HOW WILL THE CFPB FUNCTION UNDER RICHARD CORDRAY

HEARING

BEFORE THE

SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JANUARY 24, 2012

Serial No. 112–107

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

73–165 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
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HOW WILL THE CFPB FUNCTION UNDER RICHARD CORDRAY

WEDNESDAY, JANUARY 24, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:30 p.m., in room 2154, Rayburn House Office Building, Hon. Patrick T. McHenry (chairman of the subcommittee) presiding.

Present: Representatives McHenry, Guinta, Buerkle, Meehan, Walsh, Gowdy, Ross, Quigley, Maloney, Welch, and Speier.

Also present: Representatives Issa, Cummings, Norton, and Connolly.

Staff present: Kurt Bardella, senior policy advisor; Robert Borden, general counsel; Molly Boyl, parliamentarian; David Brewer, counsel; Sharon Casey, senior assistant clerk; Katelyn E. Christ, research analyst; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Peter Haller, senior counsel; Ryan M. Hambleton, professional staff member; Christopher Hixon, deputy chief counsel, oversight; Mark D. Marin, senior professional staff member; Jaron Bourke, minority director of administration; Kevin Corbin, Devon Hill, and Adam Koshkin, minority staff assistants; Ashley Etienne, minority director of communications; Jennifer Hoffman, minority press secretary; Jason Powell and Steven Rangel, minority senior counsels; and Davida Walsh, minority counsel.

Mr. MCHENRY. The committee will come to order.

The Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs is meeting here today and the hearing is entitled, How Will the CFPB Function Under Richard Cordray?

The policy of this committee is that we begin with the mission statement of the Oversight and Government Reform Committee.

We exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

So, with that, I thank Mr. Cordray for being here today and making time in his certainly busy schedule.

I will recognize myself now for 5 minutes for an opening statement.

This hearing is to focus on the functions and operations of the Consumer Financial Protection Bureau under Mr. Cordray.

The American public has always demanded consumer protection regulations that discourage and discipline financial fraud and ensure consumers are entitled to clear, succinct, and honest disclosures about financial products.

But that is simply not enough for a robust marketplace.

Since the onset of the financial crisis, Members of Congress have heard from businesses of all sizes that markets are in need of certainty. In this regard, the CFPB has failed the first test.

The needed certainty that we and the financial marketplace need, that consumers need, that regulated entities need in order to extend credit is real.

Since Dodd-Frank was enacted 18 months ago, the role, agenda and authority of the CFPB has increased uncertainty in U.S. markets, not lessened it. This restricts access to credit.

In May of last year, this subcommittee hosted then-special advisor for the CFPB, Elizabeth Warren, in an effort to perform its oversight responsibilities and allow the American public to clearly understand the Bureau's operations, accountability to U.S. taxpayers, and beliefs about its authority and limits.

At the time, Ms. Warren's answers to congressional questions were fuzzy at best, leaving members and market participants unsure of the Bureau's areas of focus and the duplicative role when establishing rules with existing Federal regulators.

An encouraging sign is the news today that there is an agreement between the CFPB and the FTC in division of those responsibilities. That is a good sign.

As a result, countless experts continued to raise serious questions about the Bureau's structure and broad discretionary powers on our economy and credit markets.

While conflicting opinions about Federal regulators are not new, the fact of the matter is that the operations and authority of the CFPB still remain a mystery to Congress and the American public.

For the last year and a half, interim figureheads for the Bureau have skillfully dodged congressional inquiries about the regulator's operations and powers. In this subcommittee, for example, Ms. Warren could not answer a simple question about the definition of abusive from Congressman Gowdy. This question came about. I hope that Mr. Cordray will be willing to engage in that discussion today and give some clarity.

With such immense powers over financial products left to the interpretation of a single, unelected, unaccountable bureaucrat, with over a half a billion dollar budget, furthermore, being done with a recess appointment, Republicans in this body and in the Senate have called for meaningful changes to the structure of the CFPB.

Unfortunately, the President decided against compromise. If having a regulator with unprecedented and ill-defined power was not enough, the administration decided to double down by bringing into question the validity of its director. That is unfortunate.

The fact that White House lawyers must continue to justify the President's decision to waive roughly 200 years of precedent jeopardizes the sanctity of the Bureau's operations and is unfair, in my opinion, to Mr. Cordray, the Bureau, its powerful responsibilities and duties, and, most importantly, the American public.

The irony for this to occur to the CFPB, self-proclaimed as "the most constrained and most accountable agency in government," is chilling.

Nonetheless, now that Mr. Cordray, despite an appointment that is constitutionally questionable, has stated his intention to assume full powers as head of the CFPB, this subcommittee believes it is time that he deliver definitive responses about how he will implement and enforce the unparalleled powers of his new office.

As daily headlines proclaim Mr. Cordray's latest authorities and targets, it is vital that this subcommittee stand committed to its mission of producing an efficient and effective government that works for the people and their livelihood.

Simple questions about the CFPB's annual budget of roughly half a billion dollars of taxpayer funds, dictated by a single individual, to its vast authority over the U.S. economy remain unanswered and warrant persistent congressional oversight.

I certainly appreciate the willingness of Mr. Cordray to submit to this oversight. There are many questions that do remain. I am interested in hearing from Mr. Cordray about his thoughts on what he believes the CFPB's new regulatory authority is and how it will be promoting private sector job creation and a robust credit market, and assuring that Congress will have accurate and full oversight over this process.

Will you disclose your regulatory agenda for the year?

Will you focus on products with even-handed enforcement, regardless of who is offering said product?

Will you get input from small businesses on your regulations that you are issuing?

Will you empanel small businesses and hear feedback from them in your major regulatory pieces?

And will you actively solicit the regulated community as well?

These are questions that I will have and I look forward to the gentleman answering, and I thank Mr. Cordray for making time in his busy schedule early in his service in this regard.

With that, I will recognize Mr. Quigley, the ranking member.

Mr. QUIGLEY. Thank you, Mr. Chairman, and thank you for holding today's hearing.

I would like to begin by reading a mission statement, that of the CFPB: "To make markets for consumer financial products and services work for Americans, whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products."

Let's remember why we are here. There can be no amnesia about the fact that these markets were not working for Americans before the financial crisis. Weak and patchwork regulation allowed dangerous consumer financial products and toxic financial instruments to infiltrate the market.

Unscrupulous lenders were able to take advantage of consumers by selling them faulty, fraudulent, and deceptive financial prod-

ucts. This reckless lending poisoned the financial system and directly contributed to the mortgage meltdown.

We explicitly created the CFPB to protect Americans from these fraudulent and abusive products.

On July 21, 2011, the CFPB took over consumer protection authorities from the Federal Reserve, the FDIC, the FTC, the NCUA, the OCC, OTS, and HUD. But, by law, CFPB supervisory authority over nondepository providers of mortgage loans, mortgage brokerage services, foreclosure release services, and abusive lending practices could not take effect until a director was in place. That is why, on December 8th, I was so disappointed to see a culture-proof minority of 45 Senators block Mr. Cordray's nomination to be director.

Mr. Cordray, a former Ohio attorney general, is eminently qualified for this position. Senator Scott Brown has called him the right person to lead the agency and help protect consumers from fraud and scams. Mr. Cordray, who I am pleased to welcome here today as the first director of CFPB, was appointed to his position by the President on January 4, 2012. He takes charge of the CFPB at a critical time for consumer financial protection. I am eager to work with him and his staff to ensure that Americans in the 5th District of Illinois, as well as around the country, are protected from financial fraud and abuse.

I am also glad to have this opportunity to discuss with Mr. Cordray his plans for the CFPB under his directorship. I applaud the early work that has been done looking into predatory practices targeting veterans and I look forward to hearing more. I also applaud the fact that the CFPB has made transparency and accountability one of its top priorities.

This is the third hearing in this committee to invite witnesses from and conduct oversight of the CFPB. Overall, this is the twelfth time that witnesses from this agency have testified before Congress. An independent audit firm found that the agency has adopted and maintained a strong interest in being transparent and accountable in public. In fact, both the ICP and the ABA have praised the Bureau for its transparent and accessible rulemaking process.

This is keeping with Congress's intent in creating the CFPB, whose ability to protect consumers is counteracted by extraordinary and unprecedented checks and balances. For example, the Financial Stability Oversight Council can reject any CFPB regulation that would put the safety and soundness of the U.S. banking system or stability of the financial system at risk. Finally, the CFPB stands alone among banking regulators in that its budget has a statutory cap.

But the simple fact is that we need the CFPB. Whether you are an investor planning for retirement or a veteran coming home after serving our country, the agency will protect you against financial abuse. I hope my colleagues will join me in welcoming Mr. Cordray, and I look forward to hearing his testimony.

We need to understand, Mr. Cordray, that to a certain extent you are outmanned. You are certainly outnumbered financially. So my concern isn't so much that you have this cap, my concern is do you

have the ability to meet this challenge given the resources you have.

I hope my colleagues will join me in welcoming Mr. Cordray. I look forward to hearing his testimony.

Mr. Chairman, I would also like to ask unanimous consent that other members of the committee be allowed to participate in the hearing.

[The prepared statement of Hon. Mike Quigley follows:]

Statement of Ranking Member Mike Quigley

Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs

"How Will the CFPB Function Under Richard Cordray?"

Tuesday, January 24, 2012 at 1:30 pm in 2154 Rayburn House Office Building

Mr. Chairman, thank you for holding today's hearing on the Consumer Financial Protection Bureau (CFPB) and its new director, Richard Cordray.

I'd like to begin by reading the CFPB's mission statement:

"To make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products."

There can be no amnesia about the fact that these markets were not working for Americans before the financial crisis.

Weak and patchwork regulation allowed dangerous consumer financial products and toxic financial instruments to infiltrate the marketplace.

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On July 21, 2011, the CFPB took over consumer protection authorities from the Federal Reserve, the FDIC, the FTC, the NCUA, the OCC, OTS, and HUD.

But by law, the CFPB's supervisory authority over (1) non-depository providers of mortgage loans, (2) mortgage brokerage services, (3) foreclosure relief services, and (4) abusive lending practices could not take effect until a Director was in place.

That is why, on December 8, I was so disappointed to see a cloture-proof minority of 45 senators block Mr. Cordray's nomination to be Director of the CFPB.

Mr. Cordray, a former Ohio Attorney General, is eminently qualified for this position.

Senator Scott Brown, a Republican, has called Mr. Cordray "the right person to lead the agency and help protect consumers from fraud and scams."

Mr. Cordray, who I am pleased to welcome here today as the first Director of the CFPB, was appointed to his position by President Obama on January 4, 2012.

Mr. Cordray takes charge of the CFPB at a critical time for consumer financial protection.

I am eager to work with him and his staff to ensure that Americans in the 5th District of Illinois as well as around the country are protected from financial fraud and abuse.

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This is keeping with Congress's intent in creating the CFPB, whose ability to protect consumers is counteracted by extraordinary and unprecedented checks and balances.

For example, the Financial Stability Oversight Council can reject any CFPB regulation that "would put the safety and soundness of the U.S. banking system or stability of the financial system of the U.S. at risk."

Finally, the CFPB stands alone among banking regulators in that its budget has a statutory cap.

But the simple fact is that we need the CFPB—

Whether you're an investor planning for retirement or a veteran coming home after serving our country, the CFPB will help protect you against financial abuse.

I hope my colleagues will join me in welcoming Mr. Cordray, and I look forward to hearing his testimony.

I'd also like to ask unanimous consent that members not on the Subcommittee be allowed to participate in the hearing.

Thank you Mr. Chairman, and I yield back.

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Mr. MCHENRY. Reserving the right to object. The intention is, with this being such an important hearing, that I want to let our Members have as many questions as they have time to ask and that Mr. Cordray has time to answer, so it would be my intention to object to other Members that are not on the subcommittee, aside from the ranking member and obviously the full committee chairman. And I would hope that Members would respect that.

Mr. ISSA. Mr. Chairman.

Mr. MCHENRY. Yes.

Mr. ISSA. Also reserving a point. The ranking member and I are actually members of the subcommittee.

Mr. MCHENRY. Ex-officio members, yes.

Mr. ISSA. Actually, as Mr. Cummings would let us all know, voting members at a previous hearing. But, Mr. Chairman, our committee rules, as I understand them, are that you must be present at the time that, by name, you are asked for. That has been the policy. So I would not object, but I think that it would be appropriate to ask for unanimous consent if, and only if, an individual arrived and could then be subject to that request, and, of course, they would still go after all other Members.

Mr. MCHENRY. Thank you so much, Mr. Chairman. I would put that down as a matter of the committee rules, and thank you for outlining that.

Mr. QUIGLEY. I think I still need to yield back, but thank you, Mr. Chairman.

Mr. MCHENRY. I thank the ranking member.

With that, we will now recognize Mr. Cordray. I know you are familiar with the process with the lights, but you have 5 minutes to summarize your opening statement. Green obviously means go; yellow means, well, you are a former attorney general, you know that means hurry up; and then, obviously, red means stop. So thank you so much and we look forward to your testimony.

STATEMENT OF RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CORDRAY. Thank you, Mr. Chairman——

Mr. ISSA. Mr. Chairman, I'd make a point of order that the witness has not been sworn.

Mr. MCHENRY. I thank the full committee chairman. Again, not reading off my script, I am so sorry.

If the gentleman will stand and if you will raise your right hand.

[Witness sworn.]

Mr. MCHENRY. Thank you. You may be seated.

Let the record reflect that the witness answered in the affirmative.

And now I will take the time to introduce Mr. Cordray here to represent the CFPB and testify on behalf of the CFPB after his January 4th appointment. Thanks so much, Mr. Cordray. Five minutes.

Mr. CORDRAY. Thank you again, Mr. Chairman, for inviting me here today. Thank you, Chairman Issa, Ranking Member Cummings, Ranking Member Quigley and members of this subcommittee for taking time to hear about the Consumer Financial Protection Bureau.

Before I became director, I promised Members of Congress in both chambers and on both sides of the aisle that I would be accountable to you for how the Consumer Bureau carries out the laws you have enacted. I said that I would always welcome your thoughts about our work, and I stand by that commitment today. I am pleased to be here with you to tell you about our work and to answer your questions.

The people who work at the Consumer Bureau are always happy to discuss our work with the Congress. This is the twelfth time that we have testified before either the House or the Senate, and my colleagues and I look forward to working closely with you, with the businesses who serve their customers in the consumer financial markets, and with the hundreds of millions of American consumers themselves.

I am honored to serve as the first director of the new Consumer Bureau. I am energized and inspired by the many talented people who work with me there and I am driven by the challenges and responsibilities of our mission to protect American consumers.

Our mission is of critical importance to making life better for Americans. Consumer finance is a big part of all our lives. Mortgages allow people to buy a home and spread the payments over many years. Student loans give young people with talent and ambition the ability to get an education. Credit cards give us immediate and convenient access to money when we need it.

These products enable people to achieve their dreams. But as we have all seen in recent years, they can also create dangers and pitfalls if they are misused or not properly understood.

During my years in State and local government, I became deeply engaged in consumer finance issues. I saw good people struggling with debt they could not afford. Sometimes those people made bad decisions they came to regret. Sometimes an unexpected event, like a loved one getting sick or a family member losing a job, overwhelmed even their most careful planning. Still, other times I saw unscrupulous businesses who obscured loan terms or engaged in outright fraud, causing substantial harm to unsuspecting consumers, ruining their lives and devastating our communities.

I am certain that each one of you hears these same stories every day from your families, your neighbors, and constituents in your districts. People do not want or expect any special favors; they just ask for a fair shake. They want a consumer financial system that actually works for consumers and a chance to get back on track toward the American dream.

One of our primary objectives at the Consumer Bureau is to make sure the costs and risks of these financial products are made clear. People can make their own decisions, and nobody can or should try to do that for them. But it is the American way for responsible businesses to be straightforward and up-front with their customers, giving them all the information they need to make informed decisions. That is good for honest businesses and it is good for the overall economy.

A particular quote caught my eye recently which embodies this view. It goes: Free men engaged in free enterprise build better nations, with more and better goods and services, higher wages and

higher standards of living for more people. But free enterprise is not a hunting license.

That was Governor Ronald Reagan in 1970. I agree with what he said and it is a view widely shared by the people who work with me at the Consumer Bureau.

So another key objective is making sure that both banks and non-bank competitors receive the evenhanded oversight necessary to promote a fair and open marketplace. Our supervisors will be going onsite to examine their books, ask tough questions, and work with them to fix problems we uncover. Under the laws enacted by Congress, and with a director now in place, we have the ability to make sure this is true across all financial products and services.

The Consumer Bureau will also make clear that violating the law has consequences. Through our field examiners, our direct contact with consumers and businesses, and our highly skilled researchers, we have multiple channels to know the facts about what is happening in the marketplace. We plan to use all the tools available to us to ensure that everyone respects and follows the rules of the road. Where we can cooperate with financial institutions to do that, we will. However, we will not hesitate to use enforcement actions to right a wrong.

As we move forward with our work, we need to hear directly from the consumers we protect and the businesses who serve them. We do that on our Web site, consumerfinance.gov, where people are able to tell us their personal stories. We also make it a point to get out of Washington and to hear from people across the country. Thus far, we have held 10 field meetings in Philadelphia, Minneapolis, Cleveland, and we had our first field hearing in Birmingham. We are hearing from thousands of Americans about what works and what does not. We are listening closely and we will hope that many of you will join us at these events when we come to visit your communities.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Cordray follows:]

Introduction

Thank you, Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee for inviting me to testify about the Consumer Financial Protection Bureau. I am pleased to have this opportunity to discuss the work of the Consumer Bureau, and I look forward to working with you and other members of Congress in the future.

I am honored to serve as the first Director of the Consumer Financial Protection Bureau, the first agency whose sole mission is making sure that consumer financial markets work for American families. As Director, I am committed to establishing the kind of productive working relationship with you and your colleagues that will allow this agency to succeed. As we work to fulfill the statutory mission set out by Congress, we believe it is critical that Congress receives the information it needs about our activities. My testimony today represents the Consumer Bureau's 12th appearance testifying before Congress. (See Appendix A)

Moreover, we need and want to hear from you. At every stage, I believe that input from Congress will help improve our work and our ability to deliver real value to American consumers. I look forward to an open dialogue with Congress on the many important issues that affect your constituents and consumer financial markets nationwide.

Consumer finance is an enormous part of our economy, and it plays a vital role in the daily life of almost every American. The stakes could not be higher. Financial products can make life better and create opportunities for people to invest in their future. However, as we have all seen in recent years, these same products can also make life more difficult. Over time, consumer finance has become more complicated and risky, and the results can be disastrous not only for families but for communities and the entire economy. Consumers need better information about the costs and risks of their financial decisions, and they should be able to make up-front comparisons among competing products. Sellers of financial products need to know that their competitors are playing by the rules and cannot succeed by deceiving customers or engaging in other unscrupulous practices that achieve cost advantages by violating the law.

My vision for the Consumer Bureau is that it will work to make consumer financial markets operate fairly in order to protect consumers, support honest businesses, and play a crucial role in helping to safeguard the overall economy.

First, the Consumer Bureau will benefit consumers by clarifying the prices and risks of consumer financial products and services. When consumers know the true costs, benefits, and risks of competing products, they will be better able to make good decisions for themselves and their families. It will also help people avoid being ambushed by costly surprises buried in the fine print, so they can have proper confidence that the terms of the deal stated today are the terms they will actually be living with down the road.

Second, the Consumer Bureau will benefit honest businesses by leveling the playing field and ensuring that financial institutions play by the same set of rules. In the run-up to the financial crisis, nonbank firms generally were not subject to the federal supervision that applied to banks. Some of these unsupervised entities led a race to the bottom in lending standards that

hurt responsible businesses, including community banks and credit unions, and greatly harmed consumers. With a Director now in place, the Bureau can work to level the playing field on which our nation's financial institutions will innovate and compete.

Honest businesses want to compete in a market where buyers understand the terms of the deal and can compare possible alternatives. These firms work to win market share based on fair competition and excellent customer service, not through deception or fraud. The Consumer Bureau can help responsible businesses by ensuring that everyone competing in the marketplace follows the same set of fair and reasonable rules.

Finally, the Bureau's efforts can help strengthen our nation's economy. We have all seen how gross imbalances in consumer financial markets, most notably in the mortgage market, were a significant cause of the recent financial crisis. By creating this new agency with an intensive focus on consumer financial protection, Congress has provided an important means to ensure that such imbalances will be identified and addressed long before they produce such devastating results.

Consumer Bureau Activities to Date

Although the Consumer Bureau was officially launched only six months ago, we have already begun several initiatives to help consumer financial markets work better.

Bank and Nonbank Supervision

This month, the Consumer Bureau launched the first federal nonbank supervision program, one of the central new authorities provided by the Dodd-Frank Act. There are thousands of nonbank providers of financial products and services that make up a significant portion of the consumer financial marketplace and affect millions of Americans each year. Nonbanks include companies such as mortgage lenders, mortgage servicers, mortgage brokers, payday lenders, consumer reporting agencies, debt collectors, and money services corporations. The nonbank supervision program will include conducting individual examinations and may also include requiring reports from businesses to determine what areas need greater focus. The Bureau will determine what degree of supervision to perform based on an analysis of the risks posed to consumers, including factors such as the nonbank's volume of business, types of products or services, and the extent of state oversight for consumer financial protection.

Last year, the Consumer Bureau launched its large bank supervision program, which focuses on ensuring that banks with more than $10 billion in assets comply with federal consumer financial laws. The large bank program covers more than one hundred of the largest banks, thrifts, and credit unions in the country, as well as their affiliates.[1]

[1] In connection with its bank and nonbank supervision program, the Consumer Bureau released a Supervision and Examination Manual that provides direction to CFPB examiners on how to determine if companies are complying with federal consumer financial laws. In addition, the Consumer Bureau has issued procedures focused on particular industries, including mortgage origination, mortgage servicing, and payday loans.

Know Before You Owe

The Consumer Bureau is hard at work to make transparency in consumer financial products a reality. The CFPB launched *Know Before You Owe* campaigns to help consumers better understand various financial products by simplifying often confusing and duplicative information. Thus far the CFPB has launched *Know Before You Owe* projects for residential mortgages, student loans, and credit cards to improve the quality and clarity of information provided to consumers. The Bureau continues to solicit feedback to make mortgages, student loans, and credit card agreements more understandable.

On mortgages, in particular, as part of our required tasks under the Dodd-Frank Act, the CFPB is creating shorter and more useful disclosure forms for the loan estimate that consumers receive shortly after they apply for a mortgage. Our work in this area will reduce regulatory burden and make the costs and risks of a loan clearer so that consumers can choose the mortgage that best meets their needs. Specifically the CFPB is working to integrate the separate disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). Over five rounds of testing prototype forms, the CFPB received feedback on the forms from more than 24,000 members of the public, industry participants, and market experts. The CFPB is also working to reduce unnecessary paperwork by combining disclosures received at the closing of a mortgage agreement.

On student loans, in collaboration with the Department of Education, the CFPB released a suggested one-page "shopping sheet" to provide students and their families with important financial aid information such as estimated monthly payment levels after leaving school. The "shopping sheet" is intended to encourage more informed decisions about paying for higher education by reducing jargon, facilitating comparisons, and distinguishing loans from other types of financial aid.

In December, the CFPB released a prototype credit card agreement that makes it easier for consumers to understand the terms and features of the product. The two-page agreement is written in plain language and explains key prices and features upfront. The CFPB is testing the prototype with Pentagon Federal Credit Union, one of the largest credit unions in the country, which has more than 350,000 credit card customers

Regulatory Streamlining

The Bureau launched a targeted initiative to streamline the regulations that the agency inherited from seven different federal agencies under the Dodd-Frank Act. In November 2011, the Bureau issued a Notice and Request for Information asking the public to identify provisions of the inherited regulations that the agency should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary. In addition, it seeks suggestions for practical measures the Bureau could take to make complying with the regulations easier.

Office of Servicemember Affairs

The Office of Servicemember Affairs is charged with educating and empowering servicemembers and their families to make better informed decisions regarding consumer financial products and services. Under the leadership of Assistant Director Holly Petraeus, the Consumer Bureau has been collecting data and other information from servicemembers, their advocates and counselors, and industry participants. Mrs. Petraeus has already brought important attention to the unique financial circumstances of men and women in uniform and has focused our efforts in several specific areas.

Mrs. Petraeus has led the Bureau's efforts to coordinate with federal and state agencies on consumer protection issues affecting military families. She has traveled to seventeen military installations to hear firsthand the financial challenges that military families face and has testified four times before Congress about servicemember issues. The Office held a day-long "Financial Fitness Forum" bringing industry leaders together to discuss how to better serve military members and veterans.

Office of Financial Protection for Older Americans

The Office of Financial Protection for Older Americans will help seniors navigate financial challenges by educating and engaging them about their financial choices. We have all seen the prevalence of scams and frauds aimed at exploiting seniors to gain access to their money or their sensitive personal financial information. In fact, I fought these predatory schemes constantly in my work as Ohio Attorney General. Under the leadership of Assistant Director Skip Humphrey, the office has begun holding town halls and other events to gather information about issues affecting seniors in states such as California, Florida, Massachusetts, Minnesota, New York, and Maine.

Enforcement

In my prior role, I was building the enforcement arm of the Bureau. Now that we have a Director, we have our full authorities to investigate and bring enforcement actions to ensure that financial providers are held accountable if they violate the law, and that the rules of the road governing banks and nonbanks are applied evenhandedly to all participants. In this area, the Bureau is also cooperating closely with other law enforcement agencies to avoid any duplication of work and to coordinate limited resources. The Bureau has many tools to address problems in the financial markets, including supervision, rulemaking, and enforcement. Filing lawsuits or administrative actions will be necessary at times to ensure that the law is followed and respected, and that harm to consumers from unlawful conduct is remedied.

Office of Fair Lending and Equal Opportunity

The Office of Fair Lending and Equal Opportunity leads the Consumer Bureau's efforts to ensure fair, equitable and nondiscriminatory access to credit for individuals and communities. The Office's function is to provide oversight and enforcement of federal fair lending laws; coordinate fair lending efforts of federal agencies and state regulators; and work with private

industry, civil rights, and consumer advocates to promote fair lending compliance and education. It is operating in close partnership with Bank and Nonbank Supervision to develop supervisory manuals and begin fair lending examinations of supervised institutions.

Engaging with Stakeholders

One of the highest priorities of the Consumer Bureau is to communicate frequently, substantively, and candidly with a wide range of industry and consumer groups who are affected by our activities. In addition to the outreach efforts discussed above, Consumer Bureau staff have traveled across the country to engage with stakeholders and listen to their expectations and concerns about consumer finance markets and the agency itself.

Engagement with individual consumers is of course a cornerstone of the Consumer Bureau's activities. In cooperation with other federal regulators, the Consumer Bureau has taken a phased approach to the scope of its Consumer Response function, which fields complaints from the public. This approach enables the Consumer Bureau to staff and build the infrastructure and processes needed to provide a service that is trusted, easy to use, and effective. Consumer Response began taking complaints related to credit cards on July 21, 2011, and the system was expanded to include mortgage complaints on December 1, 2011. The Consumer Bureau expects to handle appropriate complaints with respect to all products and services within its authority by the end of 2012.

The Bureau also created a "Tell Your Story" feature on its website that gives consumers the opportunity to share their experiences with consumer financial products – positive or negative. These submissions, along with complaints received through the Consumer Response function, help inform other aspects of the Bureau's work, including policy making, supervision, enforcement, rulemaking, and consumer education functions. In addition to learning from individual consumers, the Consumer Bureau engages frequently with consumer, civil rights, and community-based organizations that have acquired substantial expertise in the consumer financial sector.

The Consumer Bureau has also been committed to meaningful engagement with industry stakeholders whose input is essential to understanding consumer finance markets and the implications of Consumer Bureau actions. From the earliest stages of our efforts to stand up the agency, outreach to smaller lenders has been a particular focus of the Consumer Bureau. We recognize that a strong and diversified financial services industry – one that includes small as well as large providers – is the best way to serve American consumers. Community banks and credit unions know their customers, can provide tailored products and services, and have built a business model based upon long-term relationships and trust. They disproportionately provide credit to small businesses. In short, their importance to our communities and to the national economy cannot be overstated. A special team at the Bureau is dedicated to community bank and credit union outreach so that we can stay continually informed about developments in their industry as well as their unique perspective on regulatory compliance issues.

Consumer Bureau staff also continue to engage with large bank and nonbank executives as well as trade associations representing financial institutions. Large financial institutions have

a broad view of consumer finance markets, and their practices and products affect millions of Americans every day. A well-grounded understanding of the nation's largest financial companies is essential to fulfilling our mission to improve consumer financial markets.

Building a 21st Century Agency

Six months from the official launch of the Consumer Bureau, we are well along the path to building a modern and efficient agency. The early accomplishments of the Consumer Bureau are the direct result of careful planning and recruitment of a top-notch workforce.

From the early days of building the Consumer Bureau, we have recognized the importance of extensive input from and collaboration with the public at large as well as our key stakeholders. For example, when designing the agency's structure in late 2010, we provided our draft organizational chart to members of Congress and other stakeholders, and we posted the chart on our website early last year. With help and advice from many outside stakeholders, we have established an organizational structure that provides the infrastructure the Bureau needs to meet its responsibilities in the years ahead.

By creating and implementing a strategic workforce plan, the Consumer Bureau has recruited a talented, dedicated, and experienced workforce that brings a variety of backgrounds and perspectives to our work. This team includes people with significant business backgrounds, public sector experience (including transferees from other agencies), and experience in academia and non-profit organizations. As of December 31, 2011, we have hired approximately 757 employees who support operations in our Washington, D.C. headquarters and our regional satellite offices in Chicago, New York City, and San Francisco. Attached for your reference is additional detail on the Consumer Bureau's workforce. (See Appendix B)

From the earliest stages of our start-up efforts, the Consumer Bureau has worked to establish budgeting and financial controls that will help ensure that resources are deployed effectively and efficiently. The Government Accountability Office completed its first annual audit of the Consumer Bureau in November 2011, and the Bureau received an unqualified "clean" opinion in the fiscal year 2011 audit. The Bureau is also subject to an additional yearly independent audit of its budget and operations. The Bureau received positive performance ratings in the first such audit, which was completed and submitted to Congress in October 2011.[2] Consistent with the Consumer Bureau's commitment to transparency, we have posted on our website quarterly updates on our budget and expenditures, including the most recent update posted this week. Details regarding the Consumer Bureau's fiscal year 2011 funding requests and expenditures can be found in the attached materials. (See Appendix C and D)

Conclusion

At the Consumer Bureau, we are working to make financial markets work better for consumers and the honest businesses that serve them. Prior to the financial crisis, seven federal

[2] The report of GAO's fiscal year 2011 audit of the Consumer Financial Protection Bureau and the additional independent audit of budget and operations are attached as Appendix E and F.

agencies had some responsibility for consumer financial protection, but none of these agencies had consumer financial protection as its sole priority, or the tools to regulate and oversee the whole market. As a result, there were gaps in oversight and basic problems of accountability, contributing to markets that failed and an economy driven to the brink of collapse. The Consumer Bureau is now directly and singularly responsible to the public for performing its consumer financial protection functions, and it has comprehensive tools to help ensure that financial markets work for American families.

Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee, thank you again for inviting me to testify today about the Consumer Bureau. I have great appreciation for the important role of oversight. I believe that the Bureau must be an active participant in the congressional oversight process, and that meaningful oversight will help build public confidence in the Bureau. I welcome the opportunity to discuss the activities of the Bureau and update you on our efforts to protect consumers and improve consumer financial markets.

Mr. MCHENRY. Thank you, Mr. Cordray and thank you for your testimony.

I will now recognize myself for 5 minutes.

After your January 4th recess appointment, the CFPB took its nonbank supervisory authority and you are moving forward with that. On your Web site you have a statement of regulatory policy. You are familiar with the SEC and their process that they put forward, and they put forward an agenda that roughly outlines their year's plan. Would you submit to that same type of disclosure on the regulatory framework that you are going to attempt to put in place in the coming year?

Mr. CORDRAY. Thank you, Mr. Chairman. It is our intention to be as transparent as we can be, but recognizing that we are a new agency and building an agenda from the ground up. Now, first and foremost, our agenda is set by Congress. We are to implement the laws that you have enacted, and our regulatory agenda in the early going is largely going to be dictated by that.

Mr. MCHENRY. Okay.

Mr. CORDRAY. There are certain rules that you have required us to do and we will focus——

Mr. MCHENRY. Yes. And, number one, you have actually taken the existing rules from the myriad of other regulators which you have assumed.

Mr. CORDRAY. Yes.

Mr. MCHENRY. At what date did you become employed by the CFPB?

Mr. CORDRAY. Me?

Mr. MCHENRY. Yes.

Mr. CORDRAY. January of last year. I believe the date was January 18th of 2011.

Mr. MCHENRY. Okay. So you have had roughly a year as the director of enforcement, and in that role you have seen the buildup in the CFPB. How many folks are employed at the CFPB at this date?

Mr. CORDRAY. At the end of 2011 we had 757 employees. The counting depends a bit on whether you count detailees from other agencies, people who have been made offers and accepted, but that is the ballpark.

Mr. MCHENRY. So 700, 800 folks.

Mr. CORDRAY. Correct.

Mr. MCHENRY. And what was the budget last year, roughly?

Mr. CORDRAY. Well, the budget that we had sought originally in the fiscal year 2011–2012 proceedings was $142 million.

Mr. MCHENRY. And you drew down from the Fed how much?

Mr. CORDRAY. Last year we drew down from the Fed about $161 million. We had to make some adjustments in light of we had some issues with the Fed about negotiating what kind of contribution we had to make to their pension system as we joined them and when that——

Mr. MCHENRY. So $300 million budget. So the question I have is will you lay out a regulatory agenda for the coming year with these roughly 800 employees you have and a budget that is hundreds of millions of dollars? Will you lay that out for the public so that those that are engaged in that type of business activity will

know that it is coming forward, Members of Congress will know that this is part of your agenda?

Mr. CORDRAY. I think, Mr. Chairman, we have been quite transparent about our regulatory agenda. As I say, it is stuffed full of the requirements that Congress has imposed on us, and it is our first obligation to carry that out.

Mr. MCHENRY. I certainly appreciate that.

My time is short, but the SEC outlines the regulatory actions that they intend to take in the coming year. Other regulatory bodies do this. You are vested with enormous powers, one person vested with enormous powers over all consumer finance in this country. Will you at least submit to the idea of maybe laying out the agenda for the next month?

Mr. CORDRAY. Well, I will tell you what, Mr. Chairman. I think our agenda has been pretty clear to everybody who has interacted with us, from the Chamber to consumer groups. I am happy to have my staff work with you and if that seems to be a best practice, that that is something that we can do. We are not intending to hide the ball. I think our priorities are quite clear, we have stated them very clearly. If you want to have it on a particular piece of paper or on a Web site, that is something we can——

Mr. MCHENRY. I think it would be a best practice if you look at what the SEC is doing in laying out their regulatory agenda. I think that would give clarity to the public, allay a lot of concerns that I have from small and large businesses alike, and from Members of Congress as well.

Mr. CORDRAY. Let us take a look at that and work with you and your staff, and we will see what we can do to——

Mr. MCHENRY. Thank you.

Mr. CORDRAY. Yes.

Mr. MCHENRY. What current rulemaking are you working on right now?

Mr. CORDRAY. The biggest one we are working on, and we have been working on it for some time, is actually something near to your heart, I know, because you tried to legislate on it as much as 5, 6 years ago, when it would have made more of a difference before the crisis, which is consolidating the mortgage disclosure forms around real estate closings, the TILA and RESPA so-called forms that over the years have been adopted separately under different statutes by HUD and by the Federal Reserve.

They were duplicative in many respects. There was a long-time congressional desire to simplify and clarify that and reduce the burdens. That is something we have been at work on since about May of last year. We will be coming out with a proposed rule on that by this summer. We are going to have small business briefing panels on that starting in the spring and it has been an ongoing effort for us to follow through on what I know you sought to do 5, 6 years ago.

Mr. MCHENRY. Thank you. A further question would be would you intend to have a small business panel for all major regulatory actions you take?

Mr. CORDRAY. We are required by law to empanel a small business panel. Unique among the banking agencies. It is one of the oversight mechanisms you all put in place for us. It is totally ap-

propriate. Unless we can certify that a particular rule would not have a significant impact on small providers. So the assumption and the baseline is that we will do those panels. We are going to do it, and I saw some communication earlier today from one of the associations suggesting that we maybe were not. We have already committed to that; we committed in congressional testimony last year. That will be coming very soon.

Mr. MCHENRY. And that will be coming this year?

Mr. CORDRAY. On the TILA RESPA rule in particular, yes.

Mr. MCHENRY. Okay. Thank you.

Mr. Quigley for 5 minutes.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. Cordray, the questions that were set for Ms. Warren are set for you as well. I know she had discussions with community bankers associations, particularly of my State, the State of Illinois, and the discussion was very intense about leveling the playing field for community bankers. Could you comment on your sense of how that plays out in your administration?

Mr. CORDRAY. Yes, Congressman. It is a very high priority for us. It was the first active step that we took as a Bureau after I was appointed director, and that was the time at which we could now begin to actually implement a nonbank supervision program. It is something that, had it been in place, would have helped community banks and credit unions across this country immensely in the runup to the financial crisis.

We have what, in my view, was a broken regulation of the mortgage market, where some people were regulated, others were not. I was a State treasurer and local treasurer at the time. I heard from bankers in my area who told me they were asked to make loans by customers that they knew would not work and they had to watch those customers after they said, no, go down the street and get them from unlicensed brokers and others, and it eventually wrecked the system.

So leveling the playing field is very important not only to the community banks and credit unions themselves, but it is very important to making this system work. So it is very important to us and we know it is a big responsibility for us.

Mr. QUIGLEY. Thank you. You mentioned the number of employees you have and the resources you have, and I alluded to it in my opening statement. Just try to ballpark an analysis of that which you are attempting to regulate, the comparative budgeting for marketing alone within these institutions, the number of staff they have, the resources they have. The cavalry is not coming over the hill anytime soon, but do you have the resources currently to match those extraordinary levels of institutional capability?

Mr. CORDRAY. I would say two things, Congressman. That is a concern. We are, right now, a new agency, so we are building up. You know, we started obviously at zero. We are at 757 at the end of last year. We need to build further. We need to recognize the scope of what we are trying to deal with. The consumer credit markets, you add up all aspects of that, mortgages and the other things, is approximately a $20 trillion set of markets, so it is a big job. I have heard a lot of talk about how powerful we are, but it is an important set of markets, and we hope that we are up to the

task, and we are working to be up to the task, but it is an immense challenge.

Mr. QUIGLEY. I am not out to demonize anyone in any industry, but we have had enough lessons in our lifetime here to recognize, human nature being what it is, someone needs to regulate particularly this industry. If you could focus, in the closing parts of my time, your interest in the issues you see particularly for those veterans coming home, protections they might need.

Mr. CORDRAY. As I know you know, we have been fortunate to have a tremendous spokesperson for service member issues at the Bureau, Mrs. Holly Patraeus, who has been teaching us all about the special circumstances that service members and veterans face: some of the challenges that a simple debt collection issue can pose, posing risk to their security clearance; being moved around under orders and, in this market, not necessarily being able to sell their home and, therefore, being saddled with immense financial stress for themselves and their families; the real scuffle that a lot of colleges, universities are waging to get at the GI money that is available to returning service members to go to school; and there is a lot of concerns that she has raised both for us and I believe for Members of Congress.

And I know that these are issues that are bipartisan and there is concern across the spectrum that we be able to address them effectively. We feel the same and she goes out week in, week out, visits military bases, works with the JAG Corps to bring home insights and perspectives that we can then use to be more effective in our work, and we are proud and, frankly, grateful to have her as a colleague and to follow her lead in these areas.

Mr. QUIGLEY. I am particularly sensitive and concerned too because we have veterans coming home with health issues that aren't new, but perhaps will be extraordinary in number and intensity. We haven't had incidents where people on four, five, six deployments before, so I would like to think our institutions would be sensitive to that. But to the extent we can help, I think that is just as important.

My time is over and I yield back.

Mr. MCHENRY. With that, I yield 5 minutes to the vice chairman, Mr. Guinta, of New Hampshire.

Mr. GUINTA. Thank you, Mr. Chairman.

Thank you, Mr. Cordray, for testifying today. I have a couple of questions just to talk a little bit about accountability, transparency.

Mr. CORDRAY. Yes.

Mr. GUINTA. I assume those two things are rather important to you and rather important to the agency, correct?

Mr. CORDRAY. I think they are critical to the credibility of the agency and I think you have every right to demand that from us, and I hope that you will find that we provide it.

Mr. GUINTA. Do you recall, during Elizabeth Warren's testimony back in March of last year, her statement that the CFPB is the most constrained and the most accountable agency in government?

Mr. CORDRAY. I don't recall the exact words, but I recognize the tenor of the discussion.

Mr. GUINTA. If I could just have the record reflect that that was part of her testimony. Would you agree with that statement? As-

suming she said it, would you agree with that statement, now that you sit in——

Mr. CORDRAY. Well, I think Professor Warren had had more experience with the Washington agencies than I have had. I have been here for a year; she, as you know, had worked as congressional oversight and so forth, so she may have broader perspective than I. I do know that there are very special oversight provisions in our law that apply to us that do not apply to any other banking agency.

So, for example, as was mentioned earlier, our budget is subject to a cap. No other banking agency has that. We are not able to raise our budget by raising anyone's fees, unlike the other banking agencies. If we were to ever have to go above that cap, we would come to Congress and be subject to the appropriations process. Not true of any other banking agencies. Our rules can be overridden by the Financial Stability Oversight Committee. Not true of any other banking agency. I believe we are subject to more audits and financial and budget oversight than other banking agencies.

So there certainly is a way in which that statement seems quite true. Whether it is true across all agencies, I am not sure I have the perspective to make a global comment.

Mr. GUINTA. Is it fair to say that your agency should be or would be an unbiased agency?

Mr. CORDRAY. You know, I would hope that that is so, but I imagine that is always going to be in the eye of the beholder. I think one of the things we can do in our work to try to make sure that we heed to that touchstone, which I agree with you is a desirable thing, is to make sure we are hearing broadly and in a very open way from all perspective on issues, so particularly that we hear from both the providers and the consumers that are on both sides of each transaction. I think we are making a lot of efforts to do that, but it is also probably useful for us to come up here regularly and hear from you on it as well.

Mr. GUINTA. Well, given that, and I appreciate hearing you say that, and I would tend to agree, we want to see all sides of an issue before there is action, my fundamental concern moving forward is, as other Members have talked about and will continue to talk about, is the process by which you were appointed. Does it concern you that the process by which you were appointed has an impact on those very individuals or businesses or banks that you are going to be regulating?

Mr. CORDRAY. I understand that there is controversy that people have raised about the appointment. My intention here is I am in a job; it is an important job; it is a big job that commands all my time and attention. All I can do is try to carry out the responsibilities that the law of the land now has put on my back and to try to do it in a way that is consistent with the values you articulated, which I think are good ones for us, transparency and accountability. So I will do that and that will be my focus.

Mr. GUINTA. And you mentioned earlier in your testimony that you take direction from Congress. Do you also take direction from the White House?

Mr. CORDRAY. We do not. We are an independent Federal agency. As you know, there are a number of those. Constitutional scholars

scratch their heads at times to figure out how they fit directly within the three branches of government, but it is my understanding that Congress has established independent agencies to keep them closer to the Congress, to keep them accountable for enforcing the law, and I expect that that is why we will be here frequently for oversight and for you to know exactly what we are doing.

Mr. GUINTA. So there have been no directives that you have received since your appointment from the White House?

Mr. CORDRAY. There have not.

Mr. GUINTA. If there were, in the future, directives, would you willingly, proactively share that with this committee?

Mr. CORDRAY. It would be within our discretion to determine our course, and the way we would exercise that discretion is by looking at the statutes that you have passed, which are the only thing that give us any authority to do anything at all, and make sure that we are adhering closely to carrying those out.

Mr. GUINTA. The only reason I bring it up is because in terms of accountability and transparency, something I think is extremely important, I think it is better to err on the side of caution and be over-transparent than under-transparent, which I think is the point that the chairman was also making about posting things on your Web site, what your regulatory agenda is. Those things are extremely important, I think, for the country and for those that you oversee.

Mr. CORDRAY. Yes.

Mr. GUINTA. So you have credibility and the agency has credibility. And I think, as is stands today, there is probably some question about that, given the process by which you were appointed. So I thank you for your time. Unfortunately, my time has expired.

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

We will now recognize the full committee ranking member, Mr. Cummings, for 5 minutes.

Mr. QUIGLEY. Mr. Chairman, before you do that, if I might ask, again, for unanimous consent——

Mr. MCHENRY. The ranking member is recognized.

Mr. QUIGLEY. Thank you, Mr. Chairman. I would like to renew my motion to ask unanimous consent that other members of the committee be allowed to participate, particularly Mr. Connolly, who is at the far end.

Mr. MCHENRY. Yes. And the Chair did not state correctly at the beginning. In order to have other committee members of the full committee hear today, that can happen in due course, and it is based on seniority on your side of the aisle at the time that folks show up, and that is your party's prerogative of that. For other Members of Congress who wish to sit in, they have to ask unanimous consent at the time that they are here and want to ask questions. So Mr. Connolly will be recognized in due course.

Mr. Cummings is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Cordray, on behalf of my constituents, many of whom have lost almost everything they have, many of whom have lost their homes, their jobs, their savings, I am very pleased that you have been appointed. One of the most critical new responsibilities that transferred to the CFPB is the authority to oversee

nonbanks. Director Cordray, is it true that prior to the passage of Dodd-Frank Wall Street Reform and Consumer Protection Act, these nonbanks operated in the shadows and outside the scrutiny of Federal regulators, is that correct?

Mr. CORDRAY. It is the case that there was little or no regulation of any of them or oversight at the Federal level, and whether there was any State-by-State varied greatly; in some of them there was little or no at any level.

Mr. CUMMINGS. In fact, one of Dodd-Frank's top priorities was to bring these businesses and products into the regulatory sunlight. According to the CFPB, some nearly 20 million consumers used payday loans, approximately 200 million Americans rely on credit reporting agencies, 14 percent of consumers have one or more debts in collection, and nonbank lenders originated almost 2 million new mortgages in 2010. Do those figures sound correct?

Mr. CORDRAY. They do. And as you are pointing out, they are substantial.

Mr. CUMMINGS. So that is an extraordinary number of Americans who are regularly exposed to these products that have, until now, received just about zero Federal scrutiny.

Mr. Cordray, a lot of the debate surrounding your appointment focus on the bureaucratic and procedural issues, but, for consumers, what does a director of the CFPB mean for consumer protection from unscrupulous or payday lenders, for example?

Mr. CORDRAY. Well, it means, Congressman, that we can now, as we could not before, begin to have an active supervision program over four nonbank areas in particular that are specified in the law: mortgage markets, which includes mortgage originators, as you said, 2 million of those in 2010; mortgage servicers, who have been a troubled area in many respects; payday lenders are specified in the statute; and private student lenders. It also allows us to expand that program to larger participants in other fields, as we will be doing shortly, and I think that that is very important.

The other thing is this isn't only important to consumers, although it is vital for them. It is also important to responsible businesses who compete in these markets. And it is unfair for one business to be subject to regulation and oversight and their direct competitor to be subject to none. That is an automatic cost differential and it means that those who would violate the law to get advantage can get away with it. That is not something we should ever want to tolerate and it is not something that makes for a functioning marketplace.

Mr. CUMMINGS. Now, when Ms. Warren was setting up the agency, and you may be familiar with this, she talked about how she regularly met with bankers, trying to work things out. You know, it seems like folks think that a person in your position is the bogeyman, that you are going to go around and you are going to harm, I guess, the banks. I don't know what they think. And they forget that your main objective is to just make sure that there is a fair playing field, a fair playing field for the banks, but also for our constituents, the ones who live in our neighborhoods and the ones who want and deserve to have this kind of agency moving forward and doing what you are doing.

Now, she was moving around, meeting with the banks, and trying to work out things. For example, she often talked about the forms, simplifying mortgage forms, things of that nature, and how she was able to work things out with banks and lending institutions. Can you tell us about what your plans are?

Mr. CORDRAY. Sure.

Mr. CUMMINGS. Do you plan to continue that kind of effort? Because I see this as a win-win. Go ahead.

Mr. CORDRAY. I agree with that and I think that bankers and community bankers and our credit union heads who know me best, the ones from Ohio that I worked with over the years when I was a treasurer both at the State and local level, know that I reached out to them, I created advisory councils so they could help us work better, and they did.

We are going to have, I have already pledged to the community bankers, we are going to have a special community bank advisory council in this Bureau and we are going to have a credit union advisory council, as well, because we need to hear from them because I do think that their interests are often aligned with those of consumers. Their business model is a customer-facing, customer service delivery model. That is the model we want to encourage in the marketplace, so we need to hear from them to how we balance our work.

Mr. CUMMINGS. Now, I see my time is up, but, again, welcome. We look forward to working with you.

Mr. CORDRAY. Thank you.

Mr. MCHENRY. We will now recognize Mr. Meehan of Pennsylvania for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman.

And thank you, Mr. Cordray, for not only being here today, but your commitment to this process as a former prosecutor. I certainly share with you a deep concern for those who are, in appropriate times, taken advantage of by some of these instruments. And I am pleased to see you spending some time talking about the relationship with community bankers.

You have developed the idea of how the playing field can be unlevel with respect to those who are unregulated and you have spent some time talking about how important it is that community banks, in your own words, can provide tailored products and services. They, in effect, know their communities the best, and one of the fears I have is the tremendous authority you have to be looking at any kind of an instrument, so this fine relationship on oversight.

Now, the first question I have is you are going to be regulating, to some extent, the banks that are over $10 billion in assets, according to this. But at the same time we still have four agencies, the Federal Reserve, the OCC, FDIC, National Credit Union are going to be still maintaining their oversight over the community banks. How are you going to work together to assure we don't have a trickle down, the things that you have, that you are making regulations with respect to either the $10 billion and up don't trickle down and create a whole new set of problems for community banks? And how are you going to work in concert with all of these other regulatory agencies that still have authority over them?

Mr. CORDRAY. So, Congressman, I think that is an extremely insightful question because it is something that we are wrestling with and trying to figure out as we go, and I would suggest that it is a topic that you all should continue to focus on as we go forward over this year and the next and bring each of the banking agencies in together to talk to us about how are we coordinating, how are we collaborating together, what are we doing to minimize any duplication. For example, the law requires us to coordinate our supervision exam schedules with the other regulators, who are still being in some of these same institutions. That is something we are trying to do on a timing basis. We should be coordinating on the kind of guidance or regulations that we——

Mr. MEEHAN. As a former attorney general, one of the difficulties is the most dangerous place to be is between a television camera and one other regulator that thinks they have the big case. So how are you going to deal with an agency that doesn't want to work with you but says, no, this is our authority, we are going to do this, we are looking at this issue?

Mr. CORDRAY. If people really don't want to work with you, that creates a problem and it is not an easy one to get around. But let me give you an example. The chairman mentioned we have just completed a very strong and detailed memorandum of understanding with the Federal Trade Commission, because we do have overlapping jurisdiction.

And we had two goals in mind here that really came out of discussions we had with the U.S. Chamber. The first is that we should not ever double-team companies, we shouldn't have duplicative actions. By the way, that is not only bad for them, it would be bad for us; it would be a waste of resources. We have limited resources, so——

Mr. MEEHAN. May I do this? Because I am sensing you the commitment to work together.

Mr. CORDRAY. Yes.

Mr. MEEHAN. Because I have one more question I want to ask.

Mr. CORDRAY. Okay.

Mr. MEEHAN. I would like to ask if you would do two things: if you would make a commitment to see the extent to which you can reach memoranda of understanding with some of these other agencies, as well as asking, to the extent you can, I don't want to nail you down with commitments, but that you will do impact analysis on when the regulations are made for the institutions above $10 billion, you will do an impact analysis on how it will affect community banks when those regulations or other determinations are made.

Mr. CORDRAY. I made that commitment in my testimony in my nomination at the Senate Banking Committee and we are starting down that road already. I had a big call with a number of the community bankers through the ICBA last week, might have been the week before last, they are kind of running together a little bit right now, in which we pledged to do that. And with our remittance rule, which we just put out, we have added and proposed a further tweak, which is to figure out is there a threshold below which that rule should not apply. And that is the approach we are going to try to take generally.

Mr. MEEHAN. Thank you for that commitment. I have one quick area I would love to spend more time on.

Mr. CORDRAY. Sure.

Mr. MEEHAN. You have tremendous authority when you are dealing with institutions once you determine to do an investigation, and it includes the ability to effectively ask them for all kinds of information, including what you can determine, confidential and privileged information. One of the real fears I have is the standard you are going to use before you request confidential and privileged information, and then the second is, in light of the McKesson situation and other things which I imagine you are familiar with from our days as prosecutors, how you are going to protect that against third parties that may be trying to access that.

Mr. CORDRAY. That is an issue that the big financial firms, and not so big, have raised with us. It is a concern for them. There is a bit of an omission in the statute where there is a mention of other banking agencies that have a special provision for them. We were not included in that. That is an oversight that Congress may want to look at and may want to fix.

Mr. MEEHAN. I am sorry, what is that oversight?

Mr. CORDRAY. There is a special provision that was added somewhere in the course of the last 10 years that specifies that when privileged information is provided to a banking agency, that that does not waive any privilege against third parties. It is very much what you just described in your question. However, instead of simply saying banking agencies, where I think we could fit comfortably, it is specified by name, certain ones. We were not in existence then. When we came into existence, it was not noted to fix that provision in the statute. I had said that we would be supportive of that.

In the meantime, we are working with financial institutions to try to allay their concerns and help them see that we recognize the problem, and we want to do all we can both to do our work effectively, which is important, and to be mindful of that concern for them, which is a real concern.

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

Mr. Welch of Vermont is recognized for 5 minutes.

Mr. WELCH. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you for calling the hearing. There is a lot of controversy about the financial services industry and what happened after the meltdown, and to some extent I sense that the concern that is expressed by the calling of this hearing is one of excessive regulation. That is a legitimate concern. We need regulation. I happen to think that the failure to have regulation caused a lot of harm.

But if we have too much regulation, that can get in the way of, like what Mr. Meehan was saying, the facility of consumer banks, pardon me, of small banks that can be collateral damage from some of the regulatory provisions in Dodd-Frank that were intended for the large banks. When in Ohio and in Vermont, our small banks were doing the job and not causing the problem.

But, Mr. Chairman, I just want to remind Members, because I think this should put your mind at ease. Mr. Cordray comes from Ohio. He has Republicans and Democrats who were getting hammered. He saved over $2 billion for consumers in Ohio, and the

folks who were on the saving end of that didn't look at that as a Republican or Democratic deal, they just had a voice in the regulatory process, an attorney general and a treasurer who was going to do the job for them. And I also noted in Mr. Cordray's history that he got an award from the Better Business Bureau. There are a lot of small businesses who had access to the process felt they had a place that they could go to to get fair consideration for the concerns that they have.

Also what I have heard in the testimony that Mr. Cordray has provided is that one of his concerns will be whether the regulations are working. It is not as though every regulation is a good regulation. Too much regulation gets in the way.

And I want to give you a chance, Mr. Cordray, just to address that particular concern, which I think is a concern that many of my Republican colleagues, understandably and legitimately, have.

Mr. CORDRAY. Thank you, Congressman. Appreciate the kind words.

In terms of regulations actually working, we are in a good place on this issue, and maybe a unique place, because we are a brand new agency that just came into existence. We don't have any vested interest in what's been done before, and yet we have now inherited just a forest of regulations from other agencies. And one of the first things that we have determined that we need to do and want to do is we published a notice in the Federal Register to say that we are interested in considering how we can streamline our inherited regulations. Where can we reduce the burden without sacrificing anything in terms of consumer welfare?

And the reason this is important is you have a lot of rules that are developed from time to time, and they kind of add up over time. But with each new rule it is well intentioned, there is a purpose you are trying to serve.

Mr. WELCH. Right.

Mr. CORDRAY. But there isn't, often, a consideration of when you put this against the entire mass of rules, is it too much?

Mr. WELCH. Okay. So would it be fair to say, in your view, simple and clear beats complex and confusing?

Mr. CORDRAY. Every day of the week, yes.

Mr. WELCH. All right.

Mr. Chairman, you heard it here.

Also, we need to have the opportunity for small businesses, for kids with student loans, for folks who are trying to hang on to their house to have some place they can go to to get an answer. There are some Vermont situations. A woman called, her son's student loan is with the Department of Education and Sallie Mae. She is trying to get an answer and hasn't gotten one for 30 days. They make $44,000 a year and she is the sole provider for three sons, and she has no place to go.

Another situation. This is, again, a Vermont situation. A dad called our office about his son who was in a bad car accident, unable to return to school full-time. After the accident he received a bill from the bank demanding payments on the loans immediately after graduating and then claiming that the grace period that you get is the recovery period that he had while he was in the hospital.

Another one, Bridget, 29 years old, significant student loans with Sallie Mae in the American education loan, $176,000. She has been making her payments, $7,000 in interest in a year, but she can't get by. Sallie Mae has not been willing to discuss negotiating any kind of payment.

Under the Consumer Protection Finance Agency, would these Vermonters be able to call your office and at least get a yes or no answer on what they could do and some help through the process?

Mr. CORDRAY. Let me say generally we have all heard the horror stories about mortgage servicing, and I know you hear from the same people we do. There is a growing problem in the student loan servicing realm as well. It is of concern to us. We are aware of it. We are taking consumer complaints on our Web site thus far about credit card products and mortgage products. We are going to expand to other products soon and student loans will be one of those.

In the meantime, we are working on trying to simplify and clarify, as you said earlier, simple and clear is better, the student loan shopping worksheet that we have worked on with the Department of Education to try to make things easier for students and their families to understand what choices they are making. So it is an area that is of great importance. We know how tuition has grown and the burdens on people have multiplied, and then they are stuck with these other problems that occur.

Mr. WELCH. Thank you. I yield back.

Mr. MCHENRY. I thank my colleague.

And to state for the record, the hearing is entitled, How Will the CFPB Function Under Richard Cordray? The intent of this chairman who called this hearing was to understand the consequences of the appointment of Mr. Cordray as head of the CFPB in this unprecedented action the President took and the legal consequences as a result and uncertainty that that would create. So that is the intention.

With that, I recognize the full committee chairman, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

Greetings. Welcome. You know, it is my hope that there won't be any long-term controversy on your appointment, and I certainly would like to see certainty sooner, rather than later, in your position.

Let me go through a couple of things, and Mr. Welch kind of asked one of those questions that leads a point. We think we know what your agency can do. Would you make it clear that, for example, your agency cannot order some entity to take existing contract law and simply discount it? That it is beyond the scope of your new agency to say, yeah, we want Sallie Mae to cut principal and renegotiate? As a matter of law, that is not within your purview, is it?

Mr. CORDRAY. We have the limited authority that has been given us by Congress. Our authority is to follow that law, it is not to disrupt or interfere with other sources of law. Another example is that in the statute Congress made it plain that we had no authority to set the interest rate on any product, to price that product. There are States who are doing that on payday loans and other things, but that is not within our authority to do.

Mr. ISSA. Well, thank you. I will mention that this Congress, or a previous Congress, has wrestled with that same difficult task.

Mr. CORDRAY. Yes.

Mr. ISSA. And I don't envy you having to at least have people fully understand that if you take a 1-day loan out and it is $12 of fee or interest on $100, it is a lot of money, but it is probably, if you really look at the cost of processing, less than the cost of processing. So we often have exactly that problem, is how do we keep gouging, how do we define gouging and prevent it. Hopefully, your agency will do a good job of making sure at least the consumer is informed, even if it is not within your power to change that.

Mr. CORDRAY. Right.

Mr. ISSA. Let me go through a couple of questions. And I know this is difficult, that you are sort of being asked about how you got appointed more often than you are asked about what you are going to do with your appointment, but as a fellow Ohioan, I will try to make this as painless as it can be here today, although I represent, now, California.

You know there is a controversy and that there is a legal challenge. I presume that you have looked at at least some of the President's council's opinion, other justices', so on. You are familiar with it as one studied in the law.

Mr. CORDRAY. I did read the Justice Department opinion.

Mr. ISSA. And I would presume that your opinion is that it is a good opinion, even if it is the opposite of the Bush opinion in a similar situation, and that you are going to remain on the job as a result.

Mr. CORDRAY. I believe the appointment is valid and, given that, I now have legal responsibilities under the law of the land to carry out my role as director for the Bureau, yes.

Mr. ISSA. But I am concerned for our country and I am going to ask you a difficult question. Have you begun seeking counsel, weighing how you could mitigate, if the administration was wrong and we find that there is, through suits and challenges, a question of actions you take? In other words, do you have a plan B? Have you looked for ways to ensure that even if your appointment ceased to be valid, that the work that you are overseeing would somehow have the ability to continue on because of some level of redundancy of authority?

Mr. CORDRAY. Mr. Chairman, it is a good question and it is a bit of a dilemma, which is I have been appointed to be the director. There are certain legal responsibilities I now have and the Bureau has: we have to go forward with rulemakings; we are under specific deadlines; we have to carry out the intent of that law, which is well intended to better protect American consumers. Either we do or we don't, it feels to me. And it seems to me that the right answer is that we do and we need to go ahead, and that is what we are doing and that is what we will continue to do.

Mr. ISSA. Although my question was a little bit more narrow. Have you looked into forms of redundancy or some way to ensure that you still do what you want to do, what you believe your mandate is to do, but that you can look at action after action and ask the question during this period of uncertainty, as the NRLB and other—you are not the only person in this kettle of stew, but have

you looked at ways to ensure that this committee, in our oversight, looks and says how many of these things would have to be redone, how much waste would there be in government, and so on, and to mitigate that.

Look, I am not asking, and I want to make it very clear, I am not asking you to act as though you weren't appointed. I want you to act as though you were appointed. I think that is your responsibility. The question is more as we as a committee look at the ramifications of any time there is uncertainty to an appointment for a period of time, what can we see done to reduce the chances that that uncertainty, if it were to ultimately culminate in a question of law in this case.

And we could have the same argument, by the way, of the law that the President signed, well, he says the Senate was in recess. You can't pass a bill in recess. The flip side of that is if you appointment is legal, then the law the President signed which was passed while in recess may be in doubt.

So I will let the Senate and the President worry about the law, but have you looked at that or would you agree here today to at least put some time and energy into asking how many things would sustain your departure should, for any reason, that occur?

Mr. CORDRAY. I will give it some thought, Congressman, and I understand the tenor of the question as you explained it further. I do think the one thing that we could not do, and I think it would be dereliction of duty, would be for me to say we are not going to go forward and do the things the law of the land now tells us to do because I am going to somehow act as though I was not appointed. I just think that is not tenable. And as to the rest of it, I will give it some thought. If you all have insights, I would be happy to have you share those with me.

Mr. ISSA. And I would be glad to share it with you off the record or off this hearing. Candidly, my challenge is I look and say I want whatever your thousand people, by the time the end of the year comes, I want them to make sure that they do not waste their time in something that has to be redone.

I might note that all of us on the dais are aware that sometimes we have to recuse ourselves, but, you know, one of those things is if we know that a vote is going to come out exactly the same whether we recuse ourselves or not, sometimes it is a lot easier to say, you know, caution says recuse yourself so they can't question the vote, while ultimately the same outcome occurs. And that is a lot of what I am asking for, that at least you be concerned enough to ask the questions of can we have belt and suspenders for a period of time while these challenges go on.

Mr. CORDRAY. I understand the concern.

Mr. ISSA. I thank you very much and thank the chairman.

Mr. MCHENRY. Mrs. Maloney from New York for 5 minutes.

Mrs. MALONEY. Welcome, Director Cordray. I believe your appointment reflected the overwhelming consensus in the American public that reforms were needed to prevent another crisis and that the creation of the Consumer Financial Protection Board, and the Credit Card Act and other consumer protections, were deeply needed. In fact, I have a letter here that was signed by 49 Members of Congress in support of your confirmation and I am glad to hear

there is some support on the other side of the aisle for your appointment, and I would like to put that in the record.

I would like to—is there consensus, overwhelming consensus to place this in the record?

Mr. ISSA. I would ask unanimous consent that her statement be placed in the record.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. MCHENRY. Without objection.

[The information referred to follows:]

Maloney for the record 1/24/12

Congress of the United States
Washington, DC 20515

January 24, 2012

Barack Obama
President of the United States
The White House
Washington, DC

Dear President Obama,

We are writing to thank you for taking the decisive action to appoint Richard Cordray as the first Director of the Consumer Financial Protection Bureau. We believe this action was necessary in light of Senate Republican attempts to hold his appointment hostage. We salute your unwillingness to bend to their demands and believe now is the time to move forward and look to what the CFPB will be able to accomplish in the coming months and year.

With Mr. Cordray's appointment the CFPB can now fully and directly exercise its authority to protect consumers. This authority includes the ability to regulate non-bank financial entities such as pay day lenders, mortgage brokers, student lenders and other entities that do not currently have a federal regulator. With Director Cordray at the helm of the CFPB, the Bureau can get to work leveling the playing field between these entities and consumers and ensuring that non-banks are subject to the same regulation as their banking counterparts.

We support your decision to appoint Richard Cordray, an eminently well qualified nominee, to the CFPB and we look forward to working with the CFPB in its efforts going forward.

Sincerely,

CAROLYN B. MALONEY
Member of Congress

LUIS V. GUTIERREZ
Member of Congress

BRAD MILLER
Member of Congress

KEITH ELLISON
Member of Congress

GREGORY MEEKS
Member of Congress

BOBBY L. RUSH
Member of Congress

GRACE F. NAPOLITANO
Member of Congress

CHRIS VAN HOLLEN
Member of Congress

LYNN C. WOOLSEY
Member of Congress

JIM MCDERMOTT
Member of Congress

RUBEN HINOJOSA
Member of Congress

LOIS CAPPS
Member of Congress

EARL BLUMENAUER
Member of Congress

ANDRE CARSON
Member of Congress

RUSH D. HOLT
Member of Congress

WM. LACY CLAY
Member of Congress

MARCY KAPTUR
Member of Congress

DEBBIE WASSERMAN SCHULTZ
Member of Congress

JESSE L. JACKSON JR.
Member of Congress

STEVE COHEN
Member of Congress

JACKIE SPEIER
Member of Congress

ELIJAH E. CUMMINGS
Member of Congress

HENRY A. WAXMAN
Member of Congress

GEORGE MILLER
Member of Congress

JOHN CONYERS JR.
Member of Congress

ELEANOR HOLMES NORTON
Member of Congress

AL GREEN
Member of Congress

SHEILA JACKSON LEE
Member of Congress

BARBARA LEE
Member of Congress

HANSEN CLARKE
Member of Congress

BOB FILNER
Member of Congress

BILL PASCRELL JR.
Member of Congress

G.K. BUTTERFIELD
Member of Congress

LAURA RICHARDSON
Member of Congress

JANICE D. SCHAKOWSKY
Member of Congress

ROSA L. DELAURO
Member of Congress

DAVID E. PRICE
Member of Congress

MARCIA L. FUDGE
Member of Congress

HENRY C. JOHNSON JR.
Member of Congress

JAMES P. MORAN
Member of Congress

MAZIE K. HIRONO
Member of Congress

RAUL GRIJALVA
Member of Congress

CHAKA FATTAH
Member of Congress

MICHAEL HONDA
Member of Congress

JERROLD NADLER
Member of Congress

NITA LOWEY
Member of Congress

SAM FARR
Member of Congress

DANNY K. DAVIS
Member of Congress

PETER WELCH
Member of Congress

THEODORE E. DEUTCH
Member of Congress

Mrs. MALONEY. And some of my colleagues have expressed concern that there is not enough oversight. I know one of my amendments to the bill was to require that you come before, the director come before Congress twice, but I would like to put in the record that in the last 12 months, 11 months there have been 12 hearings with the CFPB before Congress, and also I would like to place in the record statements by all of the leading consumer protection groups in support of the CFPB going forward in your appointment.

Mr. MCHENRY. Without objection.

[The information referred to follows:]

Testimony Before Congress by CFPB Officials

1. **March 16, 2011**: Elizabeth Warren before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit
2. **April 12, 2011**: Holly Petraeus before the Senate Homeland Security & Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
3. **May 24, 2011**: Elizabeth Warren before the House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs
4. **July 7, 2011**: Raj Date before the House Financial Services Subcommittees on Financial Institutions and Consumer Credit and Oversight and Investigations
5. **July 13, 2011**: Kelly Cochran before the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity
6. **July 14, 2011**: Elizabeth Warren before the House Oversight and Government Reform Committee
7. **July 28, 2011**: Dan Sokolov before the House Small Business Subcommittee on Investigations, Oversight and Regulations
8. **September 6, 2011**: Richard Cordray Nomination Hearing before the Senate Banking Committee
9. **November 2, 2011**: Raj Date before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit
10. **November 3, 2011**: Holly Petraeus before the Senate Banking Committee
11. **November 15, 2011**: Skip Humphrey before the Senate Banking Subcommittee on Financial Institutions and Consumer Protection
12. **January 24, 2012:** Richard Cordray before the House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs

Mrs. MALONEY. So I feel that we suffered tremendous loss. We are still suffering. People are losing their homes and we lost trillions of wealth in this country because of, truly, mismanagement, and I would like to try to understand why people are opposed to your appointment, because isn't it true that one of the new authorities that the CFPB has is the ability to issue regulations to prohibit unfair, deceptive, and abusive practices as they relate to financial products? Is that true? Is that one of your goals?

Mr. CORDRAY. That is one of the authorities that the law gives us, yes.

Mrs. MALONEY. And before that there were a number of agencies that had roles to play, but too often consumer protection was an afterthought, a secondary thought, a third thought, or as we saw in the subprime crisis, not thought about at all. So I think that creating an agency that focuses on consumers and preventing unfair, deceptive, and abusive practices should be a goal that all Americans support.

In fact, I would like to place in the record a letter from the U.S. Conference of Mayors that was sent to Senate Majority Leader Reid and Minority Leader McConnell, and I think it pointed out very clearly that without a director the new CFPB is hamstrung in its ability to hold nonbank firms accountable and to rein in some of the financial practices that contributed to the economic downturn that hurt so many individuals, so many communities, and our overall economy. It went on to say the agency is not able to use its authority to prohibit unfair, deceptive, or abusive acts or practices, or to issue new rules requiring better disclosures of the terms of financial products. And they go on to urge a swift appointment of a director so that we can get out there and protect consumers.

And I would like to ask you——

Mr. MCHENRY. Without objection, that will be entered into the record.

Mrs. MALONEY. Thank you so much.

[The information referred to follows:]

Maloney for The record 12/14/11

THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
URL: www.usmayors.org

December 7, 2011

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Majority Leader Reid and Republican Leader McConnell:

We write as mayors from across the country to urge the swift confirmation of Richard Cordray as Director of the Consumer Financial Protection Bureau (CFPB). Mr. Cordray is an honorable, committed, and highly-qualified public servant. In his current role as Director of Enforcement at the CFPB, he has demonstrated that he has the necessary expertise and sound judgment to lead the CFPB to affect real change in our communities – change that is urgently needed.

As you know, in the wake of the financial crisis, the CFPB is intended to help the marketplace operate more effectively by ensuring that consumers have the information they need to understand the terms of their agreements with financial companies, many of which are currently unregulated. Without a Director, the new CFPB is hamstrung in its ability to hold these firms accountable and to rein in some of the financial practices that contributed to the economic downturn, hurting communities across America. Besides being unable to use its authority to regulate mortgage brokers and financial firms outside the conventional banking industry, the agency is not able to use its authority to prohibit unfair, deceptive or abusive acts or practices or to issue rules requiring better disclosures of the terms of financial products. As long as these largely unregulated sectors of the financial services industry are allowed to operate without accountability, we will continue to see empty homes and shuttered stores in needlessly impoverished neighborhoods.

A strong, independent CFPB will help restore the economy by promoting a fair, transparent financial market. It will ensure that consumers are fully informed when they undertake significant financial obligations, like taking out a mortgage or student loan. The CFPB will also ensure that particularly vulnerable populations such as servicemembers, students, older Americans, and low-income consumers are treated fairly and that there is strong, sensible oversight of the financial services industry.

Too much is at stake for this nomination to fall prey to politics as usual in Washington. We urge you to end this gridlock and confirm Richard Cordray as Director of the Consumer Financial Protection Bureau.

Respectfully,

Antonio R. Villaraigosa
Mayor of Los Angeles
President

Michael A. Nutter
Mayor of Philadelphia
Vice President

Mark A. Stodola
Little Rock, AR

Patrick H. Hays
North Little Rock, AR

Satish I. Hiremath
Oro Valley, AZ

Jonathan Rothschild
Tucson, AZ

Josue Barrios
Cudahy, CA

Bob Foster
Long Beach, CA

Bill Bogaard
Pasadena, CA

Gina K. Belforte
Rohnert Park, CA

Stephen H. Cassidy
San Leandro, CA

Ryan Coonerty
Santa Cruz, CA

Bill Finch,
Bridgeport, CT

Vincent C. Gray
Washington, DC

James M. Baker
Wilmington, DE

James C. Cason
Coral Gables, FL

Frank Carmen Ortis
Pembroke Pines, FL

John R. Marks
Tallahassee, FL

Kasim Reed
Atlanta, GA

Linda K. Jackson
Glendale Heights, IL

Chris Koos
Normal, IL

John A. Spring
Quincy, IL

Richard P. Reinbold
Richton Park, IL

Thomas C. Henry
Fort Wayne, IN

Stephen J. Luecke
South Bend, IN

Gregory E. Fischer
Louisville, KY

Mitchell J. Landrieu
New Orleans, LA

Thomas M. Menino
Boston, MA

Michael D. Bissonnette
Chicopee, MA

Scott W. Lang
New Bedford, MA

Daniel M. Knapik
Westfield, MA

Stephanie Rawlings-Blake
Baltimore, MD

William R. Wild
Westland, MI

Ardell F. Brede
Rochester, MN

Mrs. MALONEY. Why do you think opponents fear the Bureau's ability to prohibit unfair, deceptive, and abusive practices? Why are people trying to stop the agency from going forward to protect people? Do you have any idea why this is happening?

Mr. CORDRAY. Well, Congresswoman, I take people at their word and I assume that the concern is with potential overregulation and uncertainty affecting the markets. I think my experience is that people on both sides of the aisle are trying to do what they think is right, and I take that at face value.

Mrs. MALONEY. But there is more oversight over this Bureau than any other in terms of the capping of the budget, in terms of appealing to the financial stability on any rules. So why would anyone want to strain or delay the CFPB's ability to prohibit these kinds of practices, to prohibit and restrain unfair, deceptive, and abusive practices? You testified earlier that you had more oversight of your actions, they can even repeal actions by the CFPB. So I am having difficulty understanding why people want to delay, stall, defang. Do you have any idea why some people feel that way?

Mr. CORDRAY. I don't have a very informed perspective on that issue. I just know that I believe that the right thing for us to do is to go ahead and do our work, and that is what we are going to do.

Mrs. MALONEY. But some of these have caused substantial injury to the American public, abusive practices, toxic products. Is that true?

Mr. CORDRAY. Look, I think——

Mrs. MALONEY. The subprime crisis, the ability to give mortgages to people who can't even pay their rent, much less a mortgage. There was no oversight, no guidelines. There were abuses, you have to admit.

Mr. CORDRAY. Look, in my lifetime, the single thing that hurt more Americans than anything I have ever seen was the financial crisis, the meltdown, the recession. Millions of people lost jobs. Millions of people lost homes. I do think that one of the significant causes of that were the problems in the markets that were allowed to develop and metastasize. And I think that we can help head that off in the future and, if so, that would be a very good thing.

Mrs. MALONEY. I agree. Congratulations on your appointment.

Mr. MCHENRY. I hate to interrupt, but the gentlelady's time has expired. I do appreciate the exchange of ideas and thoughts and we will continue on.

Mr. Gowdy from South Carolina is recognized for 5 minutes.

Mr. GOWDY. I thank the gentleman from North Carolina.

Mr. Cordray, my first question has something of a lengthy predicate, so I would ask you to bear with me, and then the rest of them, hopefully, will be a little quicker predicate.

Recently, the CFPB released a document on examination procedures for short-term, small dollar loans. In testimony last year before this committee, Professor Elizabeth Warren stated the principle role of consumer protection regulation in credit markets is to make it easy for consumers to see what they are getting and to make it easy for consumers to compare one product with another so markets can function effectively.

On page 2 of the examination procedures, in a footnote, it is stated that overdraft lines of credit and services do not fall into the definition of short-term, small dollar loan. Both the FDIC and Federal Reserve had indicated consumers use overdraft protection in substantially the same way they would other short-term loan products.

Why have you decided to exclude these products from guidance?

Mr. CORDRAY. Thank you, Congressman, for the question. I don't think it would be fair to say that we are excluding these products from guidance, but when you try to define the market for small consumer loans there is actually a variety of potential products there; there is payday loans, there are car title loans, there are pawn brokers, there are other sort of rent-to-own type products. There also, as you note, overdraft protection is an alternative that can give you access to short-term money for considerable fees, typically, and there are issues around that the other regulators have already recognized and that we see as well.

It is typically the case that when you are talking about overdraft protection, you are talking about a deposit institution, a bank and a bank account. A payday loan is a nonbank product, typically; not necessarily. There are some new products some of the banks are starting to offer that they call some version of deposit advance products. But this is a somewhat different product and it is not, itself, a deposit type product. So I think we were trying to focus our exam guidance there on a particular type of product in the nonbank sector.

But I think you are absolutely right to note that there are comparabilities between that and overdraft protection in the effect on consumers, and there is also comparability between those and the deposit advance products that a handful of banks and perhaps others to come are starting to offer, and credit unions have a short-term product as well, stretch pay and other things it is typically called.

Mr. GOWDY. Well, to your credit, I have not heard you demagog this morning or this afternoon, but there is a lot of conversation about Wall Street versus Main Street. There is a Wall Street in my hometown; it is about two blocks long. I don't think there are any businesses on it; it is near the courthouse. Main Street is much bigger, much wider, many more businesses, and there are some businessmen in the State of South Carolina, and I suspect in other States, who have asked legitimately why their business is being treated differently from others.

So I heard your explanation. I would just ask you to be sensitive to the fact that many people use overdraft protection as a form of a loan, and if the numbers are right, 20 million people choose to go another route. And there was a lot of fear that your putative predecessor wanted to ban payday lending. So I would ask you do you want to ban it?

Mr. CORDRAY. Congressman, I don't look at these issues in terms of banning products. What that provision of the code talks about is addressing unfair, deceptive, and abusive acts or practices. One of the things we did, you may have seen last week, we went to Birmingham, Alabama and held a field hearing on payday lending. It

was important for us to do that because, in particular, we need to know more about all the perspectives on this product.

There are some issues that we have seen in terms of potential unauthorized withdrawals from bank accounts that would be illegal; there are some debt collection tactics being used that would be illegal. In terms of the structure and core essence of the product itself, we felt we need to know more about it and we were pleased that in that hearing we ended up hearing pretty extensively from both sides of the issue. It gave us a lot to come back and digest.

But I think that we need to analyze this, we need to think carefully about it, we need to hear from people and then we can make judgments. But to try to make judgments just off the top of our head is not the right approach.

Mr. GOWDY. You made reference to conduct that is currently illegal. The last time Professor Warren was here, I counted and my colleagues made use of the word illegal or unlawful 19 different times, which, as a former prosecutor, strikes me that if it is currently illegal and unlawful, why aren't people being prosecuted for it? Have you had any conversations with the Department of Justice about the status of any of their lawsuits that may have arisen from the 2008 collapse?

Mr. CORDRAY. We have discussions with the Department of Justice about their work and our work. We actually signed a memorandum of understanding with them also, before the end of last week, which we were required to do by law so that we could coordinate. I will tell you that we have also reached out to the U.S. attorneys, who have a great interest and who told us, frankly, that had they known more about mortgage fraud in the early part of the last decade, there were cases they could have dealt with that they did not see the significance of, and they regretted, some of them, that they did not.

While we were in Birmingham, we coordinated closely with the U.S. attorney for that district of Alabama, who was interested in how payday lending issues affect her constituents, and we are going to try to take insight and guidance from others on this as we think about the right approach, but we are at the beginning of that.

Mr. GOWDY. Mr. Chairman, can I ask a question that would have a one word answer?

Mr. GUINTA. Mr. Chairman, I would ask for unanimous consent to give the Member 1 additional minute.

Mr. MCHENRY. Without objection.

Mr. GOWDY. I thank the chairman and the vice chairman.

You mentioned the U.S. Attorney's Office and Department of Justice. Have the statute of limitations expired on any of the cases that they wish they had known more about?

Mr. CORDRAY. I am sure that they have because some of the mortgage fraud cases, in fact, when I was a local treasurer and we saw irregularities in our local real estate market which turned out to be flipping schemes and scams, that was 2004, 2005. You know better than I, we depend on exactly what the nature of the criminal activity was that would be charged, what the limitations period would be. Some of those I think probably very likely have expired; others probably have not.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. MCHENRY. I thank the committee's indulgence.

Ms. Speier from California is recognized for 5 minutes.

Ms. SPEIER. Thank you, Mr. Chairman.

Mr. Cordray, welcome. We have awaited your appointment for a long time and, as one Member, delighted that you are now on the job doing the people's business. I would also like to point out to my colleagues that recess appointments are not unusual. In fact, President Clinton made 139, President George W. Bush made 171, and President Obama has made a little over 30. And I think that your appointment is very key to us being able to move forward and protect consumers in America.

Let me ask you a couple questions. We got off on payday lending just a moment ago and, as you are certainly aware, there are more payday lenders in this country than there are McDonald's franchises. My question to you would be is it abusive for a lender to charge a 400 percent interest rate?

Mr. CORDRAY. That is an interesting and difficult question. There are States, including my home State of Ohio, that have made a determination in the legislature to cap the interest rate on payday loans in Ohio. The cap was set at 28 percent.

As I mentioned earlier, we do not have the authority as a Bureau, the statute is very clear, to cap any interest rates on any financial products. There is clearly a demand for small consumer loans that shows up in the demand for this product, even though it is a pretty tough product to sustain over time, so it is something that we, as I said, we just conducted a field hearing on the issue because we are very interested in it, we need to know more.

We were happy to hear from all sides, both industry and customers of industry, and also those who are opposed to its affects in their community, and it is something that we are going to continue to size up. But I think——

Ms. SPEIER. All right, thank you. Let's move on. Why don't you tell us how many complaints you have received from consumers in this country since the Bureau has been established.

Mr. CORDRAY. We have received thousands, and the volume of complaints we receive is growing, I assume as our visibility grows, and also because we are phasing in periodically the handling of different kinds of complaints as we built from scratch. We started with credit card complaints. In December we added mortgage complaints, which I am sure you all know because you all get constituents who are you telling you their stories and asking for help. Immensely more complicated, but we have been getting a higher volume of those now. We are going to add other products as we go over the course of this year and take complaints on those as well, but we are hearing a lot from people.

Ms. SPEIER. And what are you hearing about the complaints relative to credit cards?

Mr. CORDRAY. We hear all kinds of things. You can imagine. We hear all the things that you hear. We hear complaints about charges and fees that people don't understand why they are there. We get complaints about changes in interest rates that they don't understand why that happened. We get complaints about——

Ms. SPEIER. All right. Excuse me for interrupting, but there are a couple of questions I want to get to.

Mr. CORDRAY. Sure.

Ms. SPEIER. Let me ask you this. Financial privacy is a huge concern to most consumers, and when you fill out your application for a credit card or for a mortgage you are doing it for that specific purpose, not to have it then sold to third parties to be used in whatever ways they deem appropriate. Some States have passed laws to protect financial privacy and give consumers the ability to opt in or opt out. Do you have any interest in pursuing that within your Bureau?

Mr. CORDRAY. We inherited, I mentioned earlier about overdraft protection. There is opt in, opt out rule that was adopted with respect to that product. I think that there are other areas where that can be an appropriate approach, and we also have inherited some authority over Gramm-Leach-Blilely and some of the financial privacy issues for consumers that are of great concern.

When I was attorney general, perhaps when I was treasurer of Ohio, we had a credit freeze bill in our legislature that I testified in support of which had to do with your ability to protect your financial information against identity theft, which is the fastest growing crime in the United States and a very easy crime for people to perpetrate anonymously through the Internet. So it is an area of real concern and it is something that I know Congress has been concerned about and has legislated on it. We will be looking at those issues with respect to the consumers we hear from. And there is something of a difficult balance there, but some of these issues don't seem quite as hard.

Ms. SPEIER. All right, in the 9-seconds I have left, on student loans, a huge problem. You said in a New York Times article earlier this month it could be a redo of the subprime market. Do you believe that private loans should be extinguished at death or not, private student loans?

Mr. CORDRAY. I don't have a position on that issue; it is not something I have thought carefully about, so I wouldn't want to opine off the top of my head. The total student loan burden is still much smaller than the mortgage debt in this country, but it is growing fast and, in fact, it is probably growing faster than any other kind of consumer debt. So the whole area is one of concern, but I don't have a position for you today on whether that should be extinguished at death; that seems like a matter for Congress.

Mr. MCHENRY. The gentlelady's time has expired.

With that, I will recognize——

Mr. QUIGLEY. I am sorry.

Mr. MCHENRY. The ranking member seeks recognition?

Mr. QUIGLEY. I am sorry.

Mr. MCHENRY. For what purpose does the gentleman seek recognition?

Mr. QUIGLEY. I apologize, Mr. Chairman. The ranking member of the full committee, Mr. Cummings, was going to ask unanimous consent to have a letter he wrote dated January 23, 2011, to Chairman Issa on this matter entered into the record.

Mr. MCHENRY. Reserving the right to object. Is this a letter presented—what is the nature of the letter?

Mr. QUIGLEY. I was just handed the letter. I was doing the chairman a parliamentary favor.

Mr. MCHENRY. I certainly understand. I certainly appreciate the ranking member and, without objection, this will be entered into the record.

[The information referred to follows:]

January 23, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At the outset of the 112th Congress, the Oversight Committee unanimously adopted an oversight plan that included a proposal I offered to "examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies." Although the Committee has taken some preliminary steps to examine these issues, to date it has failed to conduct a full, fair, or thorough investigation of the widespread abuses committed by mortgage servicing companies against American families, particularly military servicemembers.

In its first full year of investigations this Congress, the Committee held 118 hearings with 342 witnesses, but not a single bank executive was called to testify on the foreclosure crisis, despite multiple requests from me and other Committee Members. In addition, in 2011, the Committee issued more than 200 detailed document requests and subpoenas, but none sought documents relating to wrongful foreclosures or abusive lending practices. The only exception was a document request you and I sent jointly to Bank of America, but it has not produced a single responsive document, and the Committee has taken no action to compel production.

Rather than using its substantial investigative powers to protect American consumers from the abuses of banks, the Committee has focused instead on attacking the new agency created by Congress to protect these same consumers. Tomorrow, the Committee will hold its third hearing with officials from the Consumer Financial Protection Bureau (CFPB). In addition, the Committee has received hundreds of pages of documents in response to a detailed document request you sent in June 2011, as well as numerous questions for the record after Committee hearings, regarding allegations that CFPB acted outside its authority in providing advice during negotiations toward a possible settlement with mortgage servicing companies relating to foreclosure abuses.

Based on the witnesses the Committee has called and the documents it has requested so far this Congress, it appears that the Committee is more interested in protecting powerful banks than vulnerable American consumers. I do not believe these priorities reflect the best interests of the American public. Given the extent of the foreclosure crisis and the harm it has caused our constituents, I sincerely hope we can work together to reverse this trend in the coming year.

Bank Abuses Neglected

Recent mortgage lending practices and the resulting collapse of housing prices have cost American households $7 trillion, and millions of households are in, or facing the possibility of, foreclosure.[1] One of the most troubling aspects of the crisis is the continued allegations of abusive and fraudulent practices by the nation's banks against homeowners.

In April 2011, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the then-Office of Thrift Supervision released an *Interagency Review of Foreclosure Policies and Practices*, which identified "critical weaknesses" in the foreclosure practices of 14 federally regulated mortgage servicers. The Review found that these weaknesses resulted in "unsafe and unsound practices and violations of applicable federal and state law and requirements."[1] The Review indicated the regulatory agencies found multiple examples of foreclosures that should not have proceeded, including illegal foreclosures against military homeowners in violation of the Servicemembers Civil Relief Act.[2] Thousands of affected servicemembers have been identified, and three major banks have been forced to pay unprecedented, multimillion dollar settlements related to the abuses.[3]

Since becoming Ranking Member, I have written to you multiple times highlighting the need to investigate abusive and improper conduct against homeowners. In December 2010, I requested that the first hearing convened by the Committee consider alleged flawed and fraudulent practices by the mortgage servicing industry.[4]

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[1] Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices* (Apr. 13, 2011) (online at www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf).

[2] *Id.*

[3] *See JPMorgan Mails $2 Million to Military Families for Overcharges, Lost Homes*, Bloomberg (Jan. 18, 2011) (online at www.bloomberg.com/news/2011-01-18/jpmorgan-mails-2-million-to-military-families-for-overcharges-lost-homes.html); *see also JPMorgan Settles Military Mortgage Suits for $56 Million*, Bloomberg (Apr. 21, 2011) (online at www.businessweek.com/news/2011-04-21/jpmorgan-settles-military-mortgage-suits-for-56-million.html); Department of Justice, *Justice Department Settles with Bank of America and Saxon Mortgage for Illegally Foreclosing on Servicemembers* (May 26, 2011) (online at www.justice.gov/opa/pr/2011/May/11-crt-683.html).

[4] Letter from Representative Elijah E. Cummings to Ranking Member Darrell E. Issa (Dec. 21, 2010) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5175&Itemid=49).

In January 2011, I asked that you invite the Executive Vice President and General Counsel of JPMorgan Chase to testify, which you refused.[5]

In February, the Committee adopted its oversight plan for the 112th Congress, which included a commitment I proposed to "examine the foreclosure crisis including wrongful foreclosures and other abuses by mortgage servicing companies."[6] At the time, you commended my efforts and stated, "I believe we now have a plan that can be unanimously adopted."[7]

Later that month, I asked that you join me in requesting from the ten largest mortgage servicing companies key documents relating to alleged illegal foreclosures and inflated fees charged to homeowners.[8] When you did not act, I sent letters to those companies myself.[9]

In May, I requested that you issue subpoenas to the six mortgage servicing companies that had refused to comply voluntarily with my February requests for documents.[10] You did not issue the subpoenas.

In June, I sent you a letter providing additional information on mortgage servicer abuses and reiterating the need for subpoenas for documents relating to illegal foreclosures, inflated fees, and other abuses being committed against military servicemembers.[11] Again, you did not act.

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[5] Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Jan. 24, 2011).

[6] House Committee on Oversight and Government Reform, *Oversight Plan* (Feb. 10, 2011) (online at http://oversight.house.gov/images/stories/112th_Oversight_Plan_ 02092011.pdf).

[7] House Committee on Oversight and Government Reform, *Business Meeting on Oversight Plan,* 112th Cong. (Feb. 10, 2011).

[8] Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Feb. 25, 2011) (online at http://democrats.oversight.house.gov/ index.php?option=com_content&task= view&id=5229&Itemid=49).

[9] Letters from Ranking Member Elijah E. Cummings to various mortgage servicing industry officials (Feb. 25, 2011) (online http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20to%20Mortgage%20Servicers%20%2811%20Letters%29.pdf).

[10] Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (May 24, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task= view& id=5315&Itemid=49).

[11] Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (June 21, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task =view&id=5350&Itemid=104).

During a hearing in July, after receiving no indication that you planned to move forward, I moved to subpoena mortgage servicing companies that allegedly initiated or completed illegal foreclosures and committed other abuses against military servicemembers. After suspending the hearing and consulting with staff, you agreed to join me in requesting documents relating to the abuses affecting U.S. servicemembers.[12]

To date, however, you have not sent these document requests. Instead, you sent letters requesting that mortgage servicing companies provide narrative descriptions of violations they have committed and the steps they have taken to address them.[13] Although their responses were interesting and helpful, they did not include the production of any pre-existing documents that would be helpful to the Committee's investigation.

The Committee has not used its full investigative power to protect American consumers or to thoroughly examine the numerous allegations of wrongdoing by mortgage servicers. Among the 342 witnesses who were called to testify at our 118 Committee and subcommittee hearings in 2011, not a single bank executive was called to testify on the foreclosure crisis. Though you issued over 200 document requests and subpoenas in 2011, only one bank – Bank of America – was asked to produce documents about wrongful foreclosure or abusive lending practices. It still has not produced a single responsive document, and the Committee has taken no action to compel production.[14]

Bank Reform Efforts Scrutinized

Instead of investigating the widespread abuses committed by banks against American homeowners, the Committee has repeatedly attacked efforts to protect consumers from financial abuse.

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[12] *See* Ranking Member Elijah E. Cummings, *Press Release: A Bipartisan Victory for Servicemembers; Issa Joins Cummings to Hold Banks Accountable for Foreclosure Abuses Against Active-Duty Military* (July 14, 2011) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5378&Itemid=104).

[13] *See, e.g.,* Letter from Chairman Darrell Issa to Barbara J. Desoer, President, Bank of American Home Loans (July 25, 2011).

[14] After Bank of America "chose not to provide direct responses to all of the questions" posed in a request for information you sent in July, we sent a joint request to Bank of America seeking the loan files of borrowers "in which BofA assessed foreclosures on servicermembers in violation of the SCRA from the time period of January 1, 2006, to the present," including all communications between the Bank's employees, as well as the servicemember relating to his or her mortgage. Bank of America responded by arguing that because the bank was the subject of "an ongoing Department of Justice analysis" and had "entered into a Consent Order with the Office of the Comptroller of the Currency that calls for a comprehensive, independent review of its foreclosures in 2009 and 2010," Bank of America would "respectfully request that the Bank be allowed to supplement" information it provided earlier "when appropriate in light of the Department of Justice and OCC reviews."

Tomorrow, the Committee will hold its third oversight hearing with leadership of the CFPB, a newly created federal agency charged with protecting ordinary American consumers from abusive, misleading, or confusing financial practices. During the first two hearings, the majority repeatedly questioned the character of Professor Elizabeth Warren, who was charged with standing up the Bureau, and criticized the Bureau's structure, funding, and regulatory authority, even though these were established by an act of Congress.[15]

In addition, on June 20, 2011, you sent a letter along with TARP, Financial Services, and Bailouts of Public and Private Programs Subcommittee Chairman McHenry, Financial Services Chairman Spencer Baucus, and three Financial Services Subcommittee Chairmen, Representatives Shelly Moore Capito, Scott Garrett, and Randy Neugebauer, to the Treasury Department. This letter included a wide-ranging request for the following documents:

> All documents and communications between Elizabeth Warren or the CFPB and any State Attorney General, representative of any State Attorney General, and any federal agency or mortgage servicer, or any other potentially interested party, including plaintiffs' attorneys preparing class action lawsuits, referring or reacting to mortgage servicing, foreclosures, or a possible settlement involving State Attorneys General from September 2010- present, relating in whole or in part to mortgage servicing or foreclosures or a possible settlement involving State Attorneys General from September 2010-present.[16]

You also sent a letter to the Treasury Department on August 15, 2011, with a series of detailed and far-reaching questions for the record following the Committee's hearing with Professor Warren on July 14, 2011.[17] In response, CFPB has now produced hundreds of pages of responsive documents to the Committee showing that CFPB was providing helpful advice to state and federal authorities and appropriately preparing to carry out its critical mission to oversee the mortgage servicing industry.[18]

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[15] House Committee on Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, *Hearing on Who's Watching the Watchmen? Oversight of the Consumer Financial Protection Bureau* (May 24, 2011); House Committee on Oversight and Government Reform, *Hearing on Consumer Financial Protection Efforts: Answers Needed* (July 14, 2011).

[16] Letter from Reps. Spencer Baucus, Darrell E. Issa, Shelly Moore Capito, Scott Garrett, Patrick McHenry, and Randy Neugebauer to Treasury Secretary Timothy Geithner (June 20, 2011).

[17] Letter from Chairman Darrell E. Issa to Raj Date, Special Advisor to the Secretary of the Treasury, and Richard Cordray, Assistant Director of Enforcement, Consumer Financial Protection Bureau (Aug. 15, 2011).

[18] Letter from Treasury Assistant Secretary for Legislative Affairs Kim N. Wallace to Chairman Darrell E. Issa (July 5, 2011); Letter from Lisa Konwinski, Assistant Director for Legislative Affairs, Consumer Financial Protection Bureau, to Rep. Darrell E. Issa (Dec. 30, 2011).

Now that the President's appointment of Richard Cordray to be Director of the CFPB has activated the full panoply of the Bureau's statutory authorities, Chairman McHenry's invitation for Mr. Cordray to testify at tomorrow's hearing appears to be motivated primarily by an effort to protect financial entities from the Bureau's "new powers to broadly regulate consumer financial products and services."[19]

The Committee has also leapt to investigate other highly improbable allegations that banks have been victims of abuse. On the basis of an anonymous tip and a press report, for example, you sent letters to five of the largest U.S. banks seeking documents about whether representatives of the Occupy Wall Street movement attempted to extort financial support from them.[20] The three banks that responded all refuted the allegations and stated clearly that they had not been subjected to any such abuses.[21]

Renewal of Minority Requests

The foreclosure crisis is affecting millions of Americans across the country, devastating communities, and impairing our nation's economic recovery. I am particularly alarmed by increasing reports that U.S. servicemembers and their families have been illegally evicted from their homes and charged millions of dollars in unwarranted fees. We cannot wait any longer to use the full authority of this Committee to investigate these actions.

In the context of a different investigation, you made a strong statement about the need for prompt action by the Committee. You stated: "oversight delayed is often oversight denied. I believe that path would be unacceptable to the American public."[22] This same sense of urgency should apply even when the targets of the Committee's investigation are banks.

To fulfill the Committee's unanimously approved oversight agenda, and to adequately investigate abuses against our constituents, we must obtain responsive documents from mortgage

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[19] Letter from Chairman Patrick McHenry to Richard Cordray, Director, Consumer Financial Protection Bureau (Jan. 4, 2012).

[20] Letter from Chairman Darrell Issa to Stephen M. Cutler, JPMorgan Chase & Company (Nov. 18, 2011); Letter from Chairman Darrell Issa to Michel S. Helfer, Citigroup, Inc. (Nov. 21, 2011); Letter from Chairman Darrell Issa to Edward P. O'Keefe, Bank of America Corporation, (Nov. 21, 2011); Letter from Chairman Darrell Issa to Helen P. Pudlin, PNC Financial Services Group (Nov. 21, 2011); Letter from Chairman Darrell Issa to James M. Strother, Wells Fargo & Company (Nov. 21, 2011).

[21] Letter from John Collingwood, Bank of America Corporation, to Chairman Darrell Issa (Dec. 5, 2011); Letter from Michael S. Helfer, Citigroup Inc., to Chairman Darrell Issa (Dec. 5, 2011); Letter from Vincent Randazzo, PNC Financial Services Group, to Chairman Darrell Issa (Dec. 5, 2011).

[22] Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings (June 17, 2011).

servicing companies, and we must call top executives from the nation's mortgage servicers to testify. For these reasons, I renew my requests that you:

(1) Issue subpoenas to Bank of America, Wells Fargo & Company, U.S. Bank N.A., PHH Mortgage, Suntrust Banks, Inc., and MetLife, Inc., which all refused to comply voluntarily with my previous document requests.[23]

(2) Invite top executives of JPMorgan Chase, Bank of America, Wells Fargo, Citibank, US Bank, Ally Bank, HSBC, and MetLife, to testify at a public hearing about abusive mortgage servicing practices, including illegal foreclosures of servicemembers, illegal and inflated fees, and wrongful foreclosures.

With the start of the second session of the 112th Congress, I truly hope the Committee will take the side of the American people and begin work on these critical issues.

Sincerely,

Elijah E. Cummings
Ranking Member

[23] Letters from Representative Elijah E. Cummings to Bank of America Home Loans, Wells Fargo & Company, U.S. Bank N.A., PHH Mortgage, Suntrust Banks, Inc. and MetLife, Inc. (Feb. 25, 2011) (online at http://democrats.oversight.house.gov/images/stories/Correspondence/Foreclosure%20Letters/Cummings%20to%20Mortgage%20Servicers%20%2811%20Letters%29.pdf).

Mr. MCHENRY. With that, we will recognize Mr. Ross of Florida for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman.

Mr. Cordray, I think you are going to have your hands full with regard to legitimizing not only your appointment, but also the agency with which you are going to lead. I have had a chance to review not only your opening statement, but also listen to it, and you make several references about the Consumer Bureau will benefit honest business, will support honest businesses, honest businesses want to compete in a market where buyers understand the terms. I think in your conclusion you say to make the financial markets work better for consumers and honest businesses that serve them.

What constitutes an honest business?

Mr. CORDRAY. To me, an honest business is a business that abides by the law and competes in a fair way in the marketplace. Let me give you a couple examples of what I saw as dishonest among businesses over the years. When I was a local treasurer, I was responsible for collecting delinquent property taxes, and we saw certain businesses that would put a low priority on paying their property taxes because it gave them a cost advantage if nobody went after them and never enforced the law against them, and I made it a point to do that to level the playing field on behalf of all the law-abiding taxpaying businesses.

I could give you other examples.

Mr. ROSS. Would it be just safe to say simply that it is what you have been charged with, to prevent an unfair, deceptive, or abusive act or practice? I mean, does that constitute an honest business? My point is, Mr. Cordray, is that there are little, if any, standards by which your regulatory control should be exercised.

And I guess my concern is that you have been given broad powers and now we are saying we are only going to—I think business is business and I think saying an honest business means that all other businesses out there aren't honest, and I guess what I am asking you is in your rulemaking is there a standard, is there something that says this is the level with which we are going to hold businesses accountable?

But, more importantly, at what point do you hold them? Because, again, you are a whole new agency and you are looking at a business community that is out there and says at what point do they get involved from a regulatory view. Do they get involved and say do not make this loan? Do they get involved after the loan is made and say you shouldn't have made this loan and we are going to fine you and correct performances here? That is my point.

Mr. CORDRAY. I think I understand your question better than I did when I answered it before. So we don't have authority as a Bureau to attack or make judgments about a dishonest business. Dishonesty in itself doesn't violate the law, but I do think this is a term that most people can understand. And I will tell you, I saw and I took on dishonest businesses when I was a State attorney general. I saw businesses that were fraudulent, businesses who were scams. They were making money, they were businesses, but they were violating the law.

Mr. ROSS. And I understand that you utilized private law firms to prosecute some of these suits against businesses that were in violation in furtherance of your enforcement duties. Is that something that you are going to seek to do also in your capacity, to utilize private law firms to do that, plaintiff law firms?

Mr. CORDRAY. No, it is not.

Mr. ROSS. Okay. With regard to I guess after your first 4 months you received over 5,000 credit card complaints that you investigated and I think only 400 of those came back by the consumers saying they weren't resolved to their satisfaction, or approximately 8 percent of those. Did you collect data as to whether those 5,000 were as a result of illegal activity or just customer dissatisfaction?

Mr. CORDRAY. It has been an interesting area for us, Congressman, as you can understand. We weren't sure what we would find when we started out, and what we are finding is that there is a considerable willingness on the part of the financial institutions and consumers, once we can get them to work together to see if they can figure out and resolve those issues. We are going to continue to analyze this as we go. We just have a little bit of data so far; we will have more as we go. A lot of it is disagreements and misunderstandings and just different points of view. Some of it is——

Mr. ROSS. But this data that you are collecting—and let me ask you this.

Mr. CORDRAY. Yes.

Mr. ROSS. Is this something that you want to expand further into the mortgage lending industry?

Mr. CORDRAY. We are now taking complaints on mortgage issues, yes.

Mr. ROSS. And the data that you collect, do you intend to share it? Is it something that you want to just keep for internal purposes, or what do you want to do with that data?

Mr. CORDRAY. Sure. The first thing we do with the complaints is we make efforts to get the complaints resolved. We refer them to the financial institutions. They have actually been very cooperative with us. I think they understand that this is good business for them. I think often they prefer that the customers go to them directly rather than coming to us, but it is the same difference in the end. We also then are collecting the data about what the consumers are telling us and what——

Mr. ROSS. Will you maintain this confidentiality? That is the important thing.

Mr. CORDRAY. Well, that is a hard question that we are working through right now. We have a notice out to hear from people about how we should handle that data. We are subject, as you probably know, to the Freedom of Information Act, so some of it has to be public as long as we scrub it out of personal identifiable information. Some of these issues are quite complex. I will frankly say that our lawyers are looking at them carefully. We want to be transparent, but we want to also not be unfair. So that is the balance we are trying to strike.

Mr. ROSS. Thank you. I see my time has expired and I yield back.

Mr. MCHENRY. I thank the gentleman.

Mr. Connolly of Virginia is recognized for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Cordray, welcome to the committee and let me thank you for your willingness to serve your country in a difficult role, and I very much appreciate your being here. Let me also say, however, and this may surprise my colleagues on the Republican side of the aisle, I frankly share the misgivings about recess appointments.

From my reading of the Constitution of the United States, recess appointments were intended to give the President the power to run the government when there were long stretches of Congress not being in session. And, frankly, in my view, recess appointments have been abused by both Republican and Democratic presidents.

And if my Republican friends on this committee and in this body actually want to correct that, not by using you as the example, but by moving forward to correct that on a bipartisan basis, they would find this Democrat more than willing to cooperate, because I think it is another example of, frankly, executive encroachment on the prerogatives of the legislature. That is a different issue.

Having said all of that, would that our hands being entirely clean here in the Congress, but you can't have it both ways. The chairman indicated that your appointment was unprecedented. I don't know if that is true, but I do know this, that to have 44 Members of the other body actually write a letter saying, no matter what, no matter the virtues, we are going to block any appointment to this body to protect consumers of America, duly constituted in the law, because my equal reading of the Constitution says the way a law becomes a law is it passes both bodies, goes to the President and is signed into law.

Now, you win or lose. I have lost some. I have had amendments that weren't accepted or were defeated. I have had amendments that were passed. But once it becomes a law, we implement it. That is our duty as legislators, it seems to me, and that is the duty of the President.

It is unprecedented to have all but two Members of the other party in the other body actually say, no, we don't care if we lost, we are going to thwart it anyhow. That is not how the Constitution intended legislation to work. It is not at all an example of check and balance in government, and it is, in my view, a perversion and an abuse of the powers that the other body allows itself. And you, unfortunately, are the unwilling victim of that power struggle, which I think is extra-constitutional and strange coming from so many who flash the Constitution in the public's face saying first I believe in the Constitution. But that is just me.

Mr. Cordray, could you explain to us what you think created your Bureau? What was it that Congress had in mind, from your point of view, that somehow we came up with this idea?

Mr. CORDRAY. Well, I think that Congress had several things in mind. I think they had in front of them the very unhappy and destructive experience of the financial crisis, the credit crunch, the meltdown. I was the State treasurer in Ohio in 2007 and 2008, so I had to work to safeguard public funds in the wake of markets that really weren't functioning properly, and people were trying to understand the causes of that and one of the causes, I am firmly convinced, and I think Congress embodied this in creating the Bu-

reau, was that you had the consumer finance issues that had largely been ignored at the Federal level that, when allowed to fester and to grow, such as the mortgage irregularities, could actually, to everyone's surprise, gross or large that they threatened the safety and soundness of the financial system.

Mr. CONNOLLY. I am sorry, Mr. Cordray, but just building on your experience as attorney general and now from this perch, would it be fair to say that in all of these examples you are giving, foreclosures, the meltdown on Wall Street, banks teetering on the edge, that this was in fact the worst such situation in all of those categories affecting consumers, as well as the public at large, since the Great Depression?

Mr. CORDRAY. No question.

Mr. CONNOLLY. So the need was imperative.

Mr. CORDRAY. It seems to me that there is a strong case for the Bureau. That is what Congress enacted into law. No one had real authority over these issues at the Federal level, it was parceled out among many hands and it was a low priority for all those involved——

Mr. CONNOLLY. I am going to run out of time, unfortunately, but just real quickly, Holly Patraeus's Office of Service Member Affairs, isn't it a fact a practice among some banks to foreclose on active duty members while they are serving overseas?

Mr. CORDRAY. It has been documented that there were violations of the Service Members Civil Relief Act, meaning foreclosures went forward when they should not have done so for people on active duty. I personally doubt that any of that was intended by the institutions involved, but they needed to pay closer attention to making sure they complied with the law and I think many of them have gotten that message.

Mr. CONNOLLY. I thank the Chair.

Mr. MCHENRY. With that, we will now recognize Ms. Buerkle from New York for 5 minutes.

Ms. BUERKLE. Thank you, Mr. Chairman. And I want to commend my colleague, Mr. Connolly, with regards to his comments about appointments.

I have a couple of questions, Mr. Cordray. Thank you for being here and for answering our questions. My first question is in the same line of question that I spoke of and asked Elizabeth Warren about. You have heard from so many of my colleagues from the other side of the aisle with regards to this horrendous meltdown on the foreclosures and all of the issues. Fannie and Freddie are not included or covered by Dodd-Frank, are they?

Mr. CORDRAY. I believe that they are not. There is nothing in our Bureau that touches on that.

Ms. BUERKLE. Okay. So a big part of the problems that this economy faced and that poor American people faced in the foreclosures wasn't even addressed in Dodd-Frank, which concerns me greatly. I have been a vocal critic of Dodd-Frank because of the overreaching, because of the uncertainty that it causes for so many businesses and financial institutions that I have met with and certainly in the district, the community banks and the credit unions. So that is of concern, and the fact that Fannie and Freddie weren't

addressed, that is not going to get any better, their poor business practices.

I just have a question with regards when Professor Warren was here, she said that the CFPB is completely walled off from the Durbin Amendment, and I would like to hear your view of the CFPB's authority with respect to Interchange.

Mr. CORDRAY. My understanding of our statute is that the Interchange Amendment and the cap that was put on that was specifically not something that where any jurisdiction was granted to the Consumer Bureau to address it, so that, I believe, would be the reason why she would have made that statement. We do not enforce any of that, nor do we have the authority to amend or modify by adopting rules any of that.

Ms. BUERKLE. So you would agree that it is walled off from the Durbin Amendment?

Mr. CORDRAY. I believe that is so, yes.

Ms. BUERKLE. Okay. My last line of questioning, and I also took this up with Ms. Warren when she sat here before us, and that is with regards to your budget and the fact that you are not subject to annual congressional appropriations and the whole pay scale for the employees that will be employed by the Consumer Protection Board. You mentioned to our chairman that about 757 folks have been hired to date?

Mr. CORDRAY. As of end of last year, yes, several weeks ago.

Ms. BUERKLE. And how many are you anticipating that you will hire until you get the entire board in place?

Mr. CORDRAY. It is hard to say for certain. Part of it depends on how efficient we will find that we are doing our work as we go, but I think our long-term estimates have ranged upward of 1,000 by the end of this year, and probably we will need more than that would be my sense.

Ms. BUERKLE. Any idea beyond the 1,000 how many?

Mr. CORDRAY. You know, if I had to guess sitting here today, I would estimate probably somewhere finally between 1,200 and 1,500, which is smaller than the other banking agencies, but we think that we can utilize technology and our partnerships to try to have an impact even with smaller numbers.

Ms. BUERKLE. Now, on your Web site, and before I get into this, and I have to keep watching my time, you are not going to follow the Federal guidelines for salaries for Federal employees with regards to the board, the members?

Mr. CORDRAY. Here, as in every other area, it is our intention to closely follow the law that we are operating under, and what Congress says in the law for us is that we are to be hiring, paying, promoting, retaining on the Federal Banking Agency pay scale, and we are to be comparable in particular to the Federal Reserve. We did check, in preparation for this hearing, and saw that thus far I think we are 1 percent under the average pay bans for the Federal Reserve, so I think we are following the law carefully there in trying to do what Congress told us to do.

Ms. BUERKLE. On your Web site there is a listing for open staff position at CFPB as a training administrator. What is a training administrator?

Mr. CORDRAY. Well, I am not familiar with the exact posting that you may be asking about, but it certainly would sound like to me that it is someone who is overseeing the kind of training programs that we need to bring onboard either examiners or perhaps attorneys, train them in the laws that we are overseeing, train them, if it examiners, in examination procedures that are rather voluminous that we are adapting from other banking agencies, and any and all aspects of what is needed to make sure that they work effectively and efficiently.

Ms. BUERKLE. My time is up, but I guess I would ask you would it surprise you to know that that training administrator, the starting salary is anywhere between $53,500 and $102,900?

Mr. CORDRAY. I would say that I know that on our scale, which, again, mimics the Federal Reserve, we have wide pay bands. It is very often our intention to fill those kind of positions at the lower end of the pay band. I have seen that we have been caricatured at times because people will pick out the high end of that pay band and assume that that is what people are going to be paid. It is not a valid assumption.

Ms. BUERKLE. Thank you.

I yield back my time. I just would ask, Mr. Cordray, if possible, if he could provide the committee with the job titles and some description of what you intend the staff members to do that you will be hiring 1,200 to 1,500, and possibly the pay scales that would go with each one of those job titles.

Mr. CORDRAY. Happy to do that.

Ms. BUERKLE. Thank you very much.

And I yield back my time.

Mr. MCHENRY. Thank you.

With that, we will recognize Ms. Holmes Norton of the District of Columbia.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Cordray, I want to congratulate you on your appointment and thank you for your patience and for waiting out the process. The President confronted an attempt to nullify the possibility of recess appointments, which are perfectly constitutional. Our President has shown great forbearance on recess appointments until it became clear that his appointments of perfectly qualified candidates were being filibustered and held up. And, you know, unless he was going to be a pansy, you have to step forward when you find that kind of stonewalling of a process as intended by the framers.

My good friends on the other side opposed Dodd-Frank. They lost and became sore losers, you became a hostage, and the President, it seems to me, did the only thing that he could do if he meant to enforce the law that was in fact passed.

Let me ask you. I am curious. We have seen something that should tell, I think, everybody what kind of new consumer movement we have in this country, and I don't know whether it would have come under your jurisdiction. I don't believe you were there at the time, but that was the big Bank of America revolution, where people rose up against these monthly debit card fees, where you had to pay to get your own money out, a $5 fee a month, and forced Bank of America to withdraw it. That didn't take any regu-

lation, but it does tell us where consumers are today, and I want to ask you would that have come under your jurisdiction?

Mr. CORDRAY. We do not have the ability, as I said, under our law to set the price of any fee or the interest rate on any product. However, what I would say about that set of circumstances was it is interesting to see in every marketplace transaction, consumer transaction, there is both a provider and then there is a lender and a borrower or a provider and a consumer, and both sides of the table have a certain power in the transaction, and it is important that both sides recognize the provider needs to serve their customers if they are going to succeed in the long run and the customers need to make sure that they provide the provider with the kind of information about what they are looking for, what they are seeking, and they can always vote with their feet by going to another provider.

Ms. NORTON. Well, I wish that that were the case all the time. What we had here was a set of young people who, like the Arab spring, have found a new way to organize and I think will be giving you a lot of help in consumer protection. I think it is a real warning to the Congress. There are people out there who have a way to organize they have never had before.

I do not agree that people have the same ability as the market has to simply walk away, and that would be a very dangerous thing to do. We wouldn't need you at all if that were the case. To get some kind of balance so the consumer is not left out altogether. So I don't think that that is necessarily a harbinger of what you will see in the future, but it does tell you there are a lot of people out here willing to help to make sure the consumer is protected.

There is one group of people and that is the people who I think have been most left out by this crisis, and that is the people who have been abused by mortgage service abusers. We see the attorney general's suit that is going on. The abuses that we learn of, with no clear remedy, are hard to take, for example, illegal foreclosures against military service members. Do you have any plans to address misconduct of this kind against mortgage service abusers?

Mr. CORDRAY. Under the new law we have considerable authority and different tools to try to address problems in the mortgage market, including mortgage servicing. We have both rulemaking authority, we have the ability to go in and examine these institutions and actually see what is happening, which largely did not occur until about a year ago, and we have the ability to enforce the law, which is very important to making sure people are held accountable. We will continue. That is a flashpoint, it is a very difficult area, but it is an important one for consumers and we will continue to as we now move forward, figure out how to use our tools to address those issues.

Ms. NORTON. Thank you very much.

And thank you, Mr. Chairman. I just want to say that I hope Mr. Cordray will give some priority to the service members who have, as you go down the list of people when you can't help everybody at the same time, people in the service who have been victims of the abuses by mortgage servicers.

Mr. MCHENRY. I appreciate my colleague, her comments.

With that, we will begin a second round with additional questions. We will begin with the vice chairman of the committee, Mr. Guinta of New Hampshire.

Mr. GUINTA. Thank you, Mr. Chairman.

Mr. Cordray, I want to talk about two items. I have listened to the testimony that you have given and the questions that have been asked by Members of both sides of the aisle, and my original line of questioning was about transparency, accountability, what we I think both agree is the unbias approach, and it struck me as a little interesting. I went to the Web site, the CFPB Web site.

Is there a bias toward payday loans? Because it appears that your first field hearing was on this subject matter and you also issued guidance on this on January 19th. So while you didn't take a position on whether you oppose payday loans, as your predecessor did, to me it appears that there is some sort of direction to go after this area, so I want to get some clarification there.

Mr. CORDRAY. Sure. Let me try to explain our approach here. The day after I became director, we launched our nonbank supervision program. The statute very clearly addresses this issue and it very explicitly picks out certain markets that Congress has essentially told us to prioritize. The mortgage market is mentioned by name, the payday lending market is mentioned by name, and the private student lending market is mentioned by name.

What we did was we launched our program, we brought out our general examination manual, which very closely adheres to how we are approaching banks as well, and then we begun bringing out the modules of the manual that speak more specifically to products in these priority markets as identified by the Congress. So we brought out our manual on mortgage origination products, we brought out our manual on mortgage servicing products, and we brought out a manual now on the payday lending, the short-term high-cost loan products.

Mr. GUINTA. You did that all since January 4th?

Mr. CORDRAY. Yes. Although our mortgage servicing manual had come out and a lot of it aimed at banks, so it was able to come out before, had come out before the turn of the year. But for the nonbank lenders, the mortgage originators and payday lenders, those have just come out, yes, over the course of the last several weeks. The only one of those priority areas, again, as specified in our statute, which is sort of our Bible for going forward, is the private student lending, and I expect that we will address that in due course as well.

Mr. GUINTA. Okay. So you have not issued an opinion, then, regarding any of these particular subject areas.

Mr. CORDRAY. I am not sure what you mean by an opinion. I think the answer is no, but I am not totally sure I am clear what your——

Mr. GUINTA. Well, going back to the transparency notion, I guess I am trying to figure out at what point the agency would issue public opinions on these subject matters. And the only reason I am asking is it is a new agency. I have been here a year, so I am not quite certain exactly how it is going to work. Under your vision, I am trying to get a better idea of how this would work.

Mr. CORDRAY. All right. You and me both, we have been here about a year. In terms of an opinion, I think what would happen over time is we are going to be examining, which means people will go into the institutions and they have the ability, they have the authority under the law to examine the books, to ask questions, to understand what the products are and how they are being used, how they are being marketed, whether there are any kinds of acts or practices that are of concern. You know, it is an ability to really get under the skin of the surface and see what is happening. We will be utilizing that authority and it is important for us to do that.

In terms of possible enforcement actions, you know, we will just have to see whether there are violations of the law that can't be remedied by other means and, if so, we will have to proceed on those. A possibility that gets closer to your question about opinions is whether at some point we might engage in a rulemaking on some aspects of payday lending.

If we get to a point where we have confidence that we have identified issues and problems, we have heard from all sides and a rulemaking seems like it could be in order, then what we would do is we would develop and publish a notice of a proposed rule, we would have a notice and comment process, the normal process on rulemaking that could finally result in a rule. Do we have any plans to do that at the moment? I don't believe so. But that is something that could occur over time.

In terms of an opinion per se, I don't think we have a mechanism for that, necessarily.

Mr. GUINTA. Okay, so the enforcement would be the process by which you would be setting policy, then?

Mr. CORDRAY. No, enforcement would be the process by which we would address if there are clear violations of law that aren't being remedied in any other way.

Mr. GUINTA. Okay, so is a rule going to come before enforcement?

Mr. CORDRAY. It would depend on the area. I don't think that we can say for sure. Look, if somebody is violating the law in some clear and conspicuous way, you don't want to wait on a rule. And if the law already is that that is what the law says, either you all have passed it or it is part of maybe the rules we inherit from others, we can't wait on other processes to enforce the law.

Mr. GUINTA. And in any other—without objection, may I have another 30 seconds?

Mr. MCHENRY. Without objection.

Mr. GUINTA. I guess I answered my own question. Thank you, Mr. Chairman.

The other concern I guess I have is you are obviously not subject to a congressional appropriation. I think that is unique. Through the budget process, my understanding is that the agency has provided seven pages of information relative to its budget to House Appropriations. I think that is a small number for a three to $600 million budget, whatever you are spending, whatever you are authorized. Would you commit to expanding that level of transparency maybe by tenfold, at least?

Mr. CORDRAY. I think we are providing more information than that, and we are putting information up on our Web site every quarter about our budgetary and financial issues. I think it is

something that, as we go, we will get a better understanding of what it is you need and want to know about our operations and the financial side of them.

I will say we are a new agency, we are just underway, but we did have a GAO audit, which you all provided by law we would be subject to, and it was a clean audit opinion about how we are handling our finances and the kind of information we provided them, and they had top to bottom access to everything we are doing. But if you all are dissatisfied and would like more information, I am happy to have our staff work with your staff to see what we are trying to provide what you need.

Mr. GUINTA. And I only ask it for transparency purposes. This is a brand new agency. I think members and the public should have access to that information if they so choose to read it. The final question is I understand that you are going to staff up, you have 757 employees, you are going to have 1,200 to 1,500. I understand you are a new agency. I understand that you are not subject to the President's hiring freeze. But considering the conditions of our economy, would you voluntarily adhere to his hiring freeze?

Mr. CORDRAY. If we were to adhere to the President's hiring freeze, we would still be at zero people and we wouldn't be able to do——

Mr. GUINTA. I am saying from this day forward.

Mr. CORDRAY. My sense is, you know——

Mr. GUINTA. I wouldn't object to you being at zero, but——

Mr. CORDRAY. Right. I understand. Let me refocus.

Mr. GUINTA. But we can split the difference, 757, 1,500——

Mr. CORDRAY. We are building up. That is what the law tells us we are supposed to do. The law tells us we have very specific jobs to do here. We are trying to do those jobs. Once we reach a steady state down the road, you know, I don't know what the considerations might be at that point, but that is probably where that would become germane.

Mr. GUINTA. Thank you very much. I appreciate it.

Mr. MCHENRY. I appreciate it. And I would say let the record reflect that we have no objection to you actually having an income and a means of income, but the gentleman, I think, was making a larger point about the President's hiring freeze and the sort of Swiss cheese nature of that. There are so many holes in it that government continues to expand. But certainly understand your explanation and appreciate it.

With that, Mr. Gowdy of South Carolina is recognized for 5 minutes.

Mr. GOWDY. I thank the chairman, the gentleman from North Carolina.

Mr. Cordray, if I heard you correctly, you set up advisory panels which you found helpful with community bankers and credit unions.

Mr. CORDRAY. I did. I did that when I was the treasurer in Ohio and then I did it again, even though it was not quite as germane, but I still thought it was very useful and it turned out to be, when I was the attorney general.

Mr. GOWDY. Would you be willing to do that with payday lenders, particularly those who are in full compliance with their respec-

tive State laws, before any rules or regulations are promulgated that may impact them?

Mr. CORDRAY. I do think that we are going to have, in fact, I will tell you that I intend for us to have additional advisory panels. Those are the only two we have thought through at the moment. We also have, you may be aware, in our statute we have a requirement that we set up what is called a consumer advisory board, and it is intended to be and there are provisions in the statute we were actually going over earlier today that provide for a mix of points of view; industry, bank, nonbank, consumer groups, community groups.

And that is one thing, but we are required to do that. The other things here that I am talking about we are not required to do it, but I think they will help us do our job better. I have no aversion to hearing from the nonbank firms that we are going to be regulating; I think it is important for us to hear from them. There are unofficial and more official ways for us to do that. We will consider that.

Mr. GOWDY. Having no aversion is different from saying that you will do it, so at the risk of repeating the same question again, will you commit to having advisory panel, not given one of your legal slots to a member of the industry, but an advisory panel so you can hear from people? Because I am sure, particularly as a former prosecutor, you can understand the frustration of people who are currently complying with State law fully and there is fear and apprehension about what comes tomorrow, which leads to the second question. I would like whether or not you will commit to at least have a nonbinding advisory panel where you can get the perspective of people who are currently complying with their respective State laws.

Mr. CORDRAY. And, again, that may be—the first time you asked the question it sounded like it was limited to payday lending. It may be that it expands to other nonbank firms. I will consider doing that and I will come back to you and let you know what we are doing on that over the next month or two.

Mr. GOWDY. What about the States that already have embarked on regulatory schemes? Without getting into a long discussion about preemption, what will be the fate of those regulatory schemes with the new CFPB?

Mr. CORDRAY. And I appreciate that you sent us a letter on this subject, and I believe we are responding today to the letter. For example, when we were in Birmingham for the field hearing, one of the people in attendance who spent some time talking to us was John Harrison, who is the Alabama State Superintendent of Banks, and as is true in that State, and I know from Ohio and probably a number of States, the superintendent of banks doesn't only deal with banks, they deal with a lot of nonbank financial firms, including, in Alabama, payday lenders.

So there are some States that have significant and robust oversight; there are some States that have none; there are some States, I am sure you know, that have effectively banned payday lending or imposed some sort of interest rate cap that makes it untenable. So there is kind of a patchwork quilt, as there often is, with State law.

It is our intention to work and coordinate closely with the State regulators so that we understand their perspective and point of view and it informs our work. We have no intention at this point to preempt State law in these areas, but, again, the reason we had a field hearing is we are kind of at the beginning of the road in trying to understand and appreciate what the right approach to that product and a number of other products are, and we will gather more information as we go.

Mr. GOWDY. I understand you have a really good memory, but even I will not expect you to remember every word of Dodd-Frank. There is a phrase in Dodd-Frank that speaks to taking unreasonable advantage of consumers, which strikes me that if every word has meaning, that it is possible to take reasonable advantage of consumers, or else they wouldn't have used the word unreasonable. I asked Professor Warren. You may find this to be an inappropriate question. For whatever reason, I never could get her to answer it. I think it is a fair question. What do you believe the duties of the consumer are with respect to educating themselves?

Mr. CORDRAY. I think that consumers have not only a duty to do that, because I think you really can't be a properly functioning citizen in our economic democracy if you don't try to educate yourself and be in a position to make responsible decisions for yourself that you can live with over time.

I also think that this Bureau, one of the tasks that we have been given is to work on financial literacy issues. Now, that is near to my heart. When I was a local treasurer in Ohio, we worked with the Ohio legislature that sat on both sides of the aisle to try to get it passed that it would be a requirement for high school students to have personal finance education before they could graduate. We managed to do that. It is one of very few States that has that requirement.

I think we would all be better off if young people had some sort of consistent guidance in this area, because they often don't get it at home. Often, at home, people are embarrassed to talk about finances and they know they don't really understand them or they are having trouble with their finances. So I think that that would be helpful, and we will try to work with the States to consider that.

But people have to be responsible for their decisions. But the thing that the Bureau can do that is important is to make sure that the decisions that they are faced with are as clear and transparent as possible, that they know the prices and risks, this is something we say often, and, therefore, they can make a deal that they know they can live with down the road. And if they make a bad deal, you know, they will have to live with it. Nobody is going to wave a magic wand and undo personal responsibility, and all of us feel that and see that.

I have 13-year-old twins. Before long they will go out into the world and they will be expected to fend for themselves and make their own decisions. I hope they will make good decisions. I will try to give them what assistance I can to do that, but we need to try to remember that we need to shore up young people so that when they go out and do that they won't make wrecks of their lives and hurt our society as well.

Mr. GOWDY. Thank you.

Mr. Chairman, may the record reflect Mr. Cordray answered the question?

Mr. MCHENRY. Well, I know the gentleman from South Carolina appreciates that based on how exasperated the committee was at Ms. Warren's answer to that same very question.

Thank you, Mr. Cordray. Now I will recognize myself.

My colleague delved into this, taking unreasonable advantage in the legislative text. There is also, we know, and I asked this question before when Ms. Warren was before our committee representing the CFPB in July of last year, we have case law that is already outlined unfair and deceptive, and it appears to me that in the agreement you have with the FTC that you have accepted, in essence, that whole lineage of litigation, legal memoranda, and things of that sort that really codify what that means and gives some awareness to industry that their actions are permissible. Is that correct?

Mr. CORDRAY. I think that is right. I think, frankly, for us to try to go off and define unfair and deceptive in some new and bizarre way, when the courts have been dealing with it for several decades, not only at the Federal level, but at the State level, would not be productive.

Mr. MCHENRY. Okay. The additional thing that the law that you are operating under includes is abusive. Is it your intention to define abusive as a matter of regulatory action?

Mr. CORDRAY. So the term abusive in the statute is, for the reasons you say, a little bit of a puzzle because it is a new term. It is not entirely new; there was a brief flirtation with it in some of the FTC law I think in the 1990's, and they had some difficulty defining it. But the term abusive in this statute is actually defined by Congress, there are specific prongs in the statute as Congressman mentioned a moment ago. A prong is to take unreasonable advantage of people in certain different circumstances, one of which is that they aren't in that market, they don't have an opportunity to choose their provider, so they can't shop, they can't leave, and there are markets that are marked by that.

For us, since abusive is a new term, since it is apparently different from unfair and deceptive, the first question is, well, what is something that would be abusive but wouldn't also be unfair and deceptive. And if it is one or the other, I think it is straightforward to deal with in that term. In terms of abusive specifically is, we have been looking at it, trying to understand it, and we have determined that that is going to have to be a fact and circumstances issue; it is not something we are likely to be able to define in the abstract. Probably not useful to try to define a term like that in the abstract; we are going to have to see what kind of situations may arise where that would seem to fit the bill under the prongs——

Mr. MCHENRY. Can you give us an example?

Mr. CORDRAY. Well, let's say you have a market where you don't get a chance to choose your provider, which is arguably the case with mortgage servicing these days. You——

Mr. MCHENRY. That actually could be the case for flipping on the lights in your house, as well.

Mr. CORDRAY. That is true, although——

Mr. MCHENRY. Obviously, you don't have that jurisdiction, but go on. So there is only one provider in your region.

Mr. CORDRAY. Or, in this case, you just don't have control over the provider is; you get a loan and then it is sold and resold. You aren't asked any permission on that or have any veto over that, and by the time you have a problem, you don't know who has your loan and you find out, oh, this is the person servicing; you never met him, you never had anything to do with them.

If the party were to take unreasonable advantage of the fact that you are sort of at their mercy in that way, I guess that could—and unreasonable advantage, as the Congressman pointed out, in and of itself is something of a vague term that needs definition. I suppose that could be a realm where you could have abusive practices.

But it is something that I want to stress we are trying to think through. It is obviously going to depend on judging facts and circumstances. As we have more guidance to provide, we will try to be transparent in providing the guidance. We don't have all the answers on that one at this point.

Mr. MCHENRY. So is it your intention to define abusive based on enforcement action, rather than definition?

Mr. CORDRAY. Well, there is the definition in the statute. As I said, it is fairly specific in terms of prongs. It is not so easy to determine exactly how you apply that to facts and circumstances. I could imagine a situation where we would think that practices are outrageous enough as to be abusive and it might be the basis for an enforcement action. I don't have one to give you as we speak here back and forth. I can also imagine there might be a point at which we would want to do rulemaking on that, but I would think that we would want to see facts and circumstances, and let our view of that and the view of others who are giving us lots of guidance, frankly, you can understand, on both sides of the question, mature and ripen a bit before we would have more confidence on that issue.

Mr. MCHENRY. Well, as you use the terms imagine and I'll be thinking about this and we are considering this, there are trillions of dollars of financial assets that are waiting on your thinking or imagining or going through this process, and that adds to uncertainty in these contracts. Your point of reference on reselling mortgages is a very interesting one because this has been the legal case and there are contract law for decades on the reselling of that mortgage, and it is part of the disclosure process. So to say that that is abusive is a puzzler.

Mr. CORDRAY. That wasn't what I thought I was saying. It wasn't what I intended to say. The mere selling and reselling of mortgages is perfectly legal; there is nothing abusive or illegal about that. But when you are in a situation, as this statute defines, where you do not have control or the ability to choose your provider, if then unreasonable advantage was taken of you in that situation, that seems to be what the statute is beginning to contemplate. But I am just trying to give you some context here. So, for example, if outrageous practices were engaged in at that point, I think that there might be an issue of that sort.

But I don't think there is a lot of uncertainty here for businesses——

Mr. MCHENRY. Really, in terms of abusive or the CFPB generally?

Mr. CORDRAY. I think what is very clear in the statute, even though a lot of the detail and definition is, as you say, less clear is for something to be an abusive practice, it would have to be a pretty outrageous practice. And if you, in your business, stay away from pretty outrageous practices, you should be pretty safe. That would be my sense of it at this point in time. And as we mature our views, I would be happy to talk back and forth with you more about it.

Mr. MCHENRY. Is it your intention with the agreement that you and the FTC or the CFPB and the FTC made, is that going to be a model for how the CFPB is going to work with other regulatory bodies in outlining that line so that consumers will know who they can take action with and so the regulated entities can actually know who then you would have the conversations with?

Mr. CORDRAY. I do hope that the kind of cooperation that we——

Mr. MCHENRY. Is it your intention? Not hope. Is it your intention that that be the case?

Mr. CORDRAY. Again, it takes two to tango, but it is my intention that we already have been and we will continue to reach out to our fellow banking agencies and other law enforcement agencies the same way we have already been working very well with the FTC in trying to arrive at the same kind of productive relationship. That would be my intention, and I hope that they will respond accordingly.

Mr. MCHENRY. Okay. Additionally, you know, I am asking about the definition of abusive——

Mr. CORDRAY. Yes.

Mr. MCHENRY [continuing]. To give certainty to actors in the financial marketplace.

Mr. CORDRAY. I see.

Mr. MCHENRY. But to outline that I think would give some level of certainty to the marketplace. But beyond that there is also some action that I have become aware of regarding credit card disclosures, and some of what you have already outlined or you are going through the process right now, your folks are going through this process at the CFPB in essence mandates some defined terms that the CFPB would like included in that credit card disclosure. Am I characterizing that appropriately?

Mr. CORDRAY. Yes. I think, if I am understanding your question, you are referring to our Know Before You Owe project, which the centerpiece of that is the TILA RESPA form that, as I say, we are happily starting to follow through on what you noticed 5, 6 years ago, that there is a need for that. Other areas where we are working on Know Before You Owe have to do with student loans, private student loans, where we have worked up a sample shopping sheet with the Department of Education, which is out there for people to consider and use, and we have a repayment calculator on our Web site that people can use, because that is a very confusing, difficult thing for them.

In the credit card area, what we have developed is a sample agreement—this is not binding on anyone, it has not been imposed on anyone by rule—that would attempt to pull out and identify and

highlight the specific important terms in a credit card agreement, so that instead of the consumer being confronted with this forest of dense fine print and they are never going to read it all, and they can't even tell what is important and what is not important, that there would be an effort made to make it clear and more transparent to them.

That is in line with what a lot of the credit card issuers have begun doing on their own in the wake of the Card Act. I mean, I have seen, in cards that I have applied for in the last couple years, shorter, clearer, simpler forms. We are working with financial institutions cooperatively to see if they will adopt something like this form, or if it will help encourage them in this direction. There seems to be a lot of interest in that and we are going to see how the marketplace evolves on that.

But it is not intended as some sort of binding, heavy-handed regulation; just this can be done, here is an example of how it can be done, will you consider working with us and seeing if you can either adopt that or something similar. And I think that we are getting a lot of buy-in and a lot of interest from them because I think they recognize what we all see, which is when they apply for their own credit cards, they probably have trouble getting through the fine print themselves, and they want to provide better customer service.

Mr. MCHENRY. Two of the objectives—I serve on the Financial Services Committee. I know my time has long passed and I will finish with this. Two of the great concerns with creation of the CFPB. I serve on the Financial Services Committee going through the markup, we have the concern that came about out of the Senate of having a single individual given this enormous power and a half a billion budget who has a set term, and in order to unseat that person it would take very extraordinary action. And your actions are only overruled by the Financial Stability Board if it causes a larger concern. They can't just simply overrule you; they have to have a concern about the financial marketplace of our country, the largest market in the world. So that power is one of the concerns.

The second concern was that, in essence, by having the CFPB, we would have plain vanilla consumer options. So the financial marketplace would have fewer options; you would have government terms; you would have only this one very narrow safe harbor for financial firms to operate in.

So that is why I asked this question about defining these terms. And if you are mandating these terms of their disclosures, certainly to start the process is to lay out the framework by which you are going to judge them, not simply act as many attorneys general have that enforcement action, but you are given this authority to outline the regulations, and I think those regulations, those bright lines, and the clear framework so that we can actually have a variety of consumer options and that we don't end up with plain vanilla options, fewer choices, higher cost, which is not, I don't think, what anybody wants in this country.

Mr. CORDRAY. So may I, in response to that?

Mr. MCHENRY. Oh, absolutely.

Mr. CORDRAY. So the good news is that I think that is how we are approaching the issue, and we recognize. One of the things the

statute tells us, and we take it very seriously, it is not easy to figure out how you actually do it, but is that we are supposed to see what we can do to encourage innovation in financial products. And certainly the opposite of that would be to stifle innovation and say everything has to be done in a single way.

So, again, as we put out this proposed sample credit card agreement, there is nothing mandatory about that, it is attempted to lead thinking in a somewhat different direction than has been the case in the past, although, as I said, the market is moving in this direction already, it seems, and it is not intended to constrain everybody into one straightjacket of having to do things a particular way.

One of the great features of financial products in this country has been lots of innovation over the years, lots of technological development, lots of different approaches, and then consumers are in a position to pick the ones they think are most suiting their needs, and those tend to do well. You know, credit cards themselves were once an unusual product, and they have become pretty much universal or widespread. Debit cards are a new product; prepaid cards are a fairly new product.

There is lots of innovation in this industry and we have no desire to squelch that offer because we wouldn't know—no regulator knows enough to tell the market what is the right or wrong answer in general. What we should be focusing on is accountability for evenhanded rules of the road and then where we can encourage innovation, that is a good thing, the statute tells us to do that, but any common sense approach would recognize that as well.

Mr. MCHENRY. Thank you.

With that, Mr. Walsh from Illinois is recognized.

Mr. WALSH. Thank you, Mr. Chairman.

Mr. Cordray, I appreciate you sticking around. I will be brief, and I apologize if I am redundant; I missed a chunk of the hearing. But again thank you for spending so much time with the committee.

Mr. CORDRAY. If you are redundant, I should have answered it before and I should have an answer.

Mr. WALSH. Small business in this country is dying. They are not growing, they are not hiring. No matter what the President says tonight, that is not going to change. What I hear over and over back home is they are scared to death with all the uncertainty coming out of Washington and to a man and a woman they feel overregulated like you wouldn't believe, big and small.

As importantly, what we hear from small businesses every day is they can't access credit. I chair a subcommittee, Access to Growth on the Small Business Committee. We held a hearing a few months ago and brought in the heads of three or four community banks and asked them pretty directly why aren't you lending, and to a man they all said they can't, their hands are tied. They alluded to Dodd-Frank, they alluded to all these regulations.

It seems like whatever we tend to do up here, the big banks, big business is able to adjust to; small businesses and community banks get hit hard. Dodd-Frank obviously requires you to consider the impact on small business with any rule and reg that you will

implement. These review panels are to be convened before any proposed rules that might impact small business.

And correct me where I am wrong. It seems like CFPB has determined here initially that a number of these rules won't disproportionately impact small business, and so they have opted not to convene the panels? I think I understand a panel has not been convened since July. Am I right on that?

Mr. CORDRAY. I don't think so in the following respect. Thus far we have not had a rulemaking of our own to begin and to propose a rule. What we have had is rules that were begun by others, notably the Federal Reserve in several cases, that then came to us to finish. We just issued a remittance rule, that was one that we finished that the Federal Reserve began.

As you say, and this is how we read the statute too, we are supposed to convene the SABRIEFA panels before we propose a rule and, therefore, we have not been in that position yet. But we have one upcoming, it is the big rule that I talked about with the chairman, combining the mortgage forms to simplify them. We have committed and we are going to do SABRIEFA panels. The SABRIEFA panels probably will get underway very shortly, I would say within the next month or two, and that will be a model for how we do this, and we will learn from that as we go. But it is our intention to convene SABRIEFA panels on our new rules as we proceed, wherever the law tells us to do that; and not just because the law tells us to do it, but because we recognize that will help us do our work better and be mindful of the concerns you are laying out.

My own background in Ohio was when I was the treasurer, I inherited a small business loan interest buy-down on small business loan program, and it was almost out of business when I took over because they made it so bureaucratic and difficult small businesses just didn't want to bother with it.

And by the time I left office 2 years later, we had put out more than $300 million by making the form simple, letting them do it within 30 minutes, and promising and getting them a response within 72 hours. So I am mindful of the needs of small businesses. It is critical to this country, they create more than two out of three new jobs. That is what we have been missing as we came out of this recession.

But I also want to say one other thing, which is the credit crunch that they are suffering under was caused by the financial meltdown. It has been the most difficult credit conditions that any of these small businesses have ever lived under. And some of the things the Consumer Bureau is designed to do are to prevent a recurrence of that worst economic catastrophe of our lifetime. So if we can be successful, if we can do our job reasonably well, then we will help ward off the kind of conditions that are hurting small businesses and small banks more than anything right now.

Mr. WALSH. You would worry, as well, about the pendulum swinging too far as far as too much regulation, tampering that access to credit as well.

Mr. CORDRAY. Yes, I would.

Mr. WALSH. Tell me if I am wrong, Mr. Cordray. It is my understanding that many of the actions the Bureau is poised to take may

well lead to a further reduction in credit opportunities for small businesses. Can you comment on that?

Mr. CORDRAY. I don't think that that is our intention, Congressman. And if you are hearing from small businesses, community banks, and others in your district, we hope you will pass those comments on to us. It may well be that we are hearing from them as well, but that is not our intention. Our intention is to be mindful of the difference between larger institutions and smaller institutions. Smaller institutions typically don't have a big compliance compartment to shrug off the burdens that are imposed on them.

On our remittance rule that we just issued, we have issued a further proposed rule to consider setting a threshold that the rule wouldn't apply to those below the threshold on a number of transactions because they don't really need to take on these burdens for not doing it in the normal course of business; and that is what I pledged to the community bankers and credit unions, is that we will consider our regulatory work in that way.

Mr. WALSH. Thank you. I will close with this. I would just implore you to commit to looking out for small businesses and community banks. I am not exaggerating when I say that they are suffocating right now under regulations, and there is great, great, great trepidation that this Bureau and everything else we are doing up here of late is only going to add to that. So please look out for them as you embark.

Mr. CORDRAY. I appreciate that, sir.

Mr. WALSH. And, again, thank you for your time.

Mr. MCHENRY. I certainly appreciate that.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. I would just ask that the document, Ten Reasons Why We Need the CFPB Now, issued by Americans for Financial Reform, be entered into the record. Ask unanimous consent.

Mr. MCHENRY. Without objection.

[The information referred to follows:]

10 Reasons We Need The CFPB Now:

An AFR Issue Brief

AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY • FAIRNESS • SECURITY

Illinois PIRG Education Fund

July 2011

Ten Reasons We Need The Consumer Financial Protection Bureau Now:

An Americans for Financial Reform (AFR) Issue Brief

July 2011

This report was written with assistance of the Illinois PIRG Education Fund. Authors: Edmund Mierzwinski, Illinois PIRG Education Fund Consumer Program Director and coordinator of the AFR CFPB Implementation Task Force, with Lisa Donner, AFR Director, with help and editing from Rebecca Borné of the Center for Responsible Lending, Travis Plunkett and Jean Ann Fox of the Consumer Federation of America, Chi Chi Wu, Lauren Saunders and Alys Cohen of the National Consumer Law Center, Gary Kalman and Danielle Ziff of the Illinois PIRG Education Fund and other AFR members.

Americans for Financial Reform (http://ourfinancialsecurity.org) is a coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as leading economists.

The Illinois PIRG Education Fund gratefully acknowledges the Ford Foundation (fordfoundation.org) and the Consumers Union Colston Warne Fund for their support of our financial research and education programs. However, the findings and views expressed in this report and on the website are solely those of the authors. For more information about Illinois PIRG Education Fund, visit http://illinoispirg.org/edfund.

Cover Photos: courtesy of Istockphoto.com; CFPB logo from CFPB website (http://consumerfinance.gov)

Ten Reasons We Need the Consumer Financial Protection Bureau Now
An AFR Issue Brief

Executive Summary

For years leading up to the 2008 financial collapse, federal bank regulators ignored numerous warnings of increasingly predatory mortgage practices, credit card tricks and unfair overdraft policies used by banks. The banks were earning billions from "gotcha" practices. Incredibly, bank regulators actively encouraged this behavior, arguing it was profitable and kept banks safe. No regulator cared about its other (and, to them, secondary) job: enforcing consumer laws. Some regulators rejected the role and even actively worked to prevent states from carrying it out. Worse, firms were able to pick and choose among regulators, encouraging a "race-to-the-regulatory-bottom." That is the system that failed to protect us.

This report outlines predatory financial practices that hurt consumers and helped collapse the economy, costing us eight million jobs, millions of foreclosed homes and trillions of dollars in lost home and retirement values. It explains these and other emerging problems as "10 Reasons We Need The Consumer Financial Protection Bureau Now."

In response to the problems caused by those predatory practices, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 included a major reform demanded by the public: it established the landmark Consumer Financial Protection Bureau.

On July 21, 2011, the law provides that the CFPB takes over as the primary regulator of 18 consumer financial laws that 7 federal regulators had unevenly and inadequately implemented and enforced in both the bank and non-bank financial sectors.

Making Markets Work: According to the CFPB itself, "The central mission of the Consumer Financial Protection Bureau (CFPB) is to make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products."

The CFPB also has special roles granted by Congress to protect senior citizens, military families and other frequent targets of unfair financial practices.

As described on its own website, the CFPB was created:

> "1) to ensure that consumers have timely and understandable information to make responsible decisions about financial transactions;
> 2) to protect consumers from unfair, deceptive, or abusive acts or practices, and from discrimination;
> 3) to reduce outdated, unnecessary, or overly burdensome regulations;
> 4) to promote fair competition by enforcing the Federal consumer financial laws consistently; and
> 5) to advance markets for consumer financial products and services that operate transparently and efficiently to facilitate access and innovation."

Introduction

The idea of a federal consumer protection agency focused on credit and payment products gained broad and high-profile support because it targets one of the most significant underlying causes of the massive regulatory failures that did so much damage to families and to our economy.[1] Over many years leading up to the crisis, federal agencies did not make protecting consumers their top priority and, in fact, seemed to compete against each other to keep standards low, ignoring many festering problems that grew worse over time. If agencies did act to protect consumers (and they often did not), the process was cumbersome and time-consuming. As a result, agencies did not act to stop some abusive lending practices until it was too late. And regulators were not truly independent of the influence of the financial institutions they regulated.

The failure of federal banking agencies to stem sub-prime mortgage lending abuses is well documented. From 1994 forward the Federal Reserve Board had explicit authority to stop unfair and deceptive mortgage lending practices. But despite extensive evidence of large and growing problems, they did not use it. In an extreme case of "too little too late" it was not until July of 2008 that mortgage rules were finalized, close to a decade after analysts and experts started warning that predatory sub-prime mortgage lending would lead to a foreclosure epidemic.

Less well known are federal regulatory failures that have contributed to the extension of unsustainable consumer loans, such as credit card, overdraft and payday loans, which are now imposing a crushing financial burden on many families. As with problems in the mortgage lending market, failures to rein in abusive types of consumer loans were in areas where federal regulators had existing authority to act, and either chose not to do so or acted too late to stem serious problems in the credit markets.

Combining safety and soundness supervision – with its focus on bank profitability – in the same regulatory institution where consumer protection regulation was housed magnified an ideological predisposition or anti-regulatory bias by federal officials that led to unwillingness to rein in abusive lending before it triggered the housing and economic crises. Though we now know that consumer protection is in fact vital to ensure safety and soundness in the medium and long term, structural flaws in the federal regulatory system compromised the independence of banking regulators, encouraging them to overlook, ignore and minimize the consumer protection part of their missions.

In what has been called "a race to the bottom," regulators competed to gain a greater number of regulated banks under their charter by enforcing less stringent regulations, since by doing so they collected greater regulatory fee assessments from their regulated banks. There is a massive conflict of interest in a system where agencies worry that they will lose revenue because regulated institutions can choose to pay another agency to regulate them instead. Even apart from the race to the bottom, the balkanization of regulators resulted in uneven and inconsistent regulation and a lack of transparency.

Taken together, these flaws severely compromised the regulatory process and made it far less likely that agency leaders would either act to protect consumers or succeed in doing so.

Right now, four federal bank regulatory agencies are required both to ensure the solvency of the financial institutions they regulate and to protect consumers from lending abuses.[2] Several other agencies share authority over other consumer laws.

On July 21, this responsibility is streamlined, and the CFPB becomes the primary rule maker for 18 enumerated consumer laws that govern banks, payday lenders, credit bureaus, debt collectors and others. The CFPB will also gain authority on that date to supervise compliance with those laws for all banks and credit unions over $10 billion dollars; supervision of smaller institutions remains with their prudential regulators under the law. When a CFPB director is approved, it will also gain full supervisory authority – beyond enforcement power – over certain non-bank lenders, including non-bank mortgage lenders, payday lenders and private student lenders. When a director is approved, the CFPB gains authority over unfair, deceptive and abusive practices by banks or non-banks it regulates. When it completes a "larger participants" rule, it can gain additional supervisory authority over other large non-bank firms, such as the biggest credit bureaus, debt collectors and auto finance companies, among others.

The next section describes 10 reasons, 5 in detail, that we need the CFPB. It starts out with an explanation of each of these predatory lending problems bank regulators manifestly failed to address, explains it through a few consumer stories, and then provides recommendations for early CFPB action to solve the problem. The sections are as follows:

Reason 1: Unchecked predatory mortgages
Reason 2: Unfair credit card practices
Reason 3: Overpriced overdraft fees
Reason 4: The growth of triple-digit payday lending
Reason 5: Lack of consumer legal rights
Reasons 6-10: Private student loan rip-offs, credit bureau mistakes, debt collector problems, unregulated prepaid debit cards, and auto finance scams.

A Note On "Some Actions The CFPB Can Take:"
In each section, we list "Some Actions the CFPB Can Take." The actions we suggest in each section are generalized and serve as examples of some of the reforms we believe are necessary. On an ongoing basis, AFR and its member organizations may provide more detailed recommendations or additional priorities as problems are identified or the CFPB issues requests for comment.

Finally, before the report concludes, we also have a brief section explaining the powers and structure of the CFPB and why its oversight mechanisms are not merely adequate, but unprecedented.

Reason #1: The Failure To Stop Predatory Mortgage Lending

For many years, mortgages helped most families to build assets and financial stability. But when the aggressive marketing of reckless loans became routine in the subprime market, too many mortgages became destructive, both for vulnerable communities and the entire economy. Could the regulators have taken steps to solve the problem? Yes. Could Congress have mitigated the continuing problem? Yes. Is the mortgage crisis over? No. Is there work for the CFPB? Yes.

Since housing prices began their precipitous decline in early 2007, 7.5 million homes have entered the foreclosure process.[3] And the crisis shows no signs of abating, as 8.1 percent of all loans—representing about 4.2 million borrowers—are currently 90 days or more delinquent or in some stage of the foreclosure process.[4] The foreclosure crisis has had catastrophic consequences for families and communities, especially communities of color. A 2010 study by the Center for Responsible Lending estimated that among borrowers who received their loans between 2005 and 2008, nearly 8 percent of both African Americans and Latinos had lost their homes to foreclosures, compared to 4.5 percent of whites.[5] But the negative effects of foreclosures are not confined to the families who lose their homes. Forty million of their neighbors – those who are paying their mortgages on time – will see their property values decline as a result, by over $350 billion.

Further, the U.S. Financial Crisis Inquiry Commission directly linked predatory mortgage practices to the collapse of the economy:

> As the mortgage and real estate markets churned out riskier and riskier loans and securities, many financial institutions loaded up on them. By the end of 2007, Lehman had amassed $111 billion in commercial and residential real estate holdings and securities, which was almost twice what it held just two years before, and more than four times its total equity. And again, the risk wasn't being taken on just by the big financial firms, but by families, too. Nearly one in 10 mortgage borrowers in 2005 and 2006 took out "option ARM" loans, which meant they could choose to make payments so low that their mortgage balances rose every month.[6]

CONSUMER STORIES BEHIND REASON #1

Through a local affordable housing program in North Carolina, a homeowner had a 7% fixed-rate, 30-year mortgage. A mortgage broker told the homeowner he could get a new loan at a rate "a lot" lower. Broker originated a 2/28 ARM with a starting rate of 6.75%, but told borrower that it was a fixed-rate, 30-year mortgage. At the 24th month, the loan went up to 9.75%, following the loan's formula of LIBOR plus 5.125% and a first-change cap maximum of 9.75%. Now the borrower cannot afford the loan and faces foreclosure.

A North Carolina homeowner refinanced out of a fixed-rate mortgage because she wanted a lower monthly payment. The homeowner expressly requested lower monthly payments that included escrow for insurance and taxes. Mortgage broker assured her that he would abide by her wishes. Borrower ended up in a $72,000 2/28 ARM loan with first two years monthly payments of $560.00 at a rate of 8.625%. This initial payment was lower than her fixed-rate mortgage, but it did not include escrowed insurance and taxes. After two years, loan payments increased every six months at a maximum one percent with a cap of 14.625%. At the time of foreclosure, the interest rate had climbed to 13.375% with a monthly payment of $808.75.

Lack of Action by Federal Regulators or Congress and Preemption of State and Local Efforts Began In 1994

The Federal Reserve Board was granted sweeping anti-predatory mortgage regulatory authority by the 1994 Home Ownership and Equity Protection Act (HOEPA). Final regulations were issued on 30 July 2008 only after the world economy had collapsed due to the collapse of the U.S. housing market

triggered by predatory lending. Throughout this period, while the Federal Reserve Board failed to act, the Office of the Comptroller of the Currency did act – but to *prevent* states and localities from taking up the slack and protecting their residents. The OCC engaged in an escalating pattern of preemption of state and local laws designed to protect consumers from a variety of unfair bank practices and to quell the growing predatory mortgage crisis, culminating in its 2004 rules preempting both state laws and state enforcement of laws over national banks and their subsidiaries.

The Mortgage Crisis That Led To the Financial Crisis Continues as a Mortgage Servicing and Foreclosure Crisis

More recently, of course, we have seen the back-end of this problem, as the mortgage servicing and foreclosure problem has become a second national mortgage crisis.

The existing federal regulators of financial institutions have allowed mortgage servicers to flout the laws under which they operate, as well as their mortgage contracts with homeowners, government agencies, and investors. For example, during the years leading up to the current foreclosure crisis, the OCC aggressively tried to block state enforcement actions that could have dealt effectively with many of the industry practices that are wreaking havoc upon the American public today. Recent non-public consent orders continue that pattern of attempting to block effective action at the state level, while permitting abusive practices by federally-regulated institutions to continue unchecked.

CONSUMER STORIES BEHIND REASON #1 (continued)
Mr. and Mrs. B., an elderly couple (in their late 60s) in California who each suffer from numerous disabilities, including (Mr. B.) severe depression and emphysema. They care for several of their teenage grandchildren who live with them. The couple lives on a fixed and limited income. In 2007, when the couple faced financial problems due largely to medical bills, they looked into refinancing their home. They spoke to a broker who, in turn, connected them with a hard money lender in another county, who placed them into high-cost loans that stripped out home equity in the form of high fees. Specifically, the lender put them into two loans (they had asked for only one loan). The first was for $172,000, at11% interest with a term of 20 years and a balloon payment at the end; the second was for $10,100 at an interest rate of 12% over a term of 20 years (with interest only payments) and a balloon payment. Nearly $30,000 of the $172,000 was paid out in fees to the lender, broker, et cetera. This includes a payment of over $17,000 listed as a "Reserve Account" on the Final Settlement Statement, which went to a third party and was not requested by or accessible to the elderly homeowners. Another mysterious fee was for over $6000 paid to an attorney who had not worked on the transaction at all. Monthly payments were at an amount that the couple could not keep up with. When they fell behind a year later, the lender moved to foreclose.

Fortunately, Mr. and Mrs. B. found a local legal aid office that obtained additional assistance. Claims in their complaint included a request for injunctive relief, rescission, violations of the Truth in Lending Act, and damages for predatory home mortgage lending practices. The case recently settled with the homeowners keeping their home free and clear of any mortgage and receiving a significant cash settlement, plus attorneys fees and costs paid to counsel.

Millions of homeowners have been victimized by the fraudulent and abusive practices of mortgage servicers whose staff are trained for collection activities rather than loss mitigation, whose infrastructure cannot handle the volume and intensity of demand, and whose business records are a mess. Servicers falsify court documents because they have not kept the accurate records of ownership, payments and escrow accounts that would enable them to proceed legally. The robo-signing allegations are the most obvious evidence that servicers are routinely failing to comply with the requirements of the laws and contractual provisions to which they are subject, and the tip of the iceberg of servicer noncompliance.

The failures of loan modification efforts and the robo-signing scandal have made clear what many have known for years: our system for servicing mortgage loans is plagued with problems. Misaligned

incentives and inadequate rules and supervision for mortgage servicers have allowed servicers to impose unwarranted fees and forced-placed insurance, mismanage payment records, and favor foreclosure over home preservation.

While there are now some important new reforms in the area of mortgage origination, there is almost a complete absence of federal consumer protection governing mortgage servicing. The inadequacies of the HAMP program and of loan modification efforts by Freddie Mac, Fannie Mae, and the banking agencies demonstrate the need for strong and clear rules that will govern all servicers. Although the states have an important role to play in regulating mortgage servicing, federal law should provide a baseline to ensure that unfair, deceptive or abusive servicing practices are not tolerated anywhere.

Some Actions The CFPB Can Take:
Reforming mortgage servicing practices should be an important priority for the CFPB.

1) The CFPB should ensure that the companies who collect your mortgage payments keep accurate track of what you owe, do not charge illegal fees, do not enroll you in overpriced insurance, cannot foreclose without clear legal title, and do not make mistakes that push you into foreclosure.
2) Most importantly, the CFPB should ensure that mortgage services work with you when you get into trouble to help avoid foreclosures whenever possible.

Reason #2: The Growth of Unchecked, Unfair Credit Card Practices:

In a period when complaints about credit card abuses to consumer advocates and regulators were exploding, between 1995 and 2007 the Office of the Comptroller of Currency (OCC) issued only one public enforcement action against a Top Ten credit card bank (and then only after the San Francisco District Attorney had brought an enforcement action). In that period, the OCC did not issue a public enforcement order against any of the eight largest national banks for violating consumer lending laws.[7]

Although other regulators did belatedly propose Truth In Lending rule changes, the OCC's failure to act on rising credit card complaints at the largest national banks triggered a massive public outcry that caused Congress to investigate, resulting in passage of the 2009 Credit Card Accountability, Responsibility and Disclosure Act (CARD Act). When the Federal Reserve proposed those rules prior to passage of the CARD Act, the OCC went so far as to oppose most of them.[8].

People Behind the Reasons:
From an email just received by a consumer group: "On a Thursday I went on my bank's website to pay my credit card bill, which was due on Sunday. When I entered the bill, it showed that it would not be received on Monday (because, I later found out, the people who process electronic transactions do not work over the weekend). I figured that was fine given the CARD Act rule that you get an extra day if your due date falls on a day when mail is not received. The next month's statement showed a late fee and I called to complain. The customer service guy explained that they go and pick up their mail on Sunday and therefore can charge the late fee. He wouldn't even reverse it at first, but did eventually, though I had to go to a supervisor to get the interest charge reversed."

Among the practices addressed by that landmark law:

- Applying penalty interest rate hikes to 30% APR or more retroactively on existing credit card debt, which led to sharp increases in monthly payments and forced consumers on tight budgets into credit counseling and bankruptcy;
- Charging exorbitant "penalty" fees for paying late or exceeding the credit limit.
- Using tricks or traps to illegitimately bring in fee income, such as requiring that payments be received in the late morning of the due date or approving purchases above the credit limit;
- Making aggressive credit card marketing offers directed at college students and other young people;
- Pitching fee-harvesters cards which offered low credit limits and came with so many fees that the consumer couldn't charge purchases to the card because it was already maxed out when the consumer first got it.
- Using the practice of "universal default" to raise interest rates when customers' credit scores declined or they were late only to other firms, but not the bank.

Following passage of the law, banks moved quickly to evade its terms. However, a recent consumer-industry-academic seminar held by the CFPB found that the law is now generally working well.[9] Still, there are loopholes and problems that remain.

Some issuers may be attempting to avoid disclosure of penalty rates, perhaps intending to justify this by re-characterizing them to fall under other rate increase classifications. Additionally, examinations provide an excellent opportunity to track compliance with provisions of the new rules that protect consumers against unreasonable penalty fees and other abuses. Ongoing supervision and enforcement are critical.

Also, while the CARD Act was a major step, among the problems that the CARD Act did not address were deferred interest programs, which are credit cards - often offered for big ticket purchases or medical bills - that promote "no interest" until a certain date, but then retroactively assess interest starting from the purchase date if the consumer does not pay off the entire balance by the specified date. Another abuse that continues is the industry's practice of requiring consumers to waive their right to pursue legal violations in the court system; instead, contracts force them to participate in arbitration proceedings if there is a dispute, often before an arbitrator with a conflict of interest. Consequently, there has been little recent successful consumer litigation to reform credit card practices.

Special CFPB Jobs

Preventing Discrimination:

The Congress established within the CFPB an **Office of Fair Lending and Equal Opportunity**, "with such powers and duties as the Director may delegate to the Office, including—(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities…" One study found that borrowers of color were more than 30 percent more likely to receive a higher-rate loan than White borrowers even after accounting for differences in creditworthiness. Another study found that *high-income* African-Americans in predominantly Black neighborhoods were three times more likely to receive a subprime purchase loan than *low-income* White borrowers.

Protecting Older Americans:

Unfortunately older Americans are often the targets of investment scams such as Ponzi schemes and illegal offshore investments. The CFPB has been charged with helping to educate older Americans to avoid unfair and deceptive practices. **The CFPB is creating an Office of Financial Protection for Older Americans** to ensure we serve this large community effectively."

Some Actions The CFPB Can Take:

The Credit CARD Act of 2009 enacted important reforms in the credit card area. Ensuring full compliance with both the letter and spirit of that Act should be a top priority for the Bureau. Frustration with credit card abuses is widespread among the many millions of consumers who use credit cards. Unfortunately, this industry has shown over and over again that it is on the lookout for the next ingenious trick to increase costs for consumers.

1) The CFPB should move forward on the 1-page credit card contract: The new one-page credit card contract is an important part of this agenda. To be successful in the long run, this contract should be coupled with rules or supervision to ensure that cards are not structured in ways that undercut understanding of that agreement and the reforms of the Credit CARD Act.

2) The CFPB should protect consumers from unfair rate hikes or illegal fees: Earlier this month, the CFPB announced its large bank supervision and enforcement plan to be implemented on the July 21 transfer date. "The CFPB's bank supervision program will oversee the 111 depository institutions that have total assets over $10 billion. […] These institutions collectively hold more than 80 percent of the banking industry's assets." The CFPB should use its authority to supervise and examine credit card company practices to ensure that they are complying with the credit card reform law and are not charging illegal fees or rate increases.[10]

3) The CFPB should aggressively investigate consumer complaints: The CFPB has also announced that its Complaint Center (also being rolled out on July 21) will first place a focus on credit card complaints. The volume and type of these complaints will help identify areas of concern for supervisory and enforcement purposes.

4) The bureau should ban mandatory arbitration: Consumers were stopped from challenging many credit card practices of questionable legality due to arbitration clauses in their credit card contracts that stripped them of their access to the justice system. (See Reason #5 below for more details).

REASON # 3: The Growth of Unfair Overdraft Loans

Special CFPB Jobs

Protecting Military Families:

Recently, JP Morgan Chase Bank apologized to Congress for illegally foreclosing on active duty servicemembers. The leading reason servicemebers lose security clearances and therefore diminish unit preparedness? Bad credit, often due to predatory lending.

The CFPB legislation required it to establish an **Office of Servicemember Affairs** which has been up and running since January.

"The Consumer Financial Protection Bureau (CFPB) and the Judge Advocate Generals of the United States Army, Marine Corps, Navy, Air Force, and Coast Guard today announced an agreement on a Joint Statement of Principles to provide stronger protections for servicemembers and their families in connection with consumer financial products and services.[...] "I have worked for years trying to protect military families from predatory practices and to help raise awareness of the unique financial challenges they face – and I know the Judge Advocate Generals have been on the front lines in each of those fights," said **Holly Petraeus, CFPB's Assistant Director for the Office of Servicemember Affairs.**" *News Release, July 6, 2011*

Bank overdraft fees cost Americans billions annually in unfair fees. More than half of Americans are now living paycheck-to-paycheck, making a majority of U.S. families vulnerable to bank overdraft practices, including large fees for small debit card transactions and manipulation of account holders' transactions.

Pressure from the public, lawsuits and regulators have forced minimal changes, but many banks are still automatically approving debit card transactions at the cash register and charging a fee around $35 in the event of insufficient funds. Among the four largest banks in the country, Bank of America no longer engages in this practice (although it does permit one-time opt-in overdrafts at ATMs for a $35 fee), and Citibank never has, but Wells Fargo and Chase continue it. Most banks also automatically put consumers in the most expensive form of overdraft protection for checks and electronic payments, rather than the most affordable one for which they qualify.

Years ago, when you went to an ATM or attempted to use your debit card at a store, the default switch was to deny the transaction at no cost if it would overdraft your account. When you bounced a check, banks would return it.

Seeking greater fee income, banks and their consultants came up with the idea of standard "overdraft protection." They discouraged consumers from applying for overdraft lines-of-credit or transfer-from-savings programs to overdrafts. Instead, they aggressively promoted "courtesy overdraft" as a "standard feature" of regular checking accounts. This default feature allowed nearly every accountholder to overdraw their checking account, at a cost of $30-$35 for the privilege, even for a 50 cent overdraft. The banks also made check re-ordering an industry standard – they began to clear checks and debits in order from largest to smallest instead of chronologically, as they arrived at the bank. This maximized overdraft revenue. The banks also changed the default switch on debit and ATM cards to allow overdrafts. The combination of these practices, along with the switch from cash to debit card transactions encouraged by rewards programs, made overdraft revenue a major profit center.

Would you knowingly agree to pay a $35 fee each time you used your debit card at point of sale, simply to allow you to purchase a $3 loaf of bread with only $2 in your account? Even the banks didn't think so, that's why they made "standard overdraft protection" a feature of your checking account that you didn't need to choose.

The practices would not have been successful if not for regulator indifference and even encouragement.

Until mid-2010, when some changes were made, regulators had encouraged the practice and even refused to require banks to tell consumers the APR required by the Truth in Lending Act (TILA).

Instead of treating short term bank loans in the same manner as all other loans covered under TILA, as consumer organizations recommended, the FRB issued and updated regulations under the Truth in Savings Act, pretending that finance charges for these loans were bank "service fees." In several dockets, national consumer organizations provided well-researched comments, urging the Federal Reserve to place consumer protection ahead of short-term bank profits, to no avail. As a result, consumers unknowingly borrow billions of dollars at astronomical interest rates. A $100 overdraft loan with a $35 fee that is repaid in two weeks costs 910% APR. The use of debit cards for small purchases often resulted in consumers paying more in overdraft fees than the amount of credit extended.

In 2010, after years of consumer pressure, the Fed finally issued regulations limiting "standard overdraft protection" on debit and ATM withdrawals, a so-called feature on checking accounts, only to consumers who first opted-in. However, the regulation failed to adequately restrict the number of allowable overdrafts in a month or a year for consumers who did opt-in, nor did it require banks to stop reordering transactions from highest-to-lowest to maximize fee income.

Late last year, the FDIC issued a consumer-friendly guidance for its regulated banks; conversely, the bank-friendly OCC in July proposed a bank-friendly interpretation for its regulated banks.[11]

In 2010, a U.S. judge ordered Wells Fargo to pay $203 million due to its overdraft and check re-ordering practices. In his opinion, Judge William Alsup said:

> ...the essence of this case is that Wells Fargo has devised a bookkeeping device [check re-ordering] to turn what would ordinarily be one overdraft into as many as ten overdrafts, thereby dramatically multiplying the number of fees the bank can extract from a single mistake. The draconian impact of this bookkeeping device has then been exacerbated through closely allied practices specifically "engineered" — as the bank put it — to multiply the adverse impact of this bookkeeping device. These neat tricks generated colossal sums per year in additional overdraft fees, just as the internal bank memos had predicted. The bank went to considerable effort to hide these manipulations while constructing a facade of phony disclosure. This order holds that these manipulations were and continue to be unfair and deceptive in violation of Section 17200 of the California Business and Professions Code.[12]

People Behind The Reasons

In July of 2010 my client, whose sole source of income is SSI and who has chronic Schizoaffective Disorder, received multiple (two or three) unsolicited (possibly automated) phone calls from M&T Bank during which he was offered to have M&T cover any overdrafts on his account. He states he had no idea what an "overdraft" was, and so he chose not to enroll during the first and possibly second call. He states that the final time that M&T called he decided simply to agree to enroll, and states that he believed at the time that the bank would allow him to borrow some money and to pay back money in increments. Shortly thereafter, he received a letter from M&T confirming his decision "to allow M&T Bank to authorize and pay overdrafts" on his ATM and debit transactions. It appears that afterwards, though his account balance was $4.93 at the time, he made a series of withdrawals on August 5th and August 6th using his ATM card, overdrawing his account by a total of $1,066.07, including $91.00 in insufficient funds fees. After he received postcards from M&T alerting him of the overdrawn amount, he called M&T and canceled his enrollment in the overdraft protection plan, on or around August 15, 2010.

According to Reuters:

> "Bank of America Corp. has agreed to pay $410 million to settle class-action lawsuits accusing it of charging customers excessive overdraft fees. As noted earlier, Bank of America has stopped charging overdraft fees on debit cards. But it is only one of more than two dozen U.S., Canadian, and European lenders named as defendants in the litigation."[13]

Some Actions The CFPB Can Take:

1) The CFPB should move immediately to stop banks from tricking people into incurring overdraft fees. While Federal Reserve rules now require institutions to get customers' permission before enrolling them in an overdraft system for debit card and ATM transactions, the rules do not address the excessive cost or frequency of the fees institutions can charge once they are in, nor do they prohibit banks from steering customers into far more expensive overdraft protection programs than others for which they qualify.
2) The CFPB should stop check re-ordering and other unfair practices: Prompt action by the CFPB is needed to stop the overdraft abuses that still abound. For example, the new rules don't stop institutions from manipulating posting order to increase fees. .

Reason #4: The Rise of Triple-Digit Payday Lending And The New Threat of Bank-Issued Payday Loans

From highly-visible signs and convenient neighborhood locations or websites, payday loans beckon borrowers with promises of quick cash and no credit checks. But instead of a small amount owed for a couple of weeks, borrowers become trapped in thousands of dollars of debt from fees and interest that can last a year or even longer. Most payday borrowers have nine repeat loans per year and pay 400 percent interest.

Today, there are more payday loan stores than fast food chain outlets, according to academic research. And the problem has been exacerbated by the rapid growth of virtually-unregulated online payday lending. Several of the largest banks in the country have developed their own payday loan-like products, as well. Both the online payday lenders and the banks rely on easy access to your bank accounts.

Growth Of Bank Payday Loans (Direct Deposit Advance): Astonishingly, loan sharking is not limited to traditional payday lenders. Mainstream banks are increasingly entering the 400% payday loan business to make up for lost overdraft fee income. Banks call this product a "direct deposit advance," "ready advance" or "checking account advance," but it is a payday loan plain and simple. Typically, the banks offer loans of up to $500 at a fee of $10 per $100 borrowed. The bank uses funds from incoming direct deposits to repay the loan, typically just several days later. If those deposits are not sufficient within 35 days, the bank repays itself by withdrawing the funds from the borrower's bank account, even when no deposit has been made. The bank can withdraw the funds even if the withdrawal overdraws the consumer's account.

Because the entire loan must be repaid in short order, borrowers are likely to have difficulty both retiring the loan and meeting their other obligations. As a result, these borrowers—like the typical customers of payday loan stores—will likely take out a series of back-to-back loans, staying indebted for a significant portion of the year.

The Human Cost of Payday Lending: What does it cost us? Each year, working people give payday lenders $5 billion in fees. One Advance America borrower was trapped for over five years and paid

$5,000 in fees. A 69-year-old man in Raleigh, North Carolina went to a national chain payday shop every payday for over five years. His total interest paid was over $5,000 — for one loan with a principal that started at $200 and eventually increased to $300. Here are some more stories: "At the time it seems like the way out, but this is not a quick fix. It's like a ton of bricks." Sandra Harris, (left) once a Head Start student, now a well-known and respected member of her community, worked diligently to keep up with her bills. In a tough time, she turned to payday lending. After several rollovers, Sandra's first loan was due in full. She couldn't pay it off, so she took a loan from a second lender. Frantically trying to manage her bills, Sandra eventually found herself with six simultaneous payday loans. She was paying over $600 per month in fees, none of which was applied to her debt. Sandra was evicted and her car was repossessed. Read more of Sandra's story.

"As soon as you get your first loan, you are trapped unless you know you will have the 300 extra dollars in the next two weeks." Lisa Engelkins, (right) a single mother making less than $8 an hour, paid $1254 in fees to renew a payday loan 35 times. Lisa thought she was getting "new money" each time, when in fact she was simply borrowing back the $300 she just repaid. She paid renewal fees

every two weeks for 17 months to float a $300 loan, without paying down the loan. Read more of Lisa's story.

Payday Lending Affects The Military: The Military Lending Act took effect in October of 2007, capping payday loans, car title loans and refund anticipation loans at 36 percent APR and prohibiting the use of checks, debits or car titles to secure loans defined by DOD as "covered credit." It has reportedly been significantly, though not completely, successful in keeping military families free of predatory debt. But in addition to being susceptible to practices not covered by the Act, military families are also now vulnerable to payday loans from banks, several of which have recently entered the predatory market with high-cost cash advances secured by the borrower's direct deposit paycheck.

Evasion Of State Payday Loan Laws Through Bank Prepaid Cards: Banks are increasingly partnering with payday lenders and check cashers to offer payday loans on prepaid cards. Because the card is issued by a bank, the loan does not need to comply with state laws limiting payday loans.

Some Actions The CFPB Can Take:
Although the CFPB does not have authority to extend to all consumers the 36% rate cap of the Military Lending Act, the agency does have the authority to address other harmful aspects of storefront, internet and bank payday loans.

The Electronic Funds Transfer Act (EFTA) of 1974 prohibits lenders from requiring that a consumer give the lender a right to withdraw the payment electronically from the consumer's bank account – turning control over their bank account over to the lender and putting the loan payment ahead of food and rent. The EFTA also gives consumers the right to stop payment of preauthorized electronic transfers. Unfortunately, "preauthorized electronic payment" is defined as a payment that is recurring. Thus, those who structure their loans as single payment loans claim that they can escape these protections, even though payday loans rollover and payment recurs over and over again. Payday lenders, especially internet lenders, have been adept at taking advantage of these loopholes. They can evade laws prohibiting garnishment of benefits and wages needed for necessities and can gain almost unfettered access to the consumer's bank account, even if the loan or fees are illegal.

1) The CFPB should collect information about emerging payday practices: The research and examination processes offer an excellent opportunity to develop information about the use, impact, and incidence of payday loan programs by traditional, internet, bank and prepaid card payday lenders
2) The CFPB should close loopholes. The CFPB should determine whether internet, bank and prepaid card payday lenders are requiring that consumers make recurring electronic payments in violation of the Electronic Fund Transfer Act and should extend that 1974 law to ensure that its protections reach all modern payment methods, including single electronic payments and checks converted to electronic payments.

Reason #5: Consumers Have Lost Their Rights To Protect Themselves In Court

In the financial marketplace, as well as in other parts of the market, consumers have little ability to defend themselves in court. In 2005, a so-called "Class Action Fairness Act" made it harder for consumers to band together to challenge financial and other rip-offs. Worse, over the last fifteen years or so, banks pioneered insertion of "mandatory arbitration" clauses in all bank-related contracts and agreements to strip consumers of their right to hold wrongdoers accountable in the justice system. A 2011 Supreme Court decision now even allows companies to hide class action bans in the small print of these boilerplate "take-it-or-leave it" contracts, including bank account, payday loan, credit card and other financial contracts.[14]

People Behind the Reasons: The Human Cost of Mandatory Arbitration: Beth Plowman was a victim of identity theft but that didn't stop MBNA [now part of Bank of America] and a debt buyer, Asset Acceptance Inc., from taking her to arbitration to collect more than $26,000 in principal and interest rung up on her credit card account by thieves. And, it didn't stop NAF [The National Arbitration Forum] from finding against her.[1] In 2009, Minnesota Attorney General Lori Swanson settled a lawsuit with the NAF after "charging that the dispute-resolution company engaged in "deceptive practices" in hiding its ties to the debt-collection and banking industry."[1]

Some Actions The CFPB Can Take:
The Wall Street Reform and Consumer Protection Act gives the CFPB the authority to regulate or ban pre-dispute mandatory arbitration after first conducting a study.

1) The CFPB should move expeditiously to complete the study on mandatory arbitration required by the Wall Street Reform and Consumer Protection Act. At the completion of that study, it will gain the authority to conduct a rulemaking to ban or regulate pre-dispute mandatory arbitration in consumer financial contracts. We are confident that a substantive study will support a flat ban on binding arbitration requirements. Procedural protections cannot reform a fundamentally biased and lawless system.

2) The CFPB should examine other unfair limits on consumer rights. The CFPB should examine whether class action bans, venue requirements, and choice of law requirements imposed in consumer contracts are unfair, deceptive or abusive. The CFPB should also examine consumer laws that unwisely limit consumer private rights of action. For example, amendments to the Truth In Savings Act that eliminated its private right of action are likely one of the reasons banks routinely ignore the Act's requirement to disclose all their fees to prospective customers, as both the U.S. GAO and U.S. PIRG have documented.[15]

Reasons 6-10: Other Unsolved Consumer Problems For The CFPB To Solve

The five reasons above concern only some of the unsolved problems that the CFPB will have the authority to address. Briefly, here are five additional reasons we need the CFPB now:

Reason #6: Private Student Loan Problems

Student lending is big business. The CFPB has been given full supervisory and examination authority over private education loans and also a statutory requirement to designate a "Private Education Loan Ombudsman." Federal student loans have a variety of protections, but private student loans can be much more dangerous. As Pauline Abernathy of The Institute for College Access and Success explained to Congress last month:

> Borrowers with *private* student loans, in contrast, can face much higher costs and have far fewer options when their payments become unmanageable. They are, ultimately, at the mercy of their lenders because private loans lack the important deferment options, affordable repayment plans, loan forgiveness programs and cancellation rights in cases of death, severe disability and school closure that federal student loans provide. Experts agree that private student loans should only be used as a last resort. Even borrowers in so much financial distress that they meet the requirements for declaring bankruptcy find it is nearly impossible to have student loan debt discharged, whether for federal or private loans. To put it plainly, it is currently easier to get relief from credit card and gambling debt than from student loan debt.[16]

This market has had little supervision at the federal (or even the state) level, and little information about the market is publicly available. For instance, we do not know why most students with private loans have not exhausted their federal loans, the terms of the private loans, what schools the students attend, or whether students default on the loans in high numbers.

Some Actions The CFPB Can Take:

1) The CFPB should begin to collect more information about this market.
2) The CFPB should prohibit lenders from pushing students to take on more expensive and riskier private loans without first exhausting their federal aid.
3) The CFPB should consider enforcement or supervision action now (and rules eventually may be needed) to address schools that are making loans despite knowing (and disclosing to their investors) that a majority of the students will be pushed into default.
4) Abernathy's testimony, above, includes a number of additional ideas.

Reason 7: Credit Bureaus: The Gatekeepers to Financial Success

Creditors, insurers, banks, landlords and a growing number of employers base their decisions in part or even entirely on credit reports and/or credit scores. Three national credit bureaus, Equifax, Experian and Trans Union, have become the gatekeepers to financial success in the United States. Credit scores issued by the industry leader, Fair Isaacs/FICO, are derived from the credit reports held by the Big Three credit bureaus, which also issue their own product, VantageScore. An array of "specialty" credit bureaus or consumer reporting agencies (CRAs), many owned by Fortune 500 firms, issues reports for employment, insurance claims, residential rentals, check writing, and medical records purposes. New types of databases, such as credit decision matrices derived from consumer posts to Facebook and other social network sites, are also being marketed to business subscribers. The CFPB gains authority over Fair Credit Reporting Act (FCRA) rulemaking as of July 21, 2011.

Under the Dodd-Frank Act, CFPB has the authority to supervise and examine large banks as well as companies of all sizes in the mortgage, payday lending, and private student lending markets. In addition, for all other non-bank financial markets—like credit reporting, debt collection, consumer installment loans and money transmitting and remittances—the CFPB gains authority to supervise "larger participants," after it defines them by rule. [17] It is important that the CFPB determine that all the major players in the credit reporting marketplace are larger participants, so that they will be subject to this greater scrutiny.[18] The Federal Trade Commission has never had this ability to look inside the "black boxes" of the credit bureaus it has regulated since 1970.

Some Actions The CFPB Can Take:

1) The CFPB should define the larger credit bureaus, including the Big Three, as "larger participants." It should also define the larger specialty CRAs, resellers, and credit scoring companies as "larger participants" so that it will gain the ability to subject them to supervision and examination authority.
2) The CFPB should force creditors and credit bureaus to clean up a system that produces reports prone to mistakes such as incorrect and outdated information, fraudulent accounts due to identity theft, and mixed up files of different consumers. The CFPB should take enforcement action against the credit bureaus' blatant noncompliance with the Fair Credit Reporting Act's (FCRA) dispute and investigation requirements.
3) The CFPB should address racial disparities in credit reports: These well-documented problems impact not only credit pricing and availability but also employment and homeowners and auto insurance.
4) The CFPB should make credit scoring fairer and less opaque to consumers and policymakers.

Reason 8: The Unfair Practices of Debt Collectors and Debt Settlement Companies

Nearly all households who are behind on their bills paid their bills until they faced a financial catastrophe: unemployment, illness, disability, divorce, or succumbed to some of the daily exhortations in their mailbox to borrow and on TV to buy on credit. During recessions even more consumers fall behind because they are laid off by an employer. Recognizing this, federal and many states' laws require that financially distressed consumers not be abused, deceived, lose their privacy, or be treated unfairly.

Debt collectors use various forms of illegal intimidation, including talking with friends and employers about a consumer's debt without permission from the debtor; making harassing or abusive telephone calls; threatening to take actions that are illegal or not intended; and suing on debts that were paid or not owed.

Over the past decade or more, debt collectors have consolidated and created a more complex industry that poses even greater risks to consumers. When consumer debts are not paid, even in circumstances where they may not be owed (either due to a statute of limitations or because the consumer was mistakenly identified or was a victim of identity theft), the debts are sold to a series of debt buyers, which are firms that buy the debt from other debt collectors as an investment and continue aggressive collection efforts, often seeking to "re-age" debts to make them collectible again.[19]

Debt collectors and debt buyers are flooding the courts with collection actions based on nothing more than spreadsheets, mirroring the robo-signing scandals of the mortgage industry. If a consumer disputes a debt, the debt collector just passes it off to the next debt buyer, which begins the cycle again.

In response to the recession, a once-cottage industry of debt settlement and debt negotiation firms has grown dramatically. As Chairman Jon Leibowitz of the Federal Trade Commission said last summer, "Too many of these companies pick the last dollar out of consumers' pockets – and far from leaving them better off, push them deeper into debt, even bankruptcy."

Some Actions The CFPB Can Take:

1) The CFPB should enforce the laws against debt collectors who make illegal threats or harass people for debts they do not owe.
2) The CFPB should propose rules requiring that debt collectors and debt buyers hold all relevant information identifying the owner of, amount of and payments on the debt, and all contacts with the consumer, before they can collect a debt.
3) The CFPB should bar collection of "zombie debt" that never dies but is sold and resold to the next debt buyer even if the consumer disputes it or it is too old to be legally collectible;
4) The CFPB should extend and strengthen the FTC's ban on advance fees collected by debt settlement firms to firms that do not use the telephone and thus are not covered by the Telemarketing Sales Rule.

Reason # 9: The Growing Use of Under-Protected Prepaid Debit Cards

The prepaid card industry is in an important growth stage. There has been relatively little regulation of the industry thus far, and having enjoyed relative freedom from regulation as prepaid cards developed, it is now time to ensure that prepaid card accounts enjoy the same protections as bank accounts do and to stop junk fees from spreading in this market. Prepaid cards – including general purpose cards, payroll cards, gift cards and other variants -- are becoming an important alternative for those shut out of bank accounts, a situation which may become more common as overdraft and interchange fees become less of a profit center. As this is a relatively new industry, it is essential to stop unfair fees and other abusive practices before they spread and solidify.

The Federal Reserve was on the verge of voluntarily proposing how to extend the Electronic Funds Transfer Act (EFTA) to prepaid cards before the agency gained other unrelated new mandatory rulemaking responsibilities under the Dodd-Frank Act. There is actually a lot of consensus between industry and consumer groups. There is wide agreement that the EFTA should be extended to prepaid cards, with limited areas of disagreement. Both consumers and the industry would also benefit by weeding out bad fee practices that will give this industry a bad name just as it is trying to gain consumer acceptance. Consequently, we believe that it would be a relatively easy matter, and is of some urgency, to adopt rules for prepaid cards. As the industry grows, credit may be offered on prepaid cards and the CFPB will also need to ensure that credit offered on prepaid cards complies with the Credit CARD Act, including its fee harvester provision limiting fees to 25% of the credit line, and should ensure that prepaid cards are not used as vehicles for predatory lending or evasion of state law protections.

Some Actions The CFPB Can Take:

1) The CFPB should give consumers more prepaid card rights: The CFPB should extend the Electronic Funds Transfer Act to cover prepaid cards and ensure that consumers can receive free balance and transaction information about their accounts in order to monitor unauthorized charges, unwanted fees and errors.
2) The CFPB should require a "Schumer" box for prepaid card disclosures: The CFPB should develop clear disclosures for prepaid cards (and bank accounts) with a "Schumer box" that consumers can see before purchasing a card.

3) The CFPB should monitor prepaid cards for unfair, deceptive or abusive fees: CFPB should explore methods to encourage fee simplification and transparency.[20]

Reason #10: Auto Finance Rip-offs

An auto loan is the biggest or second biggest loan that many consumers will take out. The auto lending market is plagued by many of the same problems as the mortgage market, including incentives for loan packing, kickbacks for putting consumers in more expensive loans, fair lending abuses, bait and switch tactics, deceptively low advertised rates, loan flipping, and consumers locked into loans bigger than the cars are worth. Auto lending problems can ruin credit and lead to lost jobs. According to auto industry analysts, over six million would-be new car buyers are out of the market due to excessive negative equity. In turn, this hampers efforts to restore jobs to the automotive sector of the economy.

The CFPB will have jurisdiction over most auto lenders and some car dealers, with the FTC handling the remainder. The FTC was granted expanded authority over auto dealers in the Dodd-Frank Act.

Some Actions The CFPB Can Take:

1) The CFPB should work with the FTC to identify abuses. The CFPB, the FTC should work together to begin collecting information on auto lending problems and abuses in order to prepare for rulemaking and enforcement actions to protect consumers in the largest area of consumer lending after mortgage lending.
2) The CFPB should work with other regulators on other known problems, including yo-yo sales and other unfair tactics: The CFPB, the FTC and the Fed should together prohibit kick-backs to dealers who put consumers in more expensive loans than they qualify for or who charge more to minorities. The CFPB and other regulators should prohibit bait and switch tactics through "yo-yo" clauses that give dealers a unilateral right to cancel the sale or loan
3) The CFPB and other regulators should ensure that the condition of used cars is accurately represented to borrowers and lenders by lenders by requiring independent inspections and disclosure of known defects.

The Jurisdiction and Structure Of The CFPB Under Law And How It Provides Adequate Oversight To The Congress

The CFPB has a clear mandate, and – once a Director is in place – sufficient authority and a range of tools to take on the 10 problems discussed here, as well as additional abuses in the consumer financial marketplace. These powers are not, however, unprecedented nor without limits or oversight. In fact, the opposite is true. Unique to the CFPB are unprecedented limits on its powers that exist in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Nowhere else in federal law can one set of regulators – in this case two-thirds of the members of the Financial Stability Oversight Council (FSOC) – veto the actions of another agency. The Dodd-Frank Act also caps the amount of funding provided to the CFPB, a statutory limit imposed on no other financial regulator. The Office of the Comptroller of the Currency, for example, also an agency with a single director, can raise the regulatory fees it collects from regulated national banks whenever it needs to. It sets its own budget. The CFPB is also the only financial regulator that must comply with rulemaking procedures under the Regulatory Flexibility Act, which will add at least six months to the already lengthy rulemaking process and make it more difficult for the agency to effectively address serious financial abuses that spread quickly.

The CFPB Director is appointed by the President and can be removed for cause. The CFPB director must testify before Congress semi-annually. The director must appear before committees in both houses of Congress twice a year. For these hearings, the CFPB must submit reports to both the Congressional committees and the President. These reports must include a justification for the CFPB's budget, a list of rules the CFPB has adopted, and a list of public supervisory and enforcement actions in which the CFPB has been involved.[21]

The CFPB's JURISDICTION INCLUDES THESE 18 LAWS

"enumerated consumer laws" means— (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.); (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act; (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.); (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w); (G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.); (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.); (I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f)); (J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809), except for section 505 as it applies to section 501(b); (K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); (L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note); (M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); (N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.); (O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); (P) the Truth in Savings Act (12 U.S.C. 4301 et seq.); (Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8); and (R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

Conclusion: The CFPB's Goal Is To Make Markets Work

The idea of a Consumer Financial Protection Bureau was first proposed in articles by Professor Elizabeth Warren just a few years ago.[22] Yet, as this issue brief shows, it has been needed for years. Just one year after it was established by law, on July 21, 2011, the CFPB begins to protect consumers from unfair financial practices. Its goal is not to put banks or even payday lenders out of business. Markets need both buyers and sellers to work. In the words of the CFPB, its goal is simply "to make markets work."

> "In a market that works, consumers should be able to make direct comparisons among products and no provider should be able to build, or feel pressure to build, a business model around unfair, deceptive, or abusive practices."

It should not be a radical idea that when ordinary consumers or families take out credit cards or mortgages that they be treated fairly. Nor should it be a radical idea that consumers and families should be able to count on a federal agency with only job, protecting them from unfair marketplace practices. The Consumer Financial Protection Bureau is a consumer cop on the beat making markets work.

ENDNOTES

[1] This report is based on the consumer protection work of numerous consumer, community, senior, labor and other organizations that have come together as the coalition Americans for Financial Reform. Much of the historical information on regulatory failures in this report is treated in greater detail in the joint testimony of Edmund Mierzwinski, U.S. PIRG and Travis Plunkett, Consumer Federation of America, on behalf of 12 consumer and community groups, before a hearing entitled "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation of the Committee on Financial Services, 24 June 2009, available at http://financialservices.house.gov/media/file/hearings/111/mierzwinski_-_submitted_with_plunkett.pdf. The hearing website also includes the testimony of Professor Elizabeth Warren and others and is available here http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=231823. (Both pages last visited 16 July 2011). Many organizations have pages on the CFPB and the need for reform. For additional information and materials on the CFPB, for example, see the websites of Americans for Financial Reform (http://www.ourfinancialsecurity.org), the Center for Responsible Lending (http://www.responsiblelending.org), Consumer Federation of America (http://www.consumerfed.org) , Consumers Union (http://www.consumersunion.org), the National Consumer Law Center (http://www.nclc.org), and U.S. PIRG (http://www.uspirg.org).

[2] Until July 21, the four bank prudential regulators or supervisory agencies are the Office of the Comptroller of the Currency ((OCC), which supervises national banks, the Office of Thrift Supervision (OTS), which supervises national thrifts; the Federal Reserve Board, which supervises state member banks of the Federal Reserve, and the FDIC, which supervises other state banks. On July 21, the OTS merges into the OCC. On July 21, the CFPB takes over consumer rulewriting authority for all of these banks as well as consumer supervisory and examination authority for larger banks and credit unions over $10 billion (there are currently 111 total in this category). Consumer supervision for smaller institutions is retained by these regulators and the National Credit Union Administration.

[3] CRL calculations, based on Mortgage Bankers Association, National Delinquency Surveys 2007-2011, with numbers adjusted to reflect MBA's estimated 88% market coverage.

[4] See Mortgage Bankers Association, National Delinquency Survey 1Q 2011.

[5] *See generally* Debbie G. Bocian, et al., *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* (June 18, 2010), available at http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf [hereinafter *Foreclosures by Race and Ethnicity*].

[6] Page xx, Conclusions of the Financial Crisis Inquiry Commission, available at http://bit.ly/q8pPHm (last visited 15 July 2011)

[7] See testimony of Professor Arthur Wilmarth before the House Financial Services Committee at page 14, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729840 (last visited 16 July 2011).

[8] Comment letter, 18 August 2008, from Comptroller John Dugan to the Federal Reserve available at http://www.federalreserve.gov/SECRS/2008/August/20080822/R-1314/R-1314_28743_1.pdf (last visited 16 July 2011).

[9] See the CFPB page on the Credit CARD Act including materials on the seminar held 22 February 2011 available at

http://www.consumerfinance.gov/credit-cards/credit-card-act/ (last visited 16 July 2011).

[10] News release, "Consumer Financial Protection Bureau Outlines Bank Supervision Approach," 12 July 2011, available at http://www.treasury.gov/press-center/press-releases/Pages/tg1236.aspx, (last visited 17 July 2011).

[11] See OCC news release "OCC Extends Comment Period on Deposit-Related Consumer Credit Products Guidance," 1 July 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-87.html (last visited 17 July w011).

[12] Judge Alsup's decision in *Gutierrez et al v. Wells Fargo Bank,* 10 August 2010, is available here http://graphics8.nytimes.com/packages/pdf/business/20100811-wells.pdf (last visited 17 July 2011).

[13] Jonathan Stempel, "B of A to pay $410 million to settle overdraft lawsuit," 5 February 2011, Reuters, available at http://www.reuters.com/article/2011/02/05/us-bankofamerica-overdraft-settlement-idUSTRE71423420110205(last visited 17 July 2011).

[14] See Statement of Public Citizen's Deepak Gupta, "In AT&T v. Concepcion, U.S. Supreme Court Deals Crushing Blow to Consumers," 27 April 2011, available at http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3326 (last visited 17 July 2011).

[15] See GAO Report 08-281, January 2008, "Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts," available at http://www.gao.gov/new.items/d08281.pdf (last visited on 16 July 2011). Also see U.S. PIRG Report, "Big Banks, Bigger Fees," April 2011, available at http://bit.ly/eRFHAv, (last visited on 16 July 2011).

[16] Testimony of Pauline Abernathy, Vice President, The Institute for College Access & Success, before the Senate Committee on Health, Education, Labor, and Pensions, Hearing on "Drowning in Debt: Financial Outcomes of Students at For-Profit Colleges" 7 June 2011, available at http://help.senate.gov/imo/media/doc/Abernathy.pdf (last visited 17 July 2011). TICAS is a member of Americans for Financial Reform.

[17] The CFPB has issued an Advance Notice of Proposed Rulemaking for its "Larger Participants" rulemaking. Comments on the ANPR are due by August 15. The final rule must be issued by 21 July 2012. For more information, see "Defining Larger Participants," available at http://www.consumerfinance.gov/defining-larger-nonbank-participants/ (last visited 17 July 2011).

[18] In AFR's or its member groups' detailed comments on the larger participant rule, of course, we may suggest that additional firms, including debt collectors and debt buyers, certain installment lenders and others also be categorized as larger participants.

[19] For more detail on debt collection problems, see NCLC, The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms the Courts (July 2010), Consumer Comments to the FTC: Protecting Consumers in Debt Collection Litigation and Arbitration (2009), and Consumer Comments to the FTC: Collecting Consumer Debts: The Challenges of Change (2007), all available at http://www.nclc.org/issues/debt-collection.html (last visited 17 July 2011); Woodstock Institute & Citizen Action/Illinois, "Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies," (2006), available at http://www.woodstockinst.org/publications/download/hunting-down-the-payday-loan-customer%3a--the-debt-collection-practices-of-two-payday-loan-companies/ (last visited 17 July 2011); and "Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers," Neighborhood Economic Development Assistance Project (NEDAP), The Legal Aid Society, MFY Legal Services, and Urban Justice Center, May 2010, available at http://www.nedap.org/resources/documents/DEPT_POLICY_PAPER_FINAL_WEB_REV.pdf (last visited 17 July 2011).

[20] "Prepaid Cards website, The National Consumer Law Center, available at http://www.nclc.org/issues/prepaid-debit-cards.html (last visited 17 July 2011).

[21] For more details, see Consumer Federation of America factsheet, June 2011, "Accountability Of The Consumer Financial Protection Bureau," available at http://consumerfed.org/pdfs/CFPB-Accountability-fact-sheet-6-11.pdf, (last visited 17 July 2011).

[22] Elizabeth Warren, "Unsafe at Any Rate," Democracy: A Journal of Ideas, Issue #5, Summer 2007, available at http://www.democracyjournal.org/5/6528.php (last visited 17 July 2011).

Mr. MCHENRY. I just have just a couple more questions.

Mr. CORDRAY. Sure.

Mr. MCHENRY. There is an interview that you did with the Associated Press, and I am sure you are prepared to answer this. Your quote was, "frankly, there is a lot of fraud that is committed in the marketplace that is not, on its face, necessarily technically illegal." Can you clarify that statement?

Mr. CORDRAY. Yes. And I appreciate the opportunity to clarify that statement. I thought it was garbled as I read the article; didn't like it. I am sure you have had the experience of saying things, and then you read it and——

Mr. MCHENRY. Oh, never, never, never.

Mr. CORDRAY. In any event, my point there was there are some statutes we have inherited where there are very specific and in some ways kind of technical in terms of what is compliant, for example, some of the regs under the Truth and Lending Act, and then there is also the law that we inherit under our statute of what is an unfair, deceptive, or abusive practice.

I don't mean to say in any respect that something can be not against the law, but somehow be acted on by us. It would have to violate the law in one or another of these respects. And either I got twisted around in saying it or it got twisted around in the quoting of it, and it might be either, I am not sure which. But my point is not that we can just deal with things that we don't like, even though they don't violate the law; that is not my view of what we do.

Mr. MCHENRY. Okay. But this is the concern, though. It is a violation of the law as you interpret it. That would be how you would take action. The concern here is your interpretation of existing law. So much of what we have in our common law history is built on precedence. So if you are accepting the precedence of the agencies that you are taking powers from, that you are assuming powers from, and you are accepting their legal basis for those precedents, then I think there is a greater deal of certainty.

But the marketplace not knowing that that is fully the case adds uncertainty.

Mr. CORDRAY. Yes. I see that. And that is not our intention, but I do see why the concern is there.

Mr. MCHENRY. So walk me through that. I do want to give you the opportunity to sort of walk through what that looks like and how that functions, and not as a gotcha, just as a clarity.

Mr. CORDRAY. So law that we inherit from other agencies and, frankly, law that we have because Congress has imposed it is law that we need to follow and follow closely. If there is a body of law interpreting rules, for example, Reg Z or something we have inherited from the Federal Reserve, that body of law is relevant for us too and constrains us, and we shouldn't be going off in some wild, new, unexpected direction.

The thing is what I would say is new about the Bureau is that we do have authority now in some areas where there really wasn't any application of law before. So, for example, in the nonbank sphere, Federal law did not apply to the various parties that we have talked about here today, so they weren't subject to any, nec-

essarily, unfair, deceptive, abusive, the kind of terms we talked about.

Look, it is not our point to try to revolutionize any kind of existing law; our job is to follow it and apply it. And it is also not our intention to start going off and acting like we are some sort of mini Congress, just doing anything we think is good and right, and writing it into the books. I think we need to follow our procedures carefully, follow the law carefully, and if we do that we will build credibility in our work.

Mr. MCHENRY. Okay. So, to that line of thought, it brings me back to my first question.

Mr. CORDRAY. Okay.

Mr. MCHENRY. At the beginning of each year, the SEC outlines their intention for regulatory actions for the coming year. It is not saying they will get to every action there, but it is their intention to get to those actions. That is a broader agenda than the two paragraphs that are found on the CFPB Web site that outline the principles, which looks like an agenda of sorts, but it is very broad. That adds to uncertainty. And uncertainty in the financial marketplace means things cost more or are less available. Actually, those two things go hand in hand.

So it would be a proper thing for you to outline your regulatory actions that you foresee for the coming year and make that a matter of due course for this Bureau that is new. You are the first head, you are taking powers that never existed in one person in Washington, DC. There is a great deal of trepidation based on that enormous power. It is not about you. You certainly exhibited the reason why you were elected in Ohio as attorney general in answering your questions, in answering questions and being forthright about it. Many of us just may see things differently about the powers that you are vested with and some of the actions you may take.

But if you could be very forthright at the beginning of each year, I think it would add tremendously to this and explain clearly what your intention is for enforcement actions, even on a quarterly basis would be helpful.

Mr. CORDRAY. Let me come back to you on that and say I think we can satisfy you on that. I think it is a reasonable request. I think that as I sit here and as we thought about different pieces of the Bureau in preparing for this testimony, I think it is pretty clear what we intend to do in the rulemaking sphere this year. I would just say one thing I would want to say is since we are a new agency and a lot of this is new to us, I would want to have one sort of asterisk and residual to say there may be something that will come up over the course of this year that we did not foresee that we think we need to do. But I think we can probably give you and the public more detailed guidance on that. And I happen to think, as we have had this exchange, that would be a good thing.

Mr. MCHENRY. Well, thank you. And the concern, again, is that asterisk. It does actually lead to uncertainty. And you have heard me say that quite a bit today.

Mr. Quigley, would you like any closing comments?

Mr. QUIGLEY. Thanks for being here and good luck.

Mr. MCHENRY. Mr. Cordray, thank you for your forthright answers. There have been a lot of concerns expressed here today. You have given a great deal of explanation. We appreciate that and we certainly appreciate the exchange of ideas. Again, the question of the cost to the marketplace, the question of access to credit is really key to all these questions and concerns. You are not going to simply allay the fears that many of us have about the enormous budget given to one individual and the enormous powers one individual has to, in essence, change contract law and a number of other items, but you can allay a number of fears and take away a great deal of uncertainty with your early actions. Thank you for being here today and for submitting yourself to congressional oversight.

Mr. CORDRAY. Absolutely.

Mr. MCHENRY. With that, the committee stands adjourned.

Mr. CORDRAY. Thank you.

[Whereupon, at 4:05 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Questions for Richard Cordray
Director, Consumer Financial Protection Bureau

January 24, 2012 Hearing
U.S. House of Representatives Oversight and Government Reform Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs

Questions from Rep. Patrick Meehan

1) *Speaking at the American Banker's Regulatory Symposium last fall, Raj Date, Deputy Director of the Consumer Financial Protection Bureau (CFPB) stated that the CFPB plans to finalize the Ability to Repay rule early this year. When finalized, this rule would require lenders to determine that the borrower has a reasonable ability to repay the mortgage loan they are being lent. To satisfy the ability to repay criteria, a lender may also originate a Qualified Mortgage (QM).*

   The rule, as drafted by the Federal Reserve, proposes two alternative means to establishing a QM. Under both alternatives, a QM must meet several standardized lending and underwriting criteria. Under one alternative, a borrower cannot dispute a lender's compliance with the ability to repay standard which would essentially establish a "safe harbor" for the lender. The other alternative would simply establish what has been called a "rebuttable presumption" that the lender has met the ability to repay standards. What is your opinion on the safe harbor and rebuttable presumption alternatives and their potential impacts on the housing market and access to credit?

   The Dodd-Frank Act amended the Truth in Lending Act (TILA) to require that lenders make a reasonable and good-faith determination of the consumer's ability to repay a mortgage loan. Under the Act, a lender is provided with protection from liability if it originates a "qualified mortgage" (QM).

   The Federal Reserve Board published a proposed rule implementing these provisions on May 11, 2011 and the comment period for the proposed rule closed on July 22, 2011. Under the Dodd-Frank Act, the Board's proposal became a proposal of the CFPB on the designated transfer date of July 21, 2011. The Act requires the CFPB to issue, by January 21, 2013, a final rule.

   As you mentioned, the Federal Reserve Board proposed two alternatives for the kind of legal protection that making a QM would provide. Under the "safe harbor" approach, a QM would, in essence, be an alternative means of complying with the repayment ability requirement. That is, if a loan meets the QM standard, the ability to repay standard has been met. Under the "presumption of compliance" approach, a lender who made a QM would be presumed to comply with the repayment ability rule, but that presumption would be rebuttable. That is, if a loan is a QM, the borrower may seek to overcome the presumption that the ability to repay requirements have been met based on the borrower's particular facts and circumstances.

The CFPB is in the process of developing a final rule and is carefully considering the diverse views of many commenters on this issue. The CFPB will weigh the costs and benefits of each approach in ensuring consumers have access to responsible, affordable mortgage credit.

2) *Under the Dodd-Frank Wall Street Reform Act, one of the supervisory roles of the Consumer Financial Protection Bureau (CFPB) is to oversee nonbank entities in certain markets. For some markets, this role is limited to "larger participants," a term that is still in the process of being defined. Do you plan to establish substantive rule-makings pertaining to nonbank businesses prior to the completion of the rule-making which defines the term "larger participant"? If so, please outline how you plan to establish fair and predictable rules for products and consumers before you have determined what types of financial products and participants are covered by the CFPB?*

The larger participant rulemaking will address, in part, the types of covered persons we can supervise under the Dodd-Frank Act as a general matter as part of our Nonbank Supervision Program. The Dodd-Frank Act also gives the CFPB authority to supervise covered persons whose practices pose risks to consumers once the CFPB gives that covered person notice and an opportunity to be heard. Our supervision program will focus on determining providers' compliance with various federal consumer financial protection laws and their implementing regulations.

The Bureau's authority to write substantive rules under various federal consumer financial protection laws (such as the Truth in Lending Act, the Electronic Fund Transfer Act, and the Fair Credit Reporting Act) is defined by the laws themselves. Each of those laws defines its own scope of coverage, and most of them apply to both bank and non-bank providers of consumer financial products and services. (For instance, the Truth in Lending Act applies generally to both bank and non-bank creditors who regularly extend consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required.) The Bureau's initial substantive rulemaking projects are focused on implementing new consumer protections established by the Dodd-Frank Act, particularly with regard to remittances and mortgages. Congress drafted those provisions to apply to both bank and non-bank financial services providers.

The Bureau will exercise its rulemaking authority carefully, taking a balanced and evidence-driven approach. As required by law, we will convene panels to consult with small businesses that may be impacted by the rules and will assess the benefits, costs, and impacts to consumers and covered persons in connection with each rule. The CFPB intends to use information it obtains through its supervision and research efforts to inform our substantive rulemakings so that the Bureau is better informed about market developments and how those rulemakings will impact covered persons.

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