

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

HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS
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THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Wednesday, November 29, 2023

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

The committee met, pursuant to notice, at 10:06 a.m., in room 2128, Rayburn House Office Building, Hon. Patrick McHenry [chairman of the committee] presiding.

Members present: Representatives McHenry, Lucas, Sessions, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Loudermilk, Mooney, Davidson, Rose, Steil, Timmons, Norman, Meuser, Fitzgerald, Garbarino, Kim, Donalds, Flood, Lawler, Nunn, De La Cruz, Houchin; Waters, Velazquez, Sherman, Scott, Lynch, Green, Cleaver, Foster, Beatty, Vargas, Gottheimer, Gonzalez, Casten, Pressley, Horsford, Tlaib, Torres, Garcia, Nickel, and Pettersen.

Chairman MCHENRY. The Financial Services Committee will come to order.

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

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

I now recognize myself for 4 minutes for the purposes of an opening statement.

Good morning. The public's trust in our financial regulators is shaken. Earlier this year, a Consumer Financial Protection Bureau (CFPB) employee made an unauthorized transfer of records containing personally identifiable information (PII) and confidential supervisory information. Director Chopra, your agency subsequently tried to downplay this major data breach.

We recently found out that the Office of the Comptroller of the Currency (OCC) hired a fraud, who repeatedly lied about his workplace experience, to lead its Office of Financial Technology. The OCC also tried to sweep this incident under the rug.

Finally, we are all aware of the allegations of widespread and entrenched workplace misconduct at the Federal Deposit Insurance Corporation (FDIC). These allegations directly implicate Chair Gruenberg and span his almost 20-year tenure as leader of the agency. Director Chopra, as CFPB Director, you have a seat on the FDIC Board, where you have made your presence known, from the ouster of former FDIC Chair McWilliams, to the March bank fail-

ures and the subsequent weeks of inaction thereafter. In other words, what the heck is going on at the FDIC?

Director Chopra, this committee is interested in hearing what you knew about the allegations, when you knew it, and any actions you have taken to remedy this unacceptable situation. This string of scandals has left many, including myself, questioning whether these agencies are up to the task of protecting consumers and ensuring the safety and soundness of our financial system.

When you are not dealing with internal mismanagement, the Biden Administration supposedly has independent financial regulators that are busy serving as political actors for the Administration. Director Chopra, your leadership is a glaring example of this alarming trend of becoming a hyper-partisan agency doing the bidding of the White House rather than protecting American consumers. That is much more about election-year politics than about what is right for consumers.

The ongoing barrage of press releases from the CFPB is misleading at best. They too often paint with a broad brush to vilify entire sectors of the financial services industry and even the U.S. financial system as a whole rather than targeting independent bad actors. To make matters worse, when the Biden Administration doesn't have the authority or the votes in Congress to make a change, the CFPB, under your leadership, simply forges ahead and works unchecked. One need only look at your Small Business Data Collection rulemaking, Section 1071 of the Dodd-Frank Act, which goes well beyond the CFPB's statutory authority to require the collection and reporting of onerous amounts of information in an attempt to facilitate the naming and shaming of lenders whose business activities are unfavorable to progressive activists. That is why House Republicans will pass a resolution this week to protect small businesses' access to affordable credit by rescinding this burdensome and overly-complex rule.

But I would like to close on an area where I believe we have found some agreement, which is a good thing, and that is on your work on the Section 1033 data privacy proposal. We have talked about this in private. To be clear, I think what you have proposed is far from perfect, but I believe there is common ground between your proposal and the Data Privacy Act that this committee passed earlier this year. We agree on the core of the issue, that Americans should have greater control over their sensitive financial data. Consumers should know where their data is going and how it is used, and should be able to terminate the collection of their data by certain firms. To ensure our data privacy policy is not subject to the whims of any Administration, I believe it is critical that we make law here, not just regulation, although your regulation is a good step.

I hope we can work constructively on this issue moving forward so that Americans' financial data privacy is protected for the long term.

With that, I yield back, and I recognize the ranking member of the committee, Ms. Waters, for 4 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. Good morning. I would like to welcome Director Rohit Chopra back to our committee and applaud the excellent work the CFPB has done

under your leadership to protect our nation's consumers. I am also pleased that this coming Saturday, Director Chopra will join me in my district in Los Angeles for a town hall meeting with my constituents to discuss consumer protections and access to banking products and services. We will also hear from senior executives from Wells Fargo, PNC Bank, City National Bank, and local stakeholders.

While the Senate is moving forward with a hearing featuring Big Bank CEOs next week, I am very disappointed that this committee is breaking with the tradition I established as chairwoman to hold the same hearing. Our Members deserve the same opportunity to conduct oversight of our nation's big banks. I hope the chairman will reconsider his decision and convene the CEOs for a hearing as soon as possible.

Now, as the Solicitor General argued before the Supreme Court in October, the CFPB's funding structure is constitutional, and gutting the only agency dedicated to protecting our nation's consumers in the financial marketplace will harm our economy and communities. The lawsuit before the Supreme Court is a part of a broader extremist effort by House Republicans to undermine and defund critical government agencies and programs, even Social Security and Medicare. To be clear, every single court that has reviewed CFPB's funding has reaffirmed its validity, other than the extremist Fifth Circuit. Committee Democrats urge our nation's justices to stand with the 82 percent of Americans, including 77 percent of Republicans, who want the agency to continue doing its job.

It is no mystery why the CFPB has such broad bipartisan support. It has cracked down on financial institutions that repeatedly engage in abusive practices, held lenders accountable for discriminating against borrowers, taken action to remove medical debt from credit reports, eliminated junk fees, increased access to capital for small businesses, particularly businesses of color, and more.

Unfortunately, this week, House Republicans have launched an effort to harm small businesses and help the Big Banks continue to price gouge them by overturning the CFPB's Small Business Lending Rule, which implements Section 1071 of the Dodd-Frank Act, that I worked on with House Small Business Committee Ranking Member, Nydia Velazquez. This section requires lenders to collect and report data on small business lending similar to what they already do for mortgage lending. This would help reduce borrowing costs for small businesses by creating a more transparent, competitive marketplace, and combat discriminatory lending practices. I am disappointed that Republicans are moving forward with this anti-small business effort, and I would remind my colleagues that market transparency is a fundamental pillar of free market capitalism, and that is exactly what this rule is focused on.

I look forward to hearing from Director Chopra about the importance of this rule and the other good work of the CFPB. I yield back.

Chairman McHENRY. The Chair now recognizes the gentleman from Kentucky, Mr. Barr, who is also the Chair of our Subcommittee on Financial Institutions and Monetary Policy.

Mr. BARR. The CFPB is the most-unaccountable agency in the entire Federal bureaucracy, and it is not just about Director

Chopra; it is the structure itself. But, Director Chopra, under your leadership, the agency has acted unilaterally and arbitrarily outside its statutory mandate, and we have seen time and time again, the Bureau, under you and your predecessors, pursue a lawless regulations-without-rules approach, and attempt to change the law without congressional authorization and without complying with the Administrative Procedure Act. This has not only led to a lack of accountability by the agency and a lack of accountability to the American people, but it has also harmed the very consumers that, sir, your agency is supposed to protect. Due to the CFPB's novel funding mechanism, Congress has no visibility into the agency, and Congress needs to regain its power of the purse, subject the Bureau to the congressional appropriations process, and rein in this regulator.

And you may have noticed that Congress rejected an amendment to defund the agency. We just need to fund the agency the right way, the constitutional way, and that is through the power of the purse so that the agency becomes a professional nonpartisan regulator, not a partisan regulator that acts outside of the law. And we will bring light to this today. I yield back.

Chairman MCHENRY. The gentleman yields back. The Chair now recognizes the ranking member of our Subcommittee on Financial Institutions and Monetary Policy, Mr. Foster, for 1 minute.

Mr. FOSTER. Thank you, Mr. Chairman, and Director Chopra. Since we passed the Dodd-Frank Act that created the CFPB back in 2010, the CFPB has effectively fulfilled its mission to protect consumers from unfair, deceptive, and abusive practices in financial markets, despite coming under continual attack. And despite those attacks, the CFPB has continued its work, securing over \$20 billion in relief for harmed consumers, over \$4 billion in penalties for violations of the law, and millions of responses to consumer complaints, all while adapting its supervisory activities to a rapidly-changing financial sector, and the public understands that.

As the ranking member pointed out, over 82 percent of Americans and 77 percent of Republicans support the mission of the CFPB. And as our financial system becomes more digitalized and complex, so do the scams and abuses and junk fees that threaten the life savings of the American people. So, I encourage you to stay vigilant to our new challenges, and thank you for joining us today. I yield back.

Chairman MCHENRY. The gentleman yields back.

Today, we welcome the testimony of the Honorable Rohit Chopra, Director of the Consumer Financial Protection Board—Bureau, sorry. We wish it was a board. Director Chopra, thank you for being here. You will have 5 minutes for an oral presentation of your testimony, and without objection, your written statement will be made a part of the record. You are now recognized for 5 minutes.

**STATEMENT OF THE HONORABLE ROHIT CHOPRA, DIRECTOR,
CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Mr. CHOPRA. Thank you, Mr. Chairman, Ranking Member Waters, and members of the committee. I appreciate you holding this hearing today. This is my 25th appearance before Congress in

my career, and I am grateful to many of you on this committee, on both sides of the aisle, for taking the time to meet with me and provide advice to the CFPB on how to address the challenges and opportunities we must all tackle: protecting sensitive personal financial data; reducing credit reporting errors; preserving relationship banking; giving consumers more choice; and so much more.

Since I was here in June, I am pleased to share that the CFPB has reached milestones on many of these issues, like accelerating open banking in the U.S. and protecting financial privacy, while continuing to enforce the law fairly and deliver results for consumers and law-abiding businesses. Today, I want to share some observations about household financial stability and highlight some progress on our areas of work.

As we enter the holiday season after a sustained period of higher interest rates, the CFPB is sharpening its focus on the evolving patterns of household debt. And over the past few years, borrowing has accelerated across many key product segments. Americans now owe more than \$17 trillion in household debt. Total outstanding credit card debt eclipsed \$1 trillion last year for the first time since the CFPB began tracking it. Auto loans have grown quickly, to an estimated \$1.6 trillion.

The CFPB's analyses have found that rates and fees can contribute to persistent credit card debt for a growing number of consumers. Americans paid \$130 billion in interest and fees on credit cards last year, while annual percentage rates rose far above the cost of offering credit. The CFPB is taking a number of steps to give consumers the ability to switch and take advantage of new offers.

The return to repayment for Federal student loans continues to be an area that we are monitoring, particularly the effect on other loan obligations like auto, credit card, and others. Outstanding auto loan debt has grown, particularly given the higher cost of vehicles during the pandemic and higher interest rates. These payments are consuming a greater share of income for many consumers, and we are actively monitoring credit performance.

Residential mortgage activity has unsurprisingly declined. The decline has been precipitous, while interest rates, fees, discount points, and other costs have increased. The result is that homebuyers have been paying much more. The CFPB is looking for ways to facilitate more refinancing activity, if and when prevailing mortgage interest rates subside, to ensure that borrowers who experience financial distress can navigate alternatives to foreclosure, and we are looking to streamline rules and procedures for servicers who are offering loan modifications.

Since our Semiannual Report, the CFPB has proposed a rule, as the chairman mentioned, under Section 1033, to accelerate the shift to what is known as, "open banking," in the United States. We have also initiated an early part of the process to improve accuracy in credit reporting, especially for data brokers. We are also taking steps to address very widespread inaccuracies on credit reports when it comes to medical bills.

The CFPB's supervision and enforcement program is protecting both consumers and honest firms who must compete against those who egregiously violate the law. In the last 2 years, we have ob-

tained orders totaling \$8 billion in victim redress and penalties. We are also tackling the junk fees that have been creeping across sectors of the economy and interfering with consumer choice.

The CFPB has even shifted its supervisory resources toward many of the nonbanks due to the significant role that they play in financial services today. We have also proposed a rule to ensure that many of these large nonbank companies adhere to the same rules that banks, credit unions, and other financial institutions do.

In August, our complaint database reached 4 million submissions, and I am proud of the CFPB's work in getting consumers the resolutions they deserve, often through referrals from local organizations, your offices, and many others.

Again, Chairman McHenry, I want to thank you for the opportunity to appear before you today. We value all of your input, and I look forward to your questions.

[The prepared statement of Director Chopra can be found on page 80 of the appendix.]

Chairman MCHENRY. Thank you. I now recognize myself for 5 minutes for questions.

Director Chopra, as I mentioned in my opening statement, I think we have some alignment here on updating data privacy standards and your implementation of Section 1033. You noted the importance of empowering consumers to exercise their full data rights without being trapped by powerful incumbents and without losing control of their data. How does your proposal ensure that consumers can exercise full control over their financial data?

Mr. CHOPRA. Pursuant to the statute, the rule requires that consumers are able to permission their sensitive personal financial data, and to prevent it being exploited by other actors, we have put in some safeguards to ensure that it is being permissioned only for the purpose of those financial services. I hope, Chairman McHenry, that you can legislate and figure out ways to address privacy more broadly. As you mentioned, this rule is just one piece, but I think a legislative framework on privacy would be hugely valuable.

Chairman MCHENRY. Yes, and you allow for an opt-in provision. You ban the secondary use. There are some really smart things that you have approached this with, and you have taken input from a wide variety of people, correct?

Mr. CHOPRA. Yes, and we looked at the discussions you all have had, especially where there is agreement. I really want this to be durable to last. I think it is important to restrict secondary use. You shouldn't be able to bait someone to get their sensitive data and then use it for a totally different purpose.

Chairman MCHENRY. Is there a way for companies to use anonymized data that they have captured from consumers in order to build new products? Do you think that is a viable use?

Mr. CHOPRA. That is a place where we are specifically looking for input. One of the challenges that we are dealing with in today's modern market is that re-identification is becoming easier to do, particularly with very advanced artificial intelligence. So, I think that is a challenge we are going to have to encounter and wrestle with through this process.

Chairman MCHENRY. Okay. I look forward to continuing that conversation. Now, as I have asked other financial regulators, this

summer, you announced that you have had discussions with the European Commission, and you, “started a dialogue,” on consumer financial protection issues. Under what authority are you taking those actions for those negotiations?

Mr. CHOPRA. Just to be clear, I think many of the developed economies are seeing the growing role of China, Chinese technology firms, and financial data in the world. We are seeing that we have many issues in common when it comes to surveillance, and when it comes to payments. So this, just to be clear, is a meeting. One of my predecessors, Acting Director Mulvaney, launched an initiative to join a global financial innovation network. Again, we see this as a way to understand what other economies are doing, especially when it comes to—

Chairman MCHENRY. Along those lines, they actually had public disclosures about those conversations—Director Kraninger, and Director Mulvaney. Do you intend to provide meeting minutes or any sort of public disclosure on what those conversations—

Mr. CHOPRA. Yes. We will try and make sure that we provide transparency as to what is being discussed. I think the purpose of it, again, is, as we are seeing data being a growing factor, especially in financial services in the U.K. and Europe, all of us are dealing with new ways of fraud, especially generative AI fraud. So, we are really happy to do that.

Chairman MCHENRY. But from our perspective, what we want to know is what you are doing in your job and whether or not our existing rules require disclosures for these international bodies? And I am asking you this specifically because your Bureau is doing this just like other financial regulators, and providing nothing in the way of disclosures around that other than to announce that you are having the conversations.

Mr. CHOPRA. Okay.

Chairman MCHENRY. We would like the transparency.

Mr. CHOPRA. Okay.

Chairman MCHENRY. Finally, digital assets. Under your proposed rulemaking, you interpret the word, “funds,” to include digital assets. Walk me through your thinking on that proposed rulemaking, but let’s start with this: How many firms do you think you are touching with your notice of proposed rulemaking?

Mr. CHOPRA. We put an estimate. We believe it is the largest tranche, and many of them are going to be known to you. These are large firms that have nonbank payment apps, essentially. I think with respect to the definition, we have seen a number of court decisions that have sought to interpret the meaning of, “funds.”

Mr. Chairman, we have taken a very judicious approach to this to essentially focus on what is really being used as a consumer payment, not other digital asset uses, especially in wholesale or trading or anything. We are really talking about a payment, and I know you all are thinking through stablecoins and payments. We really welcome the discussion on that as well.

Chairman MCHENRY. Thank you. I now recognize the ranking member for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. Director Chopra, as I mentioned in my opening statement, more than a dec-

ade ago I worked closely with Congresswoman Velazquez to ensure that the Dodd-Frank Act included Section 1071 so that we could shine a bright light on the small business lending market. Unfortunately, we have seen time and time again how some small businesses and their borrowers, especially those that are minority-owned, women-owned, or in rural areas, have charged more than they should be charging, if their application was not denied in the first place.

As you know, I have long been disappointed that the Section 1071 rule took more than a decade to complete. Others were frustrated, too, including ReShonda Young, a Black woman who founded Popcorn Heaven, a small business selling gourmet popcorn in Waterloo, Iowa. In 2014, she joined others to successfully sue the CFPB during the Trump Administration to compel the agency to complete the rulemaking. Ms. Young explained that she was the victim of a discriminatory lending practice, saying, "In several instances, there was just blatant discrimination, and in other cases, I found out about it later on, and it wasn't just me."

After the CFPB, then led by a Trump appointee, agreed to a court-supervised settlement to complete the rulemaking, Ms. Young said, "I am just really humbled to be part of the process. Sometimes, we feel so small, and this is one of those things that shows that if we are willing to speak up, we actually can make a difference." Ms. Young has since sold her business and is now working with other investors to open the first Black-owned bank in Iowa, with the goal of being certified as a community development financial institution (CDFI) and offering small business loans in a more-equitable manner than she was served.

Director Chopra, do you believe Congress should ignore entrepreneurs like Ms. Young and vote to rescind the CFPB's small business transparency rule? Specifically, who wins and who loses if the small business lending market continues to be opaque?

Mr. CHOPRA. I think the pandemic showed how important small businesses were in our economy and to so many entrepreneurs who struggled to get loans. And I think it is important to have a small business loan market that is free of discriminatory practices. We have done this with mortgages, and I think Congress has told the CFPB, let's do this with small business.

Ms. WATERS. And, Director Chopra, would you also briefly discuss how the final rule minimizes the impact on community banks and credit unions?

Mr. CHOPRA. We took a number of steps during the comment period to reduce many of the questions that are being asked. We took steps to extend when they would have to comply with it. We were under a court order. We completed our requirement under that court order in time. But our goal is to really make sure there is a lot of support to make sure that the smallest institutions can comply with this, and we also exempted a substantial number of them who do not make many small business loans.

Ms. WATERS. Director Chopra, the CFPB issued guidance in October to implement Section 1034(c) of Dodd-Frank, which generally prohibits large banks and credit unions from charging fees to provide basic account information to a consumer about their own account when they request it. Would you discuss the type of fees

banks are charging consumers to access their own information and how you would expect this new guidance will help ensure financial institutions follow the law and do not impose these types of junk fees on consumers?

Mr. CHOPRA. If we want consumers to be able to manage their financial lives, they need to be able to get the basic information about their accounts, and Congress made clear in the Act that large institutions cannot throw up big barriers or create obstacle courses for people to get that information. We have seen a number of fees that may be unreasonable. We have even seen a fake paper statement fee where they neither printed the statement nor mailed it. So, we are trying to make sure the law is being followed with fidelity.

Ms. WATERS. Thank you very much, Director Chopra. You are doing a fantastic job. I am so pleased that you are there heading the CFPB, and I yield back the balance of my time.

Chairman MCHENRY. The gentleman from Arkansas, Mr. Hill, the Vice Chair of the committee, is now recognized for 5 minutes.

Mr. HILL. Thank you, Mr. Chairman. Director, it's good to have you back. I wanted to pick up on a couple of topics that we started on in June and follow up on Section 1033, and continue that conversation. And, of course, that rule is rooted in the statute of Dodd Frank, and I grant that, but we have had 13 years to think about what the right direction is, and I want to see that we get it right the first time. We have had a couple of good discussions about that, but I want to continue that.

When you testified in June, I asked you about the scope being considered for this proposal, which hasn't changed from the Small Business Regulatory Enforcement Fairness Act (SBREFA), Reg E, Reg Z, or the topic, and your focus on transaction data. But the proposal goes on, as it has now been released, and says supplemental rulemaking might come out for other covered persons and consumer financial products or services. We have had 13 years, and the agency has covered this and talked about it, and Congress has for 13 years. Why leave that open-ended perpetual rulemaking potential? What other covered persons and products or services besides Electronic Benefits Transfer (EBT) did the CFPB consider but ultimately decide against including in the proposal?

Mr. CHOPRA. Yes. I like to follow in some ways the 80-20 rule, which is, what can we get the most benefit for, and really start seeing it get moving, and what we found was that transaction data of your bank account or credit card was really going to power much of open banking in the U.S. And even, let's say, your auto loan or mortgage loan payment is often typically still reflected in your transaction account. So when it comes to mortgage, auto, and other places, that is a lot of other financial institutions, so we wanted to make sure we studied that a little bit more to see how much additional data it would actually provide.

Mr. HILL. Okay.

Mr. CHOPRA. But I appreciate what you are saying.

Mr. HILL. Yes. The second issue that I raised in June, and you did not have an answer to, and now we have a proposal, is data breach liability. Where have you come ashore on who bears the liability for a data breach?

Mr. CHOPRA. Generally speaking, when a consumer permissions their data, they are handing over their data to that new financial institution. We got some feedback that they wanted the rule to have some specific regulatory text on liability generally. I think one challenge is that we can't necessarily provide liability protection for every single law that exists. We are trying to figure out under which of our statutes can we make sure it is absolutely clear that it is the receiving institution that really is responsible for handling that data. And in the data-handling section of the rule, we do specify the requirements that the receiving firm would have.

Mr. HILL. Right.

Mr. CHOPRA. I don't know if we got it perfectly right. We definitely want to hear feedback on this.

Mr. HILL. We will look at that, and we may follow up on that. Let me switch gears. In the last few days, you have issued a new rule, a large participants proposal by the agency, and it has new supervisory oversight over nonbanks offering digital payments and wallets. It is a pretty major step since you are really an enforcement agency, not a supervisory agency, I would say, principally. The proposal threshold for this supervisory oversight is based on the annual volume of consumer payment transactions, so I am not going to debate that, whether it is \$1 million or \$5 million. I am more curious about some clarity about who is covered. I assume that the six companies named in October orders are included: Amazon, Apple, Google, Meta, PayPal, and Square. Is that right?

Mr. CHOPRA. Again, that is currently a proposal, and let me just share, Congressman Hill, we devote way more resources to supervision, and the rule we have proposed—

Mr. HILL. You can send me a written answer to that. You can comment on that, but let's talk about this question.

Mr. CHOPRA. Yes. No, I am trying to get to—

Mr. HILL. Yes, but I want to get to it.

Mr. CHOPRA. The top firms, what we have proposed is a threshold for which, if they are above that, they would be subject to supervision.

Mr. HILL. Who is left, besides the ones that were named in October? Are big retailers covered on that?

Mr. CHOPRA. Again, it is not always a matter of public record how many transactions or customers they have. What we are trying to do is get comments on the threshold, and we would then be able to determine who is above that. But if I were to speculate, and I am just speculating, the most popular nonbank payment apps would be covered.

Mr. HILL. Okay. I look forward to following up with you on this.

Mr. CHOPRA. Of course.

Mr. HILL. Mr. Chairman, I yield back.

Chairman MCHENRY. The gentleman yields back. The gentleman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and Ranking Member Waters. Welcome to the committee, Director Chopra, it is really good to see you, and I just want to say that I really appreciate the CFPB's work protecting consumers, including servicemembers, older adults, and my constituents. And I want to join with Ranking Member Waters in our disappointment of the Republicans' attempt

to overturn the Section 1071 rule. Let me state for the record that as the ranking member of the House Small Business Committee, I strongly support the Section 1071 rule.

Mr. Chopra, I was very pleased to see the joint statement on immigration status that the CFPB and the Department of Justice issued. Is this based on new information?

Mr. CHOPRA. No. This is longstanding law from the Justice Department and the CFPB.

Ms. VELAZQUEZ. To be clear, does the joint statement tell banks they have to make loans to immigrants?

Mr. CHOPRA. No. At the CFPB, and the DOJ, we do not tell anyone to make a loan to a particular person.

Ms. VELAZQUEZ. And can banks still consider an applicant's immigration status?

Mr. CHOPRA. Yes. The guidance makes it very clear that a creditor may consider immigration status when making a lending decision.

Ms. VELAZQUEZ. So, why did the CFPB issue this joint statement now?

Mr. CHOPRA. It was clear, based on feedback from lenders, that there were court decisions and adjudications that raised some questions about the use of immigration status. We affirmed that you can use immigration status, but at the same time, we wanted to make sure that it was clear that national origin discrimination is completely prohibited.

Ms. VELAZQUEZ. I want to thank you for issuing guidance. As the ranking member of the House Small Business Committee, I know that smaller institutions often cannot afford an army of lobbyists and big law firms, so more guidance is especially helpful for them. I also know that discrimination on the basis of race, national origin, or immigration status, unfortunately, is still very much present today, and I take it very seriously. I know what it is like to be judged by your name and stereotyped as a member of an ethnicity.

I understand you recently took an enforcement action involving a blatant, intentional, egregious discrimination case against a population group that is prominently represented in New York City. As a proud member of the caucus that championed them, along with about 100 of my bipartisan colleagues, can you please tell me about Citi's discrimination against Armenian Americans?

Mr. CHOPRA. We recently finalized an enforcement action that addressed intentional discrimination against Armenian Americans in Citibank's credit card business. They had a policy of essentially disqualifying anyone whose name has a suffix of, "Y-A-N," or, "I-A-N." That is extremely common with Armenian Americans, and in many cases, Citibank provided false records about why those borrowers were denied and made up other reasons for it. And again, I think our guidance tries to make clear you can use immigration status, but you can't engage in national origin discrimination.

Ms. VELAZQUEZ. Thank you. Mr. Chairman, I yield back.

Chairman MCHENRY. The gentleman from Oklahoma, Mr. Lucas, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman, and Director Chopra. As you know, the House will vote this week on a Congressional Review

Act resolution of disapproval to the CFPB's rule on small business lending, led by my colleague, Chairman Roger Williams. The Senate has already passed this resolution, which required a bipartisan vote, and while Congress is working to rescind the final rule, it seems this may be decided ultimately by the courts.

In the meantime, I would like to focus on one aspect of the final rule on which I would appreciate clarification. The Paperwork Reduction Act requires agencies to determine the total paperwork burden by hours of major rulemakings. This measures the time required to generate and provide the requested information of the rule. CFPB estimated the total annual burden hours imposed by this final rule to be 8,302,000, which is the equivalent of 947 years. Director Chopra, would you discuss how the CFPB balances the compliance burden with the value of the paperwork being produced, because 8 million hours is a lot of time.

Mr. CHOPRA. We try and analyze various ways to reduce the burden, and in the rule, we actually provided different flexibilities. They don't have to use a particular form, but in this case, Congressman, we were under a court order to complete the rule. It was a statutory mandate, so we knew we had to do it, and we tried to look at various ways that firms could be able to use industry associations to help them collect it. So, we always are looking at analyzing what kind of burden there is when thinking about how we ultimately implement it.

Mr. LUCAS. But broadly speaking, Director, how can the CFPB best maximize the utility and the quality of information received while minimizing, to the extent possible, the paperwork burden imposed on the American public?

Mr. CHOPRA. We put a lot of thought into this, and I had a discussion with a few of you. One of the reasons why these rules can often create a lot of burden is when they are excessively complex. And I think, overall, we need to continue to shift to rules that are very bright line, that they are in or out, so that we can reduce the amount of overall kind of thinking about how to actually deal with it. In some cases, it is hard. Congress may specify certain aspects that need to be done, but we are looking at simplification wherever we can.

Mr. LUCAS. I am, by training, a director and an agricultural economist, and our main focus is on making sure that we have enough food and fiber to meet our needs in this country and in this world, and economics, by its nature, is, how do you allocate those finite resources and unlimited demands to maximize the return? Is there a volume of reporting that outweighs the cost, I guess is what I am asking? Just asking for every conceivable bit of information doesn't necessarily add to the quality of the result. Do you have economists, do you have people who work on those calculations as opposed to just, how much information can we squeeze out of people, but the value of it, again, the volume when it outweighs the cost?

Mr. CHOPRA. Yes. We have an Office of Research where we have economists who help to look at all of this, and under the regulatory flexibility analysis that we are required to do, we talk through that. I will share, though, in terms of putting value on the benefits, it also can sometimes be hard to give a benefit and a number to

not being illegally discriminated against or put in a loan that was unlawful. We try our best, and I won't say that it is always the easiest thing, but we put a lot of rigor into what we are doing.

Mr. LUCAS. We would suggest, Director, that with the vote in the United States Senate and the efforts of Chairman Williams here in the House, Congress is going to send a very clear signal to you about how to address these issues, and I hope that the agency will be responsive. But we shouldn't make the best job guarantee in the history of the world being a compliance officer at some financial institution, and that appears to be what we have done is provided job security for the folks who deal with these 8 million hours of paper-work, and I am not sure that adds to the quality of life of my constituents. And with that, I yield back, Mr. Chairman.

Chairman MCHENRY. The gentleman yields back. The gentleman from California, Mr. Sherman, is now recognized for 5 minutes.

Mr. SHERMAN. Mr. Director, I want to join with the ranking member and others in commending you for an outstanding job. You have dealt with 4 million consumer complaints, and returned \$17.5 billion to consumers with just your rule on overdraft protection, saving consumers \$5 billion. And that is just the tip of the iceberg because when you take action, you not only return money to wronged consumers, you deter bad practices through the whole industry so the consumers don't get ripped off in the first place. I want to commend your efforts on junk fees. Because of my focus on capital markets, I digress a little bit and mention that, unfortunately, the SEC is thinking of adding a junk fee to mutual fund investors or many of them, but that is not the focus of this hearing.

I also want to say that I am relatively confident the Supreme Court will uphold your structure. It is so necessary to make sure that you have the independence you need to do the good work that you have been doing. I am also pleased that you issued proposed rules dealing with Property Assessed Clean Energy (PACE) loans. These loans seem to have perhaps a well-intentioned purpose but are used by those who are predatory. My home State of California took action in 2017. Your rule builds on that work in California, providing not only the Truth in Lending Act protection, but especially those ability to repay determinations. Can I count on you not to weaken the rule as we get from proposed to final?

Mr. CHOPRA. Yes. It is currently under process, but let me just say the ability to pay rules are very, very important to make sure that rulemaking meets its intended purposes. I completely share your view that there are a lot of well-intentioned elements of PACE lending, but it can also lead to a lot of abuse.

Mr. SHERMAN. We have these debt settlement companies that claim that they will have you pay off your debt without having to pay the amount you owe. Your website says that dealing with these companies can be risky. Some of these companies are discouraging consumers from making payments, causing them to default, and even encouraging them to take on additional debt. What can you do about those who are advising people not to pay what they owe and to even incur more debt they can't afford to repay?

Mr. CHOPRA. Certainly, we have seen a number of issues where consumers are seeking help, but, instead, they become worse off. We recently finalized an order—we went to court to get it—against

one of the largest debt repair conglomerates and obtained a judgment close to \$3 billion. So, we continue to try and monitor what are the vectors in which people are being defrauded. We understand that there may be an uptick soon because TikTok will be allowing more ads on this business, so we are very much monitoring the situation.

Mr. SHERMAN. Just another reason to be wary of TikTok. We have a real concern about Know Your Customer/Anti-Money Laundering (KYC/AML), with 1.1 million reports of identity theft. There is a thing called the credit header data, which is just the name and address and Social Security number, nothing else in the credit report. These are being used by financial institutions in order to verify identity and to prevent identity theft and to comply with the Know Your Customer laws. There is some discussion in your agency to qualify just this name, address, Social Security report as a consumer report. Will this adversely affect the ability to prevent identity theft and compliance with Know Your Customer laws?

Mr. CHOPRA. No, I appreciate the question, and we have not proposed anything on this. We do not want to do anything that would jeopardize a financial institution's ability to really crack down on identity theft. I think certainly, though, we know that this data is being used outside of financial institutions, including to steal people's identity. So, I think that is what we are looking at with respect to data brokers and how we might handle some of this, but, again, we have not proposed anything on this front.

Mr. SHERMAN. And finally, I hope you will make sure that you have protection for privacy as you move forward with these Section 1071 rules. I yield back.

Chairman MCHENRY. The gentleman's time has expired. We will now go to the gentleman from Texas, Mr. Sessions, for 5 minutes.

Mr. SESSIONS. Mr. Chairman, thank you very much. Director Chopra, it's good to see you. I must applaud you for your glibness and your ability to effectively take questions from both sides of this committee and to respectfully offer back your viewpoint. I want to offer that to you, because I appreciate your forthrightness.

Mr. CHOPRA. I appreciate that.

Mr. SESSIONS. Mr. Director, as you know, The Wall Street Journal yesterday or the day before put an article out, "The CFPB Targets an Antiterror Tool," and, essentially, it is talking about selling credit header data to law enforcement. But also, they had written another article, and been more specific also about credit information that would be available about what might be criminal history, that people who are going to lend money would have that opportunity to buy this data and information as they chose at the time they are going to give someone money, offer a loan. If you could please address both of those circumstances, because it seems like you are on the wrong side, at least in my opinion, of this issue.

Mr. CHOPRA. Yes. And to be clear, we have not proposed anything. We are a law enforcement agency as well. We need to be able to identify bad actors. It has been nearly 4 years since then-Attorney General Barr indicted three members of the Chinese Communist Party's (CCP's) People's Liberation Army (PLA) with respect to Equifax. There is no question that sensitive data about each of us cannot just be used to steal identities, but also for use

by state and nonstate actors. I think we want to make sure that data is being used in ways that is appropriate here in the United States. There is not an effort to stop law enforcement or, as Congressman Sherman mentioned, to help financial institutions detect money launderers, but we also need to think——

Mr. SESSIONS. How about other criminal history?

Mr. CHOPRA. On criminal history, I actually haven't heard a reference to anything we have been doing on criminal history. Generally speaking, for any sort of background report, including a credit report, a tenant screening report, or an employment background check, the only requirement that currently exists right now is that that data be accurate. If it is a consumer reporting agency, there are rights to dispute. I am happy to talk about it with you separately, but I am not familiar with the restrictions.

Mr. SESSIONS. Good. I will just do it right here. I am going to ask unanimous consent to put into the record, Mr. Chairman, two articles: number one, "The CFPB Targets an Antiterror Tool," that appeared in The Wall Street Journal; and number two, "Remarks of CFPB Director Rohit Chopra at White House Roundtable on Protecting Americans from Harmful Data Broker Practices" from the CFPB website on August 15, 2023.

Chairman MCHENRY. Without objection, it is so ordered.

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

Director, I think that the reason why we get specific about these items on both sides of the aisle is that we find that there is happy-talk conversation between us, and then something different appears, as in what might be the 1071 debacle that our colleague, my baseball coach, Roger Williams, Chair of the House Small Business Committee, headed up yesterday at the Rules Committee. Great discussion, great dialogue, but we are going to vote on it today. It received five Democratic votes in the United States Senate, I think, earlier in October.

My point is that I would like to have, and I think you have offered this to me, a conversation about these pending matters. And while I do say that you offered that to me—sometimes in our haste, we do it here—but I would like to have a conversation about this because I think it would be in everyone's best interest, including the CFPB, that we see these rollouts of ideas closer to the same way.

Mr. CHOPRA. I want to do that, and I think the chairman also mentioned this also relates to privacy, the Fourth Amendment. There are all sorts of issues. It's always the best thing when you can legislate on it——

Mr. SESSIONS. Yes.

Mr. CHOPRA. We are very happy to do that because the truth is, once you legislate on it, it is——

Mr. SESSIONS. The Fourth Amendment is about privacy, but it is also about somebody not taking your data and information——

Mr. CHOPRA. That is correct.

Mr. SESSIONS. ——without a court order.

Chairman MCHENRY. The gentleman's time has expired.

Mr. SESSIONS. Thank you very much, Mr. Director. Thank you, Mr. Chairman.

Chairman MCHENRY. The gentleman from Georgia, Mr. Scott, is now recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Director Chopra, I want to begin by expressing my strong support to you and to your staff at the CFPB for ensuring that Americans' data is accurate and secure. You are doing a great job.

In March of this year, the CFPB issued a request for information (RFI) on data broker practices, and you asked for information about how this market works and what consumers' experiences are with the data brokers. And I understand you received over 7,000 comments, and, overwhelmingly, comments from consumers expressed frustration with the lack of control over who has access to their data, who uses their data, and who is sharing their data, and comments over the difficulty consumers have with opting out of having their data shared. Even when they can identify data brokers, concerns were also raised that data broker practices result in large amounts of unwanted spam, marketing calls, emails, and, worst of all, leave people vulnerable to identity theft and data breaches.

I know there has been some confusion about the Bureau's work in relationship to data brokers from some of my Republican friends. Can you explain how the comments received in the requests for information are going forward?

Mr. CHOPRA. I appreciate that, and let me just say that I think it is becoming increasingly scary about the types of dossiers about us online—geolocation, religious attendance—very sensitive data being compiled and often sold. The Fair Credit Reporting Act (FCRA) is our core statute for ensuring that those dossiers have some degree of transparency, that they are accurate, and that people can dispute it.

So, we are trying to figure out what is the right way to make sure in the modern data broker industry that there is some even-handed consumer protection. We have a lot of firms who follow that clearly. And we want to make sure that we are providing the appropriate clarity so we don't have an out-of-control system. And I will share that a lot of these are being used and purchased by people overseas, and it is a huge vector for stealing identities and scamming people.

Mr. SCOTT. Let me ask you this question that is important to all of us, and that is, we are all concerned about the extent to which data brokers are collecting and selling children's data—which is a big thing going on—and allowing the children's data to be used for marketing, targeting, and worse. One recent study found that 67 percent of phone applications used by very young children collected highly-sensitive data and then transmitted this data to third parties. Tell us about this?

Mr. CHOPRA. Many years ago, Congress passed the Children's Online Privacy Protection Act (COPPA), and with the advent of more data brokers, I think kids and seniors are going to be very important for us to think about as to how we safeguard their sensitive data. There is work on this committee that I think you can all do. We are happy to really work with you to figure out what are all the solutions we can get, because collecting all of this kids'

data, too, when they are an adult can just be another way to defraud people.

Mr. SCOTT. We really have to look out for our young people, our future generations, and make sure they are educated properly and that their interests are protected when it comes to this new technology. Thank you, Mr. Chairman.

Chairman MCHENRY. The gentleman from Florida, Mr. Posey, is now recognized for 5 minutes.

Mr. POSEY. Thank you very much, Mr. Chairman. Many of the omnipresent defenders of the nonexistent problems of the people talk about all the junk fees you have eliminated. So, would you tell us what a junk fee is?

Mr. CHOPRA. Junk fees are ones that are typically not subject to the competitive process. You have to click through the screen. You find them at the end. Sometimes, they are for a service that doesn't even really exist. Sometimes, they are just completely hidden and random, so there are lots of different ones. We have really tried to focus—

Mr. POSEY. Okay. Can you give me a couple of examples of those?

Mr. CHOPRA. For example, I mentioned to one of your colleagues that we identified in one of our examinations and similar other places a paper statement fee that was charged on a recurring basis where the financial institution did not even print out a piece of paper, nor did they mail it.

Mr. POSEY. Yes. That just sounds like a fraud. Is there a statutory definition? Have you put in the statute somewhere a definition of a, "junk fee," so we know exactly what we are talking about?

Mr. CHOPRA. No, but we have tried to really articulate through the various laws that we enforce where certain fees may not be permitted under existing law.

Mr. POSEY. Don't you think you should articulate those more clearly or put them in writing so everyone knows what it really is?

Mr. CHOPRA. We are trying to. We are trying to take the feedback of where we should be issuing guidance on this. Overall, I would say the market has really moved in many ways and is being more clear about how fees are being assessed. That is very, very good progress. But inasmuch that there are particular places you think we need to issue more guidance, we are very, very open to it. We have published some information where we give examples of what we have uncovered in enforcement and exams, that in some ways have been pretty egregious violations.

Mr. POSEY. How do you assess the impact of your regulations on the cost of access to credit?

Mr. CHOPRA. Big picture or as it relates to fees or—

Mr. POSEY. Big picture.

Mr. CHOPRA. Big picture, I think, as I mentioned to your colleague, we try and really look and have fidelity to the competitive market. We really want people to be able to compete for business and that it is clear the product they are getting and the price they are getting.

Mr. POSEY. Does that involve assessing the cumulative impact on the entire system of regulations?

Mr. CHOPRA. Yes. One of the places of feedback that, in all my meetings with industry and that you all have given, is we all need

to be thinking about all of the issues together. The CFPB is not the only one——

Mr. POSEY. Would you describe your process for considering the cumulative impact of your regulations on the access to credit?

Mr. CHOPRA. We have a requirement under the statute, I believe it is the Regulatory Flexibility Act (RFA). We have to conduct an analysis about the impact of regulations and, of course, we have to look at that in the context of other ones that are current or are being implemented. In our proposed rules, we tend to outline that, and we include some data and estimates. We get comments on it and try and be able to refine based on that input.

Mr. POSEY. How do you use your cost-benefit analysis? Do you do cost-benefit analysis if any of your regulations rise to that level?

Mr. CHOPRA. Sorry. I just couldn't hear a little bit.

Mr. POSEY. I said, have you done any cost-benefit analyses? Have any of your regulations risen to that level?

Mr. CHOPRA. Risen to that level?

Mr. POSEY. Yes, the standard. The government says you can write a ridiculous rule, but if it doesn't harm people to the tune of over \$100 million——

Mr. CHOPRA. Right. The path we follow is really what is spelled out in the statute. As I mentioned, in the proposed rule, we have to spell out the cost. We articulate what the benefits are, and we follow exactly what is in the statute. We even collect comments on the analysis as well.

Mr. POSEY. Thank you, Mr. Chairman. I yield back.

Chairman MCHENRY. The gentleman yields back. The gentleman from Illinois, Mr. Foster, is now recognized for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chairman, and Director Chopra. I was very encouraged to hear my Republican colleagues' support for your mission, and that they agree with roughly 80 percent of Americans that you are doing something useful here, and I find that especially reassuring in light of the fact that earlier this month, Republicans voted 140–78 to completely defund the CFPB. I will just leave that there.

However, we have also heard a lot about the number of hours that have to be spent on compliance as a real cost here. Do you also track the number of hours that consumers lose, for example, through ID fraud when they have to spend all afternoon on hold replacing all of their credit cards?

Mr. CHOPRA. It can be very hard, but we know there have been some reports that show the enormous amount of cost to consumers, not even counting their time, of dealing with identity theft, credit reporting errors, going back and forth about inaccuracies. It is an enormous amount of time.

Mr. FOSTER. That is right, but quantifying it in the number of hours, if you could make an attempt to quantify the number of consumer hours that are sort of on the other side of the scale here, that would be——

Mr. CHOPRA. We do know that there are millions of disputes filed on credit reporting-related issues which does involve a multi-step process.

Mr. FOSTER. Right, so you multiply that by the average time the consumer wastes with a mistake on their credit file. We have to

balance everything, and that is an important weight to put on the other side. I have been really encouraged to see that you have raised the alarm over artificial intelligence (AI) and where that is taking the whole thing. The leading edge of this is probably AI-enabled deepfake impersonations, which is going to have to result in our really raising the bar on secure digital identity and proving you are who you say you are. Where do you see that going and the role of—

Mr. CHOPRA. Let me just say that I strongly support any efforts you all can make when it comes to getting better digital identity verification. The amount that we would save businesses and consumers in fraud would be enormous. I don't know how to do it necessarily, but using just publicly-available information about someone to authenticate, and when we add in generative AI, we do have firms that allow you to authenticate into their system with your voice. You as public officials, it is becoming very easy to clone all of your voices because once it is in the public domain, there is a data set to be able to duplicate it. So, we have to make sure that we are not opening up even more fraud with some of this.

Mr. FOSTER. Yes. In your conversations with other countries that have been sort of looked at skeptically at this hearing, have you taken a look at how they are dealing with it, because some countries are doing a much better job, frankly, of a secure, safe, privacy-preserving digital identity? And they did not, for example, have hundreds of billions of dollars for COVID benefit identity fraud, and it is a real decrease in the amount of what the fraudsters can get away with to have a secured digital ID.

Mr. CHOPRA. A stronger digital authentication layer would have so many benefits, including other obligations that banks have. It could reduce their cost on anti-money laundering detection and really, overall, in our commercial economy.

Mr. FOSTER. Yes. McKinsey has estimated, I think, between 2 and 3 percent GDP loss from not having a high-quality digital identity. Other countries are doing a better job, so I think that is an area where you should pay attention to other countries.

Okay. Now, there are other aspects of artificial intelligence that are going to be huge. During the last years when I was chairing the AI Task Force that we had set up on this committee, we were wrestling with sort of bias-type problems that happen when you just take a credit history and you put it into a neural net that is incomprehensible, and out comes an answer. And we are now going to be facing really even more complex ones where the next generation of AIs learn from their experience.

Mr. CHOPRA. Yes.

Mr. FOSTER. So, it is like a child. You raise your child perfectly, you make sure it is behaving properly, then you send it off into the world with no guarantee that it won't come in contact with things that make it become evil. How do you view the increased surveillance you are going to need on AI after it has been released in the wild?

Mr. CHOPRA. Yes. I think there are a lot of questions you all have to answer. We have taken the view that it is important that existing law not be sidestepped on this, because at the end of the day, if there is generative AI making representations, communicating

with consumers, that has to be truthful. When it comes to all sorts of uses, the existing law still applies, but there is a lot we have to do on this.

Mr. FOSTER. Yes. When you figure it out, please let me know.

Mr. CHOPRA. Yes.

Mr. FOSTER. I yield back.

Chairman McHENRY. The gentleman from Missouri, Mr. Luetkemeyer, is now recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. My good friend, Mr. Williams, often starts some of the discussions by asking whether you are a capitalist or a socialist.

Mr. CHOPRA. As I mentioned, I think I have appeared before Congress 25 times and have mentioned every time that I am very much a capitalist.

Mr. LUETKEMEYER. I appreciate that, but I was curious—I would assume that you believe the banking industry should be a for-profit industry?

Mr. CHOPRA. Yes, and I think the banking industry is just as essential as our communications infrastructure, and as our electric grid.

Mr. LUETKEMEYER. Mr. Chopra, your actions are completely different, though, than what you say. During your tenure at the Bureau, the Administration has spoken of or taken actions on banks' operating expenses, the fees institutions can charge, interest rate caps on credit, increased capital requirements, and, of course, interchange fees, and contracts between private entities, just to name a few. You even sought to increase your control over the credit reporting agencies and, therefore, who can get a loan.

Taken together, we are looking at massive losses of revenue, and loan and other credit losses, as well as very large additional costs of compliance. All of this results in higher costs and fewer banking services for customers and fewer financial institutions to provide those services, all the while giving the government more control over our personal finances. And it begs the question, at what point can we just publicly recognize that you and the Administration believe that financial services should be a utility provided to the public by the government?

Mr. CHOPRA. Nothing we have said has suggested that. We want a lot of competing financial firms——

Mr. LUETKEMEYER. Mr. Chopra, you say——

Mr. CHOPRA. And if you look at the profitability of the——

Mr. LUETKEMEYER. Excuse me.

Mr. CHOPRA. Do you mind if finish this? If you look at the profitability of the finance industry, we have actually seen a way in which they have been able to be robust and create new products and new revenue streams.

Mr. LUETKEMEYER. Director Chopra, what is happening is that the regulation is running downhill and choking the small institutions. You sit on the FDIC Board, do you not?

Mr. CHOPRA. I do.

Mr. LUETKEMEYER. You see the mergers and the continued consolidation of the industry, do you not?

Mr. CHOPRA. We do see it. We do review merger applications.

Mr. LUETKEMEYER. I just had a meeting this morning with Fed Chairman Powell. He talked about the consolidation. It is there. It begs the question then, if you see this, what are you doing about it?

Mr. CHOPRA. We should have a discussion actually about consolidation, because there are a few places where I think it has driven, and one of the ways some institutions get preferred cost of funding advantages because of perceptions about that.

Mr. LUETKEMEYER. Okay. So, you recognize the problem. Have you taken any actions whatsoever to relieve the regulatory burden on small banks?

Mr. CHOPRA. One of the things we have done is we have tried to make sure we are making our supervision fit for the actual risks. We have shifted much of our supervisory resources to larger players—

Mr. LUETKEMEYER. Okay. You sit on the Financial Stability Oversight Council (FSOC), too, do you not?

Mr. CHOPRA. I do.

Mr. LUETKEMEYER. Basel III is coming along. That is a detriment to all of the small businesses, small banks, and everybody else. It is going to hugely increase the costs. Can we get your support of trying to minimize the impact of that regulation on small banks?

Mr. CHOPRA. Just to be clear, as I understand it, the rule that the agencies have proposed applies to banks with \$100 billion or more in assets.

Mr. LUETKEMEYER. Director, I just got done talking to some banks, and they were telling me the regulators are saying, look, we know it starts at \$100 billion and up, but get ready, it is going to roll downhill. The banks are looking at it from the standpoint that if they don't comply with it, there is a wink and a nod going on here with the regulators that we have to be able to live with as well. And what happens is you are chasing consumers away from banks because banks are constricting services to the online lenders, offshore stuff where it is not regulated.

I want to quickly get to one more question I have here for you with regards to a letter that I sent to you and the Department of Justice with regards to warning the creditors that unnecessary and overboard consideration of credit applicants' permanent residency status could violate the Equal Credit Opportunity Act (ECOA), despite consideration that the criteria being expressly permitted under ECOA's Regulation B. And I am concerned that by what you are doing, you are adding a lot of confusion to the situation here. I know you addressed some of this a while ago, but I am very concerned about the confusion here. We haven't gotten a response to our letter yet, and, to me, it looks like you are in direct violation of the Know Your Customer law. Can you explain your position on that, so it is not in violation, and there is no confusion for the—

Mr. CHOPRA. Mr. Chairman, may I answer this? I am out of time, but—

Mr. LUETKEMEYER. You have 4 seconds.

Mr. CHOPRA. Yes. May I answer?

Chairman MCHENRY. You did for everybody else. Go for it.

Mr. CHOPRA. Okay. I was going to say that, of course, the Know Your Customer (KYC) requirements absolutely are the initial part of the process.

Mr. LUETKEMEYER. It is the law.

Mr. CHOPRA. The Bank Secrecy Act (BSA) requires, for a non-U.S. person, to collect certain documentation. There should be nothing that is in conflict of it. The guidance that was issued explicitly allows the consideration of immigration status, but I take your point if there is confusion, and we will respond to your—

Mr. LUETKEMEYER. If there is confusion, the law should take precedence, which is KYC, not your joint—

Mr. CHOPRA. Oh, KYC, of course, has to be—

Chairman MCHENRY. And you will respond for the record.

Mr. LUETKEMEYER. Thank you. I yield back.

Chairman MCHENRY. We will now go to the gentlewoman from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman, and Ranking Member Waters. And good morning and thank you, Director Chopra, for being here, and thank you for taking your time to testify today and for all the work that you do at the CFPB to protect our consumers. And let me join others in thanking you for traveling and listening, attending town halls, and going far beyond, and certainly, I have benefited from that. I'm very proud that a few months ago, you were in my district in Columbus, Ohio, meeting with consumers, and small business owners, and not only did you come, you stayed and I think almost missed your flight to answer all of those questions. And I really appreciate that because we had a very productive roundtable, and I appreciate you taking your work so seriously.

I am going to try to get through two questions quickly. Director, we know that the CFPB's recently-proposed Section 1033 rule-making invites public input on the question of whether the rule should cover EBT accounts. And certainly, as you are no doubt aware, and more so for some of my colleagues and the public, EBT account holders, Americans who rely on programs like the Supplemental Nutrition Assistance Program (SNAP) to put food on their tables each month, constantly struggle with access to their account information electronically in a marketplace that is highly uncompetitive. My understanding is that the Section 1033 rule aims to improve competition and ensure consumers have reliable access to their own financial data. Given these goals, it seems to me that it is critically important that financially at-risk consumers and their EBT accounts be included.

In addition, the proposed rule gives accountholders legally-enforceable rights to access their data and creates new, strong protections for data covered under the proposal. Now, we have seen a massive increase in theft from EBT accounts, and increased data access could help EBT accountholders detect and report fraud. I know that is a lot.

Here's the question: Shouldn't the CFPB use this opportunity to give financially-vulnerable customers control over their financial data so they can protect themselves?

Mr. CHOPRA. Let me just say I totally agree that those who are receiving EBT benefits and the transaction data they have, that is

very valuable. We are collecting comments on that. I will share with you, and maybe we can talk offline—we are trying to figure out with the USDA and State and local governments, who really are the issuers of this, how it would work because there is a slightly different way compared to bank accounts. But we are trying to work through it, and it has opened up some other issues about, do EBT recipients have access to even knowing their balance? So, there are a whole bunch of things that I want to look at there.

Mrs. BEATTY. Okay. Maybe we can talk offline on that. Let me kind of switch topics here and now go to the Section 1071 small business lending rulemaking. For decades before coming to Congress, I was a very successful small business owner, and I know we have colleagues on both sides of the aisle who will always say, “I am a small business owner.” I think it is critical to have a small business lending transparency rule that will help root out discrimination and ensure that small businesses have access to credit, especially those that are owned by females, women like myself, or people of color. And I believe that some of my colleagues on the other side of the aisle who claim to be advocates for small businesses, claim that this rule is too onerous for small lenders and are advancing legislation to actually rescind this. I want to give you my last minute to explain to us what provisions have been built into the rule to accommodate small lenders, and to set the record straight on how onerous the reporting requirements are. Tell us about the resources to make us a little more comfortable?

Mr. CHOPRA. Based on the comments we received, we increased the threshold pretty substantially. It exempts a number of small lenders. We reduced some of the collection requirements. We are providing support and implementation guidance on how to make it work. We are giving smaller lenders much more time to comply. We are starting with the very largest banks. We really did our best to implement this law with fidelity, and I hope that we can really see the benefits of it over time.

Mrs. BEATTY. I know my time is up, but let me just say some of those questions came from Democrat and Republican small business owners. Thank you, and I yield back.

Chairman MCHENRY. The gentlewoman from Missouri, Mrs. Wagner, is now recognized.

Mrs. WAGNER. Thank you, Mr. Chairman. Director Chopra, the CFPB’s credit card late fees proposed rule attempts to help a small number of credit card customers at the expense of a vast majority of others. Cardholders who never pay late, which the CFPB’s own data and report indicates is 74 percent of all Americans with credit cards, will not benefit from the reduced fees, and according to the proposed rule, they could experience, “higher maintenance fees and lower rewards.” The Dodd-Frank Act requires the CFPB to consider the cost of its rules. How does a rule that, by the CFPB’s own admission, would help only a small number of consumers while increasing costs for cardholders across-the-board, survive a cost-benefit analysis?

Mr. CHOPRA. Respectfully, I think the analysis suggests a number of different permutations, but in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), there is a statutory prohibition on fees that are not reasonable and propor-

tional. What we are doing is we are evaluating the Federal Reserve's—

Mrs. WAGNER. Did you do a cost-benefit analysis?

Mr. CHOPRA. Just if I could, we are evaluating the first 12 years of that rule, and what we are trying to do is to make sure that those firms are able to recover their costs, are able to really collect the fees they can, but not necessarily—

Mrs. WAGNER. Why should responsible cardholders, who pay their bills on time and typically never pay late fees, be forced to subsidize frequent late payers?

Mr. CHOPRA. If you look at actually the profit and revenue models of the card issuers, I don't think you will see that subsidy occur.

Mrs. WAGNER. It absolutely does by virtue of the rule. Director Chopra, if this credit card late fee—

Mr. CHOPRA. No. Actually, I would just respectfully say that—

Mrs. WAGNER. It is my time, respectfully. Director Chopra, if this credit card late fee proposal goes into effect, costs for consumers will increase, not because card issuers want to increase costs, but because they are required to do so. The prudential regulators require banks to manage and offset their credit risks, which banks would be required to do by taking actions such as raising APRs, eliminating rewards, reducing the amount of credit extended, or even restricting to whom it is extended. How has the CFPB accounted for actions that credit card issuers will be forced to take to properly manage credit risk and other prudential regulatory requirements?

Mr. CHOPRA. This is a good question. With respect to the proposed rule on late fees, we do know that credit card issuers engage in risk-based pricing. That is the vast majority of the market. In other words, they develop a price that is specific to a person; they don't just have one price for everyone. So inasmuch that someone is engaged in not paying, they can substantially raise their rate. They can take all sorts of actions, lowering their credit—

Mrs. WAGNER. They will have to by virtue of the rule and by virtue of what the prudential regulators are doing in terms of safety and soundness. Did the CFPB engage with the prudential regulators when preparing this proposed rule to ensure that card issuers remain able to meet their safety and soundness obligations?

Mr. CHOPRA. Yes. As part of how we think about—

Mrs. WAGNER. You did? You are telling me that you engaged with the prudential regulators on this?

Mr. CHOPRA. Yes. I am saying, yes.

Mrs. WAGNER. Okay.

Mr. CHOPRA. Yes, we do.

Mrs. WAGNER. Then, I don't understand. Let me get to my question then. If you engaged with them, how can the agency justify proposing a rule that would implicate these safety and soundness obligations? I don't know how you justify it.

Mr. CHOPRA. Again, as I just mentioned, the way credit card issuers originate, they can engage in risk-based pricing, so they are able to raise rates for customers who are risky and lower them for those who are less risky. They use a lot of data in order to predict that. They have complex scoring models. We certainly try and look at all the factors that are driving pricing. What we do find right

now in the credit card market is actually that rates have increased beyond what interest rates have been, so we are looking at all of those dynamics all the time, and I am truly happy to talk through this.

Mrs. WAGNER. You are taking responsible cardholders who pay their bills, sir, on time and typically never pay late fees, and you are forcing them to subsidize frequent late payers, and I see no cost-benefit analysis that says otherwise in this. This proposal is yet another example of the Biden Administration seeking to score political points rather than protecting American consumers. And, Mr. Chairman, I yield back the balance of my time.

Chairman MCHENRY. The gentleman from California, Mr. Vargas, is recognized for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. I want to thank you and the ranking member for holding this important hearing, and see if I can move over a little bit, Director, so you can see me, not that that makes a difference. Again, I want to thank you for testifying today, and I thank you for the great work that you and your Bureau do to protect the consumers of my district and across the country.

Since 2011, the Consumer Financial Protection Bureau has protected consumers from unfair, deceptive, and abusive business practices. To date, the CFPB has returned over \$20 billion to 205,000,000 consumers. The Bureau is delivering results for students, veterans, and many other Americans across the country, and I appreciate that, and so do the polls. Notably, according to a recent nonpartisan poll, over 82 percent of Americans support the CFPB and its mission to protect consumers in the financial marketplace, and I have to tell you, from my district, that seems to be correct. I get so many compliments for the work that you have done and your Bureau has done. I know it is tough. I know it is tough sometimes up here not being able to answer all the questions because you don't get time, but I appreciate the work you have done.

Now, in the last question, you didn't have enough time to answer. Is there a subsidy then from the people who pay their credit cards on time and those who don't?

Mr. CHOPRA. No. There is no forced subsidy from one group to another. We are trying to follow the law and be able to implement that faithfully, and you must understand that underwriting is increasingly individualized. It is not one price that anyone pays. It is risk-based.

Mr. VARGAS. The same thing happens in insurance, as you know.

Mr. CHOPRA. Yes.

Mr. VARGAS. Absolutely, so I appreciate that. Now, in fact, one of the things I do want to talk about a little bit, and it has been talked about here, is cost-benefit analysis. How do you determine that? For example, discrimination against women, how would you weigh that? How many hours or what price is it against the discrimination that a woman feels, the humiliation, the opportunities that are missed? How do you weigh that, because that has been brought up here and hasn't been explained, as if a woman who is discriminated against, all of a sudden because she lost a thousand dollars, you have a thousand dollars' worth of time over here, it is

an equivalent. I don't believe that personally, but how do you weigh that?

Mr. CHOPRA. Yes. When there were widespread illegal mortgage foreclosures and there was an attempt at cost-benefit analysis, I believe one of the takeaways was that the children in the home of an illegal foreclosure actually lost three grade levels—I may not have that exactly right. You are right that it is very hard to put a price on that, and we did a rule to implement legislation you all passed on survivors of human trafficking and repairing their life. It is very, very hard to put a price on that, but, again, we do try our best to make sure we are limiting costs, but sometimes the benefits, when it comes to getting your life back, are extraordinary.

Mr. VARGAS. And I hope you keep that in mind, because I know there is a lot of pressure to just do a simple cost-benefit analysis, dollars and cents, which doesn't take into account the family, the humiliation, the standard of living, really, that we all have, the belief and faith that we have in the government, and maybe a lot of us in God and other things, because you have to have right and wrong. I believe still there is right and there is wrong, and sometimes to do right costs a lot. I hope that you keep taking that into account instead of just some crude cost-benefit analysis.

I do want to talk a little bit about AI. It is something that scares me, to be honest with you. Maybe I have seen too many darn movies about it, but it does seem like something that, as Mr. Foster said, unleashed into humanity could do great damage, especially to our financial system. Could you comment on that?

Mr. CHOPRA. I certainly think the financial system, especially when it is highly automated, which it is, when you introduce very-opaque algorithms into it, I think there are some worries about systemic risk of that, the extent to which tremors could turn into earthquakes. I hope that you all can be thinking about all the various ways that there could be risk created. Now, AI, in some ways, in financial services, has been used forever—

Mr. VARGAS. For sure.

Mr. CHOPRA. —for credit scores, and other things. We have to make sure some of the existing laws on the books are being followed, and that is really what has been our focus. It is a much longer discussion about how we deal with generative AI and fraud, the lending algorithms, but we are trying to make sure we are beefing up our technology core so that we really understand what is going on before it is too late.

Mr. VARGAS. My time is up. Thank you. I yield back.

Mr. BARR. [presiding]. The gentleman yields back. The Chair now recognizes himself for 5 minutes.

Director Chopra, let me start with your policy statement defining, “abusive practices.” Do you believe that financial services companies should be held liable for not complying with novel guidance or regulations that you have only recently published on a retroactive basis?

Mr. CHOPRA. No, and, in fact, the abusive policy statement really was an attempt to try and avoid situations where people didn't know.

Mr. BARR. I appreciate that, and you have said that before in this committee. I do appreciate that. So, can I take it from your testimony that your policy statement will only apply prospectively?

Mr. CHOPRA. The issue is that the statute has always existed, but—

Mr. BARR. Okay. Fair enough. Reclaiming my time, I am generally glad to hear what you just said, because I don't think it is fair to punish companies for operating within the boundaries of the law at the time the company was engaged in an act or practice that was lawful at the time, even under the preexisting statute. I do, however, plan to introduce a bill which ensures that the Bureau does just that and does not try to retroactively apply new requirements onto activities that occurred in the past. And I would appreciate your input on that and your working with me on that legislation to make sure that we are achieving our mutual goal.

Mr. CHOPRA. And I want this to be durable and not ping pong and not—

Mr. BARR. Right. Great.

Mr. CHOPRA. Sorry.

Mr. BARR. Great. Director Chopra, if a small business begins a loan application process, can a lender under your Section 1071 proposal disclose to them that they are required to collect information under the direction of the Federal Government?

Mr. CHOPRA. I need to look at the specific regulation, but my understanding is that even the model form makes very clear that this is a government requirement.

Mr. BARR. Okay. Does a small business loan applicant have the right to refuse to provide this data under your proposal?

Mr. CHOPRA. Yes. It is actually not under the proposal. It is in the statute.

Mr. BARR. Great. I agree, it is in the statute. So, under 1071 and under the statute, small businesses are not legally obligated to provide data in connection with any application of credit, but do you believe a small business owner should know why an institution, before any underwriting occurs, is collecting demographic information about them?

Mr. CHOPRA. If I understand your question, I think, yes, that is right, and in the Home Mortgage Disclosure Act (HMDA), I believe there is a similar type of framework.

Mr. BARR. Okay.

Mr. CHOPRA. I would need to check.

Mr. BARR. Do you recognize that if a small business owner fails to understand why the data is being collected, it could lead to confusion and misunderstanding and potential liability for a financial institution? In other words, if they are asked to disclose their race or their ethnicity or their LGBT status before underwriting occurs, then that loan application is denied, that could lead to confusion as to the basis for the denial of the application? You do understand that?

Mr. CHOPRA. I understand that.

Mr. BARR. Yes. And based on your response, I believe you would agree with me that providing a simple document to consumers or small business owners explaining all of this would help clear up confusion in the small business lending space.

As chairman, I am asking myself for unanimous consent to submit for the record a potential questionnaire crafted by the Kentucky Bankers Association that would do just that.

Without objection, it is so ordered.

Director Chopra, my constituents who provide small business loans in my district in Kentucky tell me that your 1071 rule would force them to exit small business lending and will, therefore, decrease availability and increase the cost of credit for small Main Street borrowers. I believe this questionnaire could help clarify the need for, or the lack of any need for, this data collection effort and reduce incentives for firms to exit the market because of fear of legal repercussions.

Mr. CHOPRA. By the way, I am very open to that.

Mr. BARR. Okay. I will share it with you, and I appreciate your feedback. My final question is about funding and the Supreme Court and what the Supreme Court is about ready to do. Did you see that the Fiscal Year 2024 Financial Services and General Government Appropriations bill that we just took up in the Congress, that the Congress funded the CFPB in that bill at current levels? Did you notice that?

Mr. CHOPRA. I did.

Mr. BARR. And did you notice that Republicans, the Republican Majority, with Democrats, voted down an amendment that zeroed out the CFPB's funding?

Mr. CHOPRA. I didn't catch that, but your colleague mentioned it, yes.

Mr. BARR. Yes. Clearly, some Republicans voted to zero it out, but that amendment failed. I want you to take notice of that, and I want the Supreme Court to take notice of that because it demonstrates that the Congress is not about eliminating consumer protection or the Bureau. It is about upholding the Constitution and the separation of powers, and if our bill were enacted, the agency would continue to operate. The only difference would be that Congress would oversee the agency spending in the same way it does for most other consumer protection agencies, and I believe it is time for Congress to regain its most important oversight tool, and that is the power of the purse.

And with that, I will recognize the gentleman from Illinois, Mr. Casten.

Mr. CASTEN. Thank you, Mr. Barr. Director Chopra, it's great to see you again. I want to follow up on the conversation we had last June. We talked at that time about the 2022 complaint bulletin that had been issued looking at complaints on digital assets that, I think, specifically said fraud, theft, hacks, and scams are a significant problem in the crypto asset markets, and it appears to be getting worse. I am just curious, in the last 5 months, are things getting better, are things getting worse, or are they about the same?

Mr. CHOPRA. I don't have a great answer on this. It can often be difficult to determine. We look at our complaints. I will say that people have lost a lot of money through hacks.

Mr. CASTEN. Yes.

Mr. CHOPRA. They have been cleaned out there, and another thing is that it used to be gift cards. People would ask someone to

purchase a gift card in a fraud context, and now, it is often a new technology like this.

Mr. CASTEN. Yes.

Mr. CHOPRA. It is something that the Justice Department and others were trying to deal with, especially when it comes to targeting the elderly.

Mr. CASTEN. I appreciate the confusion, and part of the reason I asked the question is, we have seen a lot of public actions by Treasury, by the Justice Department, and of course, the Binance news and the shutdown that is there, and obviously, a lot of information will come out of there. While we were sitting here, I think the Treasury Department just announced that they are sanctioning Sinbad, a virtual currency mixer that is being used to launder stolen assets, primarily to fund the North Korean nuclear program, as far as I can tell from the public reporting. The Binance reporting said that the platform was being used to fund child abusers, sanctions evaders, and a whole host of bad terrorist groups, and remarkably, never filed a single suspicious activity report (SAR). And I am not ranting to criticize them, but I am just curious if that is a sign that we have this under control or are we just getting at the tip of the iceberg—

Mr. CHOPRA. I think when we talk about new uses of data, and certainly when it comes to AI, digital assets, there are all sorts of ways that we constantly have to think about how it could be misused and not just—

Mr. CASTEN. Can you just, on that point, in the 2022 report you talked about the use of crypto for, “pig butchering.” Can you just explain for the committee what that is, as it is related to this thing about—I guess it is like a high-tech gift card?

Mr. CHOPRA. A major way in which people are defrauded is often through romance scams, including through online dating websites, and social media. And, “pig butchering,” is the concept of building trust over time, to, at the end, ultimately wipe them out of their financial assets. And you see, unfortunately, a lot of that, and it can be very challenging, particularly when the fraudster has so much information about the target that they might be able to really trust them.

Mr. CASTEN. This shouldn’t need to be said, but I am proud to say that we have a bipartisan opposition to, “pig butchering,” to funding North Korea nuclear programs, to funding Hamas, and to child trafficking. I think all of us on this committee want to make sure that we stop those things.

I am troubled by the fact that there is a common nexus in all those, which is crypto networks that are used to evade anti-money laundering rules. And I think we on this committee have some accountability to do with the fact that just within this term, the majority has passed two bills on a straight party line basis that would actually limit the ability of regulators like yourself to pursue anti-money laundering rules, to even have any authority to go after folks who are using unhosted wallets, these cryptographic assets. And if we genuinely oppose these things, we should stop the ways they are getting used.

I just want to raise a concern with some public reporting that has come out this week that Chairman McHenry has been threat-

ening to hold up the Defense Authorization Act unless we get a crypto-friendly bill, which is not going to make this better. And there has also been some public reporting that perhaps the currency will be to take out some protections against fentanyl use, which, of course, has also been listed in a lot of these reports as one of the common uses of cryptographic money.

I realize this isn't your concern, but I want to thank Ranking Member Waters for her efforts to block that. And I want to thank Chairman Brown and the Senate for blocking that, and just urge them to continue to do so because we do need a fully-funded Defense Authorization Act. We do need to make sure that our financial regulators have the tools to shut down money laundering. And my goodness, we would like to put a stop to pig butchering, terrorism, North Korean nuclear programs, and child trafficking. Thank you, Director Chopra, and I yield back.

Mr. BARR. The gentleman yields back. Let me remind Members to refrain from referencing the chairman when he is not in a position to represent his side of the story, and represent his views in response. With that, the gentleman from Texas, Mr. Williams, is now recognized.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman. Director, it's good to see you again.

Mr. CHOPRA. Same.

Mr. WILLIAMS OF TEXAS. Consistently, you have come before this committee saying you would protect the interests of small business. You have said that today. Yet, ever since you joined the CFPB, your agency continues to add burdensome requirements without consideration of their impact on small business and small lenders, and you know I am a small business person. For the past 6 months, I have been consistently hearing from small and community bankers back in my district in Texas and across the country on how unprepared and terrified they are about the CFPB's Section 1071 Small Business Data Collection Rule. Small lenders are concerned that the complicated reporting requirements, which add 81 new data fields, will tie up loan officers and increase compliance costs, ultimately forcing them to pass these costs down to whom? The customer. Furthermore, small lenders are worried this rule will push the industry towards a standardized small business loan product and kill relationship banking, which all of us are familiar with and have grown up with. This overly-burdensome rule will limit the banks' lending abilities and make it harder for small businesses to access the capital they need.

Now, I have been working with members of this committee and the Senate to push back against the rule, and I am glad to say that our CRA is coming to the House Floor for a vote this week. So, it is critical that we pass this bill to overturn the rule, stop the regulatory overreach, and protect Main Street America. This will be an easy yes-or-no answer for you, I think, Director. Congress is elected by the American public, and you are an appointed bureaucrat. The question is, will you respect the views of the American people and overturn the 1071 rule should both Chambers vote in favor of nullifying this rule? Yes or no?

Mr. CHOPRA. If it is enacted into law, pursuant to the Congressional Review Act (CRA), of course, we will comply with that.

Mr. WILLIAMS OF TEXAS. Thank you. The funding structure of the CFPB minimizes congressional oversight and budget authority and, instead, relies on allocations from the Federal Reserve. This unconventional funding approach has sparked numerous legal challenges, raising concerns about the Bureau's lack of transparency and accountability to the American people. This funding mechanism is vastly different than other Federal banking agencies. In order to have a check on the CFPB's power, it is imperative that your operations be subject to congressional operations or appropriations.

So, Director, while we wait for the court's decision on your agency's funding, how are you ensuring that you are remaining transparent and accountable to the American people?

Mr. CHOPRA. Respectfully, we try and do everything we can with respect to our spending. We have not only complied with the statutory requirements on audits, providing reports, we have tried to answer all sorts of questions that people may have and, frankly, taken a lot of feedback. We have also looked very carefully at spending that can be eliminated. We have spent below our budget cap that is given to us from the Federal Reserve and have not even requested the full amount. We continue to look at how we are going to have a workforce that can help us deliver what Congress said, but, of course, we await the Supreme Court's ruling. The CFPB, the Fed, the OCC, the FDIC, and others are funded very similarly, so we are all looking forward to getting a conclusion to that issue.

Mr. WILLIAMS OF TEXAS. Okay. The CFPB has indicated that they are in the pre-rule stage of creating a new overdraft rule that would reclassify overdraft fees and finance charges. This proposal is widely unreasonable and burdensome for consumers and providers. Overdraft is a key tool that allows consumers to withdraw more money than is available in their accounts so that they may make a payment with these temporary funds. With the rising cost of everyday needs due to the Biden economics that we see today, this feature is helpful in situations that are dire because of Bidenomics, and this feature is helpful in situations where a consumer has unexpected expenses or delays in income. Overdrafts allow them to continue with the purchase of whatever they may need, so this safety net is key for consumers and must be protected.

So, Director, is the CFPB actively working to eliminate overdraft programs that consumers rely on to meet day-to-day needs, like groceries or other essentials?

Mr. CHOPRA. As I have shared before, we do believe that all forms of credit, including overdraft services, have a role to play. Our focus has been to focus on where it has been illegally done, and we have received requests to look at a rulemaking to provide clarity, but there is not an effort to eliminate that need that you share.

Mr. WILLIAMS OF TEXAS. Okay. Thank you, and I yield back.

Mr. BARR. The gentleman yields back. The gentlewoman from Texas, Ms. Garcia, is now recognized.

Ms. GARCIA. Thank you, Mr. Chairman, and it is always great to have you with us, Director Chopra. You are always a breath of fresh air, always willing to respond to all the questions and with such candor and precision. I was a little taken aback by my col-

leagues' comments that you are running your agency in a lawless manner, acting outside of the law. I feel like I know a little bit about the law, being a lawyer and a former judge, and I think if you were doing anything lawless or outside of the law, I would probably be the first one to raise the red flag. Can you assure the public today and those listening that you are, in fact, following the law and doing everything that is mandated by Congress?

Mr. CHOPRA. Yes, and we take those congressional mandates seriously. We are implementing each and every piece that has been required of us, and we just take that responsibility seriously.

Ms. GARCIA. Right. And as you responded to an earlier question, if the law is passed and is signed into law, of course, you are going to follow that law.

Mr. CHOPRA. Yes, and I actually would recommend you putting deadlines on that because it makes sure that it happens. We do have issues with other agencies where it is passed and never gets done.

Ms. GARCIA. Thank you. It is reassuring, and I had full confidence that would be your response, but I thought it was necessary to put that in the record because under your leadership, the CFPB has taken unprecedented action to combat junk fees and medical debt, while holding credit card reporting companies accountable and curbing predatory lenders. As always, you have been there up front with a commitment to protecting our nation's consumers.

I would like to begin by discussing your outstanding efforts to tackle the junk fee situation. Prior to today's hearing, I reviewed a useful fact sheet about the CFPB's whole-of-government approach to addressing junk fees, and it briefly mentioned the CFPB's enforcement actions against MoneyGram, an international remittance provider. This was of great interest to me because, as you know, my district is 77-percent Latino, and many people in my district either know someone or have relatives in Mexico. And, in fact, Texas has the second-highest amount of remittances that go to Mexico within the United States. In 2021, in fact, \$7.7 billion in remittances were sent from Texas to Mexico, making up 15.9 percent of all transactions.

In 2012, the CFPB implemented its remittance rule, requiring companies that offer remittances to provide consistent disclosure regarding the price of a transfer before the consumer makes a payment. Less than 10 years later, consumer and immigration groups have found that U.S. consumers lose approximately \$8.7 billion in hidden fees due to the exchange rate markups.

In June of 2023, you testified before this committee and recognized this issue where remittances are advertised at zero cost, but a hidden foreign exchange markup is added. These junk fees impact a large number of my constituents who send remittances to their families. Director Chopra, what action has the CFPB taken since June to eliminate these junk fees within remittances, or what other action can we expect from you soon?

Mr. CHOPRA. Let me first share that remittances are such an important market for us to be focused on. We also know that remittances are a key part of U.S. national security policy as well, given the volume that takes place, so let me share this. I do share your

concerns about advertising, especially that something is free, when, in reality, it has a big cost.

We have actually taken a number of enforcement actions over the last 2 years, including fairly recently, to go after violations of the remittance rule. I think as more consumers are doing this digitally, we are going to need to evaluate whether those rules need any updates so that they are fit for the modern times. We do see that there are many people who are sending them through apps, and we want to make sure they can compare, get a good offer, and really know what they are getting into.

Ms. GARCIA. Great. Also, I read your Semiannual Report, which notes the efforts to diversify in terms of your contractors, with 43 percent of contracts going to minority- and women-owned programs. However, when we looked at the breakdown of the contract, it only showed .2 percent—not even 1 percent—.2 percent of the dollars spent went to Latino-owned businesses. What steps is the CFPB taking to ensure that Latino contractors are at the table and get some of those contracts?

Mr. CHOPRA. Yes. We have our Office of Minority and Women Inclusion that is required to oversee that. I am happy to answer more questions for the record.

Ms. GARCIA. Mr. Chairman, I will submit those in writing. Thank you.

Mr. BARR. Thank you. The gentlelady's time has expired. The gentleman from Georgia, Mr. Loudermilk, is now recognized.

Mr. LOUDERMILK. Thank you, Mr. Chairman. Mr. Chopra, thank you for being here and for being willing to answer questions. I agree with some of my colleagues that there are some things that we share that are important, and one is data privacy. That is something I have been working on since I have been here in Congress, and it seems that we continue to go backwards, not forwards. I am talking about the Federal Government in general. One of the things about data privacy is it is intrinsically tied to data security, and one of the best ways to protect data is to not have it. You don't have to protect what you don't have, so only collect what you need, but that is a conversation for another day.

I want to ask about the data breach that happened in February of this year. Obviously, you are aware of this as you have communicated this in the past, but I do want to ask some questions about that, especially as early as 2014, the Bureau was warned that vulnerabilities in its information security program put it at risk of a breach, and the latest Office of the Inspector General (OIG) report indicates the Bureau hadn't addressed any of these cybersecurity action items that were previously recommended. Have you implemented any of these recommendations since the publication of the report? This report was in February of 2023.

Mr. CHOPRA. Yes. We have gotten from our Federal Information Security Modernization Act (FISMA) audit, our OIG, and our third-party review, a whole slew of things that, over time, we have been able to successfully implement. I want to give you the appropriate details of that, and we do know which ones have been fulfilled, and we work with the Inspector General to see if it is also to their satisfaction. But let me just share that, of course, the misappropriation of data that occurred earlier this year was extremely serious.

One of my reflections on it is that we are talking about an insider threat.

Mr. LOUDERMILK. Yes.

Mr. CHOPRA. So, part of what we are doing is not just making sure that systems are not penetrable from outside, but also from the inside, making sure that there is limited access, only where there needs to be. There will employees who have access to information. We have made some system changes, too, to limit the information that is accessible. I can confirm the issue was not related to any sort of intelligence operation by a foreign state actor. The individual is no longer employed at the agency, but there is work to do as it relates to insider threats across the——

Mr. LOUDERMILK. Right, and in a lot of cases, access by foreign actors, criminals, come as the result of improper actions by an internal operator, as we saw with Equifax a while back, right?

Mr. CHOPRA. And ultimately, we know it was not just Equifax, but Marriott, and the Office of Personnel Management (OPM).

Mr. LOUDERMILK. Yes.

Mr. CHOPRA. It was bad actors affiliated with the Chinese Government, that we have to make sure that we know this data is used for all sorts of purposes.

Mr. LOUDERMILK. I just want to ask you specifically some of these questions and bring it back up.

Mr. CHOPRA. Sure.

Mr. LOUDERMILK. You may not have the answer now, but if you could respond in writing for the record, that would be great. There are specifically three in the OIG report. The first was to develop and implement a cybersecurity risk register and associated process to identify and manage organizational-wide cybersecurity risks. These were showing that they had not been completed by February of 2023, but the response from the Bureau was, “implementation in progress,” and, “estimated completion is this year,” and we are running out of time. The other two, and I can provide these to you, all three of these—we will provide them in written format.

Mr. CHOPRA. Of course.

Mr. LOUDERMILK. If you can respond where you are on these, I would appreciate it.

Mr. CHOPRA. On that one, we know that part of it was, I believe we were procuring a new system, and it would replace and implement something. We have tried to also complete these in a way that is deliberate and also to the satisfaction of our office.

Mr. LOUDERMILK. Okay. I am running out of time quickly, and I need to ask this: How and when were the victims of the CFPB data breach notified? Congress wasn’t notified until May. Were the businesses or the individuals that were potentially breached, were they notified at any time——

Mr. CHOPRA. Yes.

Mr. LOUDERMILK. ——and if so, was it before Congress or after Congress?

Mr. CHOPRA. We notified Congress completely pursuant to the guidance, and actually, when we found out, we looked to see when the data may have left the system by the insider threat. We did the customer notifications, and we had to work with our supervised

entity, because sometimes it was complicated, and my staff just shared that Congress was notified in March.

Mr. LOUDERMILK. Right, but when were the customers notified, before or after Congress?

Mr. CHOPRA. We actually didn't have their contact information in most situations, so we had to work with the institutions.

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

Mr. LOUDERMILK. Thank you.

Mr. BARR. The gentlewoman from Massachusetts, Ms. Pressley, is recognized.

Ms. PRESSLEY. It's good to see you, Director Chopra. I always smile when I see you because I actually know what it is that you do. I am grateful for your service and certainly your resilience. Despite the destructive efforts by Republicans to sabotage the Consumer Financial Protection Bureau, I commend you on your work to support vulnerable consumers. From cracking down on junk fees and predatory lenders, to working to remove burdensome medical debt from credit reports, and protecting seniors against fraud, the CFPB's record speaks for itself.

Now, I want to talk about the \$2-trillion crisis that is student debt. You have heard the expression, "like a dog with a bone." I am no dog, but I am a Congresswoman with a cause, and some of my colleagues may be tired of me bringing up student debt, but imagine how tired our constituents are of living with it. For borrowers who live in my district, the Massachusetts 7th, whether it is a father juggling part-time jobs, or a third grade teacher who spent a decade in the classroom making payments month to month, their situations are as precarious now as they were 3 years ago when payments were first paused, and student loan servicers are not making it any easier: high wait times when you call; false information when you get someone on the phone; and wrong billing amounts when they ask for money.

Just last month, MOHELA, the largest student loan servicer in the country, proved its incompetence: 78,000 borrowers received the wrong information for the SAVE Income-Driven Repayment Plan; 153,000 borrowers did not receive a bill until after it was due; and for the ones who did receive a bill, 21,000 borrowers received bills that were very high and far from correct, including some who received a bill for \$100,000. Now, imagine opening your mail and seeing a bill for \$100,000. This is ridiculous, and it is proof that the CFPB's work is more critical now than ever before.

Director Chopra, could you describe what steps the Bureau is taking to protect student loan borrowers from the gross incompetence of student loan servicers?

Mr. CHOPRA. Those servicers, just like mortgage servicers, impact people's lives so much. We have seen, over the course of the past 15 years, illegal foreclosures and other harms in the mortgage market. But in the student loan market, a wrongful default or a major error can hit people so hard early in their financial life and eliminate their ability to even get an auto loan or do anything else. They may not be banks, but they have to follow the same laws. We are allocating real attention to this, including the return to repayment, because many of those servicers shrunk quite a bit during the payment pause, scaling up, and we will be releasing more infor-

mation about some of our findings. We have taken enforcement actions, and it is very, very important that people are not the victims of an unlawful practice.

Ms. PRESSLEY. Thank you. And, Director Chopra, what is your advice—sort of consider this a PSA, if you will—to borrowers who are dealing with predatory student loan servicers, scammers, and malicious actors?

Mr. CHOPRA. Certainly, be very, very cautious about talking to someone who isn't the loan servicer. They may be using information about you in order to get you to pay something that you don't owe them. We also say if you are having trouble, please file a complaint. We are often able to get those individuals across the country fixes and sometimes clear answers on what really needs to happen. This whole thing has to work, or there are going to be big problems.

Ms. PRESSLEY. Thank you, Director Chopra. Like many Americans, I took on student loans to pursue higher education, not because I wanted to, but because I had to. It was the only way. It took me over 20 years to pay them off while I was a caregiver to my mother and often working multiple jobs, including as an aide in the House and in the Senate, but I want an easier road for the next person. The people demand and deserve student debt cancellation. In the meantime, we must provide relief for our borrowers wherever and however we can, and that includes holding student loan servicers accountable for their incompetence. I thank you again, Director Chopra, and your entire dedicated team, and I look forward to continuing to work together.

Mr. BARR. The gentlelady yields back. The gentlelady—no, the gentleman from Ohio, Mr. Davidson, is now recognized.

Mr. DAVIDSON. I'm glad we got that right. Thanks, Director Chopra. I appreciate you being here, and I appreciate your work on privacy. I have really enjoyed the prominence of the Fourth Amendment in this hearing, and I know you know that I share your fondness of the respect for privacy and the sense that it really needs a lot of attention right now.

I have been developing a bill called the Payment Privacy Act that would ban the sale or distribution of consumer financial data unless the consumer provides express consent. This consent would only be legal if the consumer can identify who will receive their data at the time the consent is given. We still have a few things to work out, but it is close to being done, and most notably, we are trying to make sure that enforcement and damages provisions match the impact of the data breaches. This is clearly something that you touch on with some of the rulemakings that you have been in process with, and I look forward to continuing to work with you and your office on that, so I appreciate that.

But as we talk about Section 1033, one component of it would allow tokenized account numbers when making data available to consumer-permission third parties, so they could tokenize it, it kind of anonymizes the data in a sense. This means the account identifier would mask that identity from the third party. Has the Bureau considered any alternative approaches to protecting consumer account information?

Mr. CHOPRA. Yes. In many ways, Congressman, we also have to think ahead. I have talked to some of you on this committee about quantum decryption and the risk of re-identification, and we want to think of ways that are timeless, so we are very open to feedback on other alternatives. We don't want any sort of specific technology built in, but I do fear that if we don't make sure that the rule has some real data protections, it will be a haven for misuse.

Mr. DAVIDSON. I think that is the point of not just protecting the consumer privacy. They clearly didn't disclose it. This is a way to bypass the fact that they haven't disclosed it and technology kind of escalates.

Mr. CHOPRA. I see. That could sidestep it.

Mr. DAVIDSON. Right.

Mr. CHOPRA. Oh, I'm sorry. I misunderstood.

Mr. DAVIDSON. And I am also fond of zero knowledge proofs, for what it is worth, and this touches on a transition point to digital assets briefly.

Director Chopra, the former Director of the CFPB, Director Kraninger, previously stated that the CFPB's authority over digital assets is murky at best because there is a lack of jurisdictional clarity. Given that the, "larger payment participant rulemaking," attempts to sweep in digital assets, how do you see the scope of the CFPB's role in digital assets and, in particular, with respect to protecting self-custody and privacy?

Mr. CHOPRA. Yes. It is really when it is being used for a consumer payment, so we do have a lot of nonbank payment apps. To the extent to which they are using something that is just for a consumer payment, there is case law which shows that is covered under the Electronic Fund Transfer Act (EFTA), and that is what we supervise for. I think we have tried to be very cautious about this, and also, inasmuch that you are legislating on it, we are happy to provide any input on it. But when it comes to that, we are really trying to address those large payment apps that we have to make sure are following the same set of laws as the banks.

Mr. DAVIDSON. Right. Yes. The general trend is to make everything account-based, and one of the best things is self-custody. So if I have cash, my identity is pretty well protected.

Mr. CHOPRA. Yes.

Mr. DAVIDSON. And if I want to exchange that with someone else, then we don't really have a lot of risk of data breach or privacy issues. Now, for many of my colleagues, that level of privacy is too much privacy. They like the spying-on-people features of account-based systems, and I am really concerned that we protect self-custody because that is at the core of privacy. That is at the core of protecting your money because someone's not skimming part of it for providing services unless you want them to.

One other thing that I just want to touch on is that in the last numbers I saw on Buy Now, Pay Later for Black Friday and Cyber Monday, spending was \$940 million. That is about a 42-percent jump over last year. The pros of Buy Now, Pay Later are really apparent. There is no credit check. It is interest free up front. So if you want to buy something for, say, \$200, and you pay \$50 now, you can pay 3 more payments of \$50 and do it. Does that, at some

point, especially if you don't make that next payment, start to look a lot like credit? You did some work on this.

Mr. CHOPRA. Yes. We are trying to make sure that those similar types of use cases have similar treatment. Buy Now, Pay Later is an option for many, many people, and you are right, it has grown, and there are a lot more providers. I think there are some issues, some credit reporting issues and other things that we do need to keep thinking about.

Mr. DAVIDSON. Okay. Thank you. My time has expired, and I yield back.

Mr. BARR. The gentleman yields back. The gentleman from Nevada, Mr. Horsford, is recognized.

Mr. HORSFORD. Thank you very much, Mr. Chairman, and thank you to the ranking member for this hearing, and thank you, Director Chopra, for returning to discuss the continued consumer protection efforts that your Bureau has undertaken since we last spoke. Americans everywhere deserve to have someone in their corner every day to keep a watchful eye on the financial sector and to protect hardworking people from discrimination and fraud.

I was pleased to receive your report. In it, you identified 950,000 complaints that were received in the time period encompassed by the report, with an impressive 99-percent response rate from the respective companies. The CFPB is not just standing idly by, but is actively securing redress for harmed consumers. Under your leadership, I have been glad to see the CFPB standing up for consumers, combating the negative effects of medical debt, ensuring that fair lending standards are adhered to, and holding bad actors in our financial sector accountable.

I want to point to the issue of the Office of Servicemember Affairs and how they are working to address the growing number of complaints that members of our Armed Forces have regarding their consumer protection needs. As you are aware, in June your agency reported that there was a staggering 66,400 complaints filed by servicemembers in 2022 alone. This is a dramatic 55-percent increase from the prior year. Unfortunately, for my home State of Nevada, the volume of complaints from servicemembers ranks third in the country on a per capita basis.

Director Chopra, your report on Servicemember Affairs shows that active-duty personnel are 76 percent more likely to become victims of identity theft than the general population. What are your insights into why this may be the cause, what characteristics make them most susceptible to theft, and what recommendations do you have to further protect them from this abuse?

Mr. CHOPRA. We have seen time and time again, active-duty servicemembers' personal data being weaponized. It used to just take the form of putting a fake debt on their credit report and bullying them into paying something they didn't owe. Now, it is getting even more sophisticated. We see that all sorts of data companies are collecting information on military personnel. Identity theft is just one piece. There are real national security implications. We don't just care about these families because they serve our country. They are often the canary in the coal mine for everyone else, and that is why we pay a lot of attention to it.

Mr. HORSFORD. I am glad you are. As you said, it does take attention away from national security. It has serious negative effects on morale and can even interrupt their service if it is not addressed, so I look forward to working with you on that issue. Private identity verification companies are fortunately able to prevent some of these issues, so I am glad that while the CFPB has enhanced capabilities to protect these populations, fraudulent applications and identity theft can be disastrous for any American.

As we look to continue to expand access to credit across the country, have you considered that these unintended consequences of your upcoming Fair Credit Reporting Act rulemaking could lead to more legitimate applicants being inappropriately rejected due to their perceived fraud risk by financial institutions?

Mr. CHOPRA. Yes. We haven't proposed anything as of yet, but we are trying to look at all the ways that data could be used or misused and, ultimately, look at the downstream effects. Absolutely, we are looking at all aspects before we propose anything.

Mr. HORSFORD. Thank you. Dr. Chopra, I have also been pleased to see that the CFPB has brought about enforcement actions to curtail the unscrupulous actors in the credit repair marketplace. Unfortunately, in an industry rife with malpractice, there are still bad actors operating in blatant violation of your recent court ruling regarding deceptive telemarketing practices. The Bureau should apply this decision uniformly across the credit repair space to protect our most-vulnerable consumers from being scammed by products that will actually do little to improve their credit. Do you believe that there is a benefit to providing clear, consistent guidance regarding the telemarketing sales rule's advanced fee prohibition in order to prevent bad actors from continuing to take advantage of consumers?

Mr. CHOPRA. Yes, and the telemarketing sales rule, while we enforce it, it is not administered by the CFPB. The Federal Trade Commission (FTC) is the one that issues rules and guidance, but I think certainly as these scams develop, we can have a conversation with them about that.

Mr. HORSFORD. Thank you very much. I look forward to continuing to work with you. I yield back.

Mr. BARR. The gentleman yields back. The gentleman from Michigan, Mr. Huizenga, is now recognized.

Mr. HUIZENGA. Thank you, Mr. Chairman, and I apologize for my tardiness. I was in the Budget Committee testifying on our debt commission that, I think, is also another significant issue for us. But thank you, Director Chopra, for being here today. I have a couple of topics I want to cover this morning, so I ask for concise answers.

You have been employed by the U.S. Government for about a decade. Is that correct?

Mr. CHOPRA. Yes, all told.

Mr. HUIZENGA. And holding several senior positions throughout that time?

Mr. CHOPRA. Yes.

Mr. HUIZENGA. Yes. Okay. You have served on the FDIC's Board of Directors since October of 2021, correct?

Mr. CHOPRA. Yes.

Mr. HUIZENGA. Since you have been a Director on the FDIC Board, were you ever made aware of the July 2020 FDIC Office of Inspector General report on the sexual harassment charges that were happening at the FDIC?

Mr. CHOPRA. I can't recall when, but I did review, prior to coming to the Board, all of those reports that the Inspector General and others had issued on a wide range—

Mr. HUIZENGA. Had the Inspector General run you through those and the Board? Who made you aware of those?

Mr. CHOPRA. Prior to being confirmed, I personally reviewed all of those for the CFPB and others as well to prepare. I do have periodic discussions with the Inspector General about that. And with respect to implementing any recommendations, the executives of the Corporation do file periodic reports about where things are. So, we try our best to ascertain where the issues are.

Mr. HUIZENGA. Are you alarmed by the FDIC OIG's findings of underreporting and fear of retaliation at the FDIC?

Mr. CHOPRA. Yes, and, in fact, at the CFPB, we actually implemented a number of new steps to make sure that there were many ways for employees to report these issues. From a risk management perspective, you want to be able to be sure you are getting these complaints, and every agency is trying to do—

Mr. HUIZENGA. Okay. Well, maybe not every agency is trying to do that.

Mr. CHOPRA. Well, I can speak for the CFPB.

Mr. HUIZENGA. Okay. So, you are speaking for yourself, and you are saying—I am not trying to put words in your mouth—you are saying you took your experiences and what you witnessed at the FDIC, and you are trying to improve the CFPB's operations, correct?

Mr. CHOPRA. Sure, and other agencies.

Mr. HUIZENGA. Okay. Now, I have been, and I think a number of my colleagues have been a bit critical of your role in ousting the last Chair of the FDIC and sort of what happened there. Why weren't you as concerned or as aggressive with this particular Chair?

Mr. CHOPRA. To be clear, the last Chair resigned. There was an issue about the law—

Mr. HUIZENGA. There was significant palace intrigue behind that.

Mr. CHOPRA. There was a violation of the law, in my view and others, but I know you don't want to get—

Mr. HUIZENGA. Okay, a violation of the law. We have some very, very serious charges with people at the FDIC, including this Chair, and whether he knew and whether he was involved or how he was involved, so why not take that same passion to the FDIC?

Mr. CHOPRA. Certainly, any type of these issues are serious. The Board has created a bipartisan special committee that will have full authority to investigate it, to hire outside players, to determine if appropriate actions were taken, and to identify what needs to change.

Mr. HUIZENGA. I am going to remind some of my newer colleagues that it wasn't that long ago we had another head of an agency—the Federal Housing Finance Agency (FHFA)—Mel Watt, our former colleague on this committee, who was before the com-

mittee to discuss allegations of inappropriate behavior, and it was a bipartisan effort then. I hope the discussion of the FDIC is a bipartisan effort now. As Chair of our Oversight and Investigations Subcommittee, I hold our government officials accountable, and I hope and expect that the FDIC Chair and others are going to cooperate fully.

Let me turn very briefly here to a recent enforcement action of yours—Mr. Barr had brought this up earlier—about the CFPB using the fine print, pop-ups, dropdowns, different sort of criteria, as labeling that abusive. Now, in this instance, the company in question was following the laws of the State in which they were operating. And while your agency did not accuse the finance company of breaking any laws, you still went forward with an enforcement action. Last night, I sent you a letter on this specific issue.

Mr. CHOPRA. That is not true. We did plead a violation of law in the complaints. Every enforcement action, if it is being litigated, has specific allegations of what law is being violated, and that will be adjudicated.

Mr. HUIZENGA. My time has expired, but last night, I sent you a letter on this specific issue, and I expect a——

Mr. CHOPRA. We will respond.

Mr. HUIZENGA. —response in a timely manner. Thank you. Mr. Chairman, I yield back.

Mr. BARR. The gentleman's time has expired and I thank him for his good work as our Oversight Subcommittee Chair. The gentleman from Michigan, Ms. Talib, is now recognized.

Ms. TLAIB. Thank you so much, Mr. Chairman. And thank you so much, Director Chopra. I want to talk about something that my residents are actually asking me about specifically. Of course, the CFPB has been incredibly responsive with a number of fraudulent cases, issues that are coming up with folks' credit card companies, so I appreciate your team and your staff being so responsive to my team. They really are getting callbacks and feeling like they have an advocate in the CFPB.

As you know, nearly 1 in 5 American adults are burdened with medical debt, and this is something that I have been continuing to talk about with many of my colleagues here. I feel like it is completely wrong to have medical debt weighing down credit reports. And you and I know no one chooses to get sick, and I know you have personal stories yourself, but medical debt should not prevent somebody from securing a home or even education, basic needs. I have even had residents talk to me about the fact that they had to sell their home because of medical debt or get another loan on their home because of medical debt.

In my own district, we have had residents who are veterans or seniors report difficulty in paying \$3,000 to \$4,000 in medical bills, and they are on a fixed income. And these are folks, by the way, who get their stuff garnished, they go after them, and these are people who are actually insured. Let's understand that. They are not uninsured. They are actually folks with health insurance, who are still facing a high burden of medical debt. And for me, I was so incredibly excited that the CFPB announced a rulemaking process to remove medical debt from consumer credit reports, which I

also called for in my Restoring Unfairly Impaired Credit and Protecting Consumers Act.

Director Chopra, can you describe, because I think it is important for my colleagues to listen to this—this is important, because even Chairman McHenry talked about the fact that he paid his bill, and it still showed up, and the inaccuracy of debt that is showing up on people's credit reports. Collections are inaccurate. Things are already paid. A medical service that occurred many, many years ago is all of a sudden appearing from decades prior on people's credit. It is really unbelievable the stories that are coming from many folks. Can you describe some of the billing and collection practices that motivated the CFPB to take action?

Mr. CHOPRA. What we saw is that the largest delinquent, derogatory items on a credit report were no longer credit cards, and no longer a normal loan. It was allegedly unpaid bills, and the very common experience was people say, I am disputing this, this is wrong, and then, they go through this endless paperwork process to do it, and we know this is not like a normal loan. This is a situation where there is a back and forth between the insurance company, the provider, and the facility, and we have found very serious inaccuracies. And I think it has just raised the question about, given its limited or almost no predictive value in cases, is the credit report just a way to coerce someone to pay something they don't owe?

Ms. TLAIB. Exactly. And I think you led a little bit on this, but your own research at the CFPB found that using medical billing data on a credit report is less predictive of a credit risk or performance than non-medical collection. So, there is no benefit in having medical debt on credit reports and weighing down on so many of our families, from cancer to even folks who have really awful car accidents that lead to so many charges, including physical therapy. Folks have told me that they have insurance, but it didn't cover everything, and years later, they are getting all this stuff showing up on their credit report.

There is something that I talked to you about, and I really want to take a moment, and I know you may not have coverage over, but right now, auto insurance companies are using non-driving factors, Director, and I talked to Treasury Secretary Yellen about that this morning. It really has had a disparate impact on my residents, using marital status and education level for credit scores. I just feel like that practice is a way to discriminate, especially when I see folks with DUIs but high credit scores paying 3 times less than somebody with no DUI and a lower credit score. And I wanted to see if you had anything to say about that?

Mr. CHOPRA. Yes. You are right, we don't regulate insurance, but I think there are serious issues with how credit scores are being used sometimes. For many people, it just doesn't seem to make sense.

Ms. TLAIB. No. Somebody with a Ph.D. is not necessarily going to be a better driver. I don't understand the rationale that auto insurance companies use in this data.

Mr. CHOPRA. I think sometimes, they will say it reflects on whether their premium is going to get paid, but sometimes, it is so variant, and, again, we don't have authority over here. We just

cover the credit report and credit score, but certainly, if Treasury's insurance office does further work on this, we are happy to provide information on the State insurance regulators. I know many of them are also wondering the same thing.

Ms. TLAIB. Yes. Some States have done that, but thank you so much. Chairman, I yield back.

Mr. FITZGERALD. [presiding]. The gentlelady yields back, and we will take a 5-minute recess.

[recess]

Mr. FITZGERALD. Okay. We are back, and next, we are going to go to the gentleman from Tennessee, Mr. Rose, for 5 minutes..

Mr. ROSE. I want to thank Chairman McHenry, and thank you, too, Director Chopra for being here today.

Director Chopra, last month, The New York Times ran an article with a headline calling you, "Wall Street's Most Hated Regulator," and stated that bankers believe that you are a regulator gone rogue. Do you agree with the characterization that you are Wall Street's most hated regulator and a regulator gone rogue?

Mr. CHOPRA. Certainly not, but you will have to ask them. We try and make sure that all of our work is really with the public interest in mind, including honest financial institutions.

Mr. ROSE. Thank you for that. I want to say this to you, because I feel this very strongly about all of our Federal regulators, that in my view, your first responsibility is to help those who you regulate comply with the regulations, and that your entire approach to that regulated community that you deal with should be to empower, enable, inform, educate, and facilitate their compliance with the regulations that are intended to protect the consumers of this country. Do you agree with that observation?

Mr. CHOPRA. Yes, and, in fact, we spend much more of our energy on supervision, and most of the issues are not dealt with in litigation or enforcement actions. In many cases, they are when they are serious or repeat offenses, but we do take that as examiners looking at where there are issues and being constructive about how it can be fixed.

Mr. ROSE. I worry then a little bit. I know earlier in your remarks, you highlighted the amount of fines that you have recovered from the regulated community, and I just——

Mr. CHOPRA. Restitution.

Mr. ROSE. ——would caution you that I don't think that is the objective. I don't think that is what we ought to be measuring your success by. I think compliance with a regulated community that understands what they are supposed to be doing to protect consumers is the goal, and what I would like to hear is measures that affirm the agency's understanding, the Bureau's understanding.

Mr. CHOPRA. And just to comment on that, we have really focused on repeat offenders and others. We are not trying to target with, "gotcha," actions. I saw that at the Federal Trade Commission, where that agency had a history of targeting small businesses, strong-arming them into settlements. We just are taking a very different approach.

Mr. ROSE. Thank you. Director Chopra, as has already come up today, and I am sure you are aware, of course, of the FDIC Inspector General starting an investigation into the extremely serious

workplace misconduct allegations first raised by The Wall Street Journal. As a Board member of the FDIC, will you commit to fully cooperating with any requests made by the FDIC Inspector General regarding their investigation?

Mr. CHOPRA. Oh, of course, and, in fact, we cooperate with all sorts of inquiries on this.

Mr. ROSE. Thank you. And will you commit to fully cooperating with congressional investigations into workplace misconduct allegations at the FDIC, including promptly turning over any requested information and documents?

Mr. CHOPRA. As always, we will work with you to accommodate your request. Obviously, it is another agency we have, the CFPB, but you are right, I am a Board member, so we will do our best to accommodate that.

Mr. ROSE. Thank you. Director Chopra, have you ever been investigated for workplace misconduct?

Mr. CHOPRA. I have never been a target of an investigation. Of course, where there have been issues, there are lots of other investigations. We always cooperate, but I have never been a target of one.

Mr. ROSE. Do you believe that consumers should have the financial freedom to make their own financial choices as long as loan terms are clearly disclosed?

Mr. CHOPRA. Yes. I think that is right. I think we want consumers to have lots of choice and to be able to compare one with the other. I think in the digital economy, there are new issues about how they can present certain information, so-called dark patterns, but yes, we want to give consumers that informed choice.

Mr. ROSE. Thank you. And as our time winds down here, would you help to explain how you and the Bureau are ensuring that the costs of regulations and other CFPB actions do not outweigh any potential benefit, especially since those costs, of course, will likely be passed on, ultimately, to the consumer?

Mr. CHOPRA. Yes. We never want to do something that makes the public worse off. I think your colleague asked me a question about when there are benefits—Congress had passed the Debt Bondage Repair Act, which the CFPB implemented. That is about a human trafficking survivor getting their life back. It is sometimes hard to put a dollar figure on it, but we do our best in the required analyses in those rules.

Mr. ROSE. Thank you very much, and I yield back.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentleman from North Carolina, Mr. Nickel, for 5 minutes.

Mr. NICKEL. Thank you very much. I want to thank Chairman McHenry and Ranking Member Waters for their work on these issues. And it is great to see you, Director Chopra. My colleague from Tennessee referenced the article where you are the most-hated regulator on Wall Street. I was just on Wall Street yesterday, and I definitely don't think you are the most hated. I can feel pretty confident about that. I don't know if that is much of a consolation prize, but—

Mr. CHOPRA. It is not a popularity contest, so yes.

Mr. NICKEL. Yes. And 25 of these, when you get down to the final row here of Democrats, it has been a while, so thank you for your

testimony and being here. I want to thank you for the work you and your colleagues at the Bureau do daily to protect consumers, Democrat or Republican. All of our constituents rely on the CFPB to protect them from financial harm. In fact, over 82 percent of Americans want the Bureau to continue doing its job. I think that is a good record of success. And earlier, I heard from some of my Republican colleagues, and I was glad to hear them voicing words of encouragement and support for open banking. I want to talk a little bit about open banking.

I am glad the CFPB proposed the Personal Financial Data Rights Rule last month to accelerate the shift towards open banking. Open banking would give consumers the right to control their financial data, which is long overdue. As an example, if one of my constituents has a checking account at a bank but is receiving bad service, high fees, under the current system, they would have to jump through a significant amount of hoops to, “break up,” with that bank and move their data to another financial services company, whether it is a bank or a fintech. They would likely lose some of their data along the way, and spend countless hours trying to piece it all together as they make that shift. But open banking will change this, make life easier for consumers, drive down costs, and promote financial inclusion. Can you share your thoughts on how open banking is transforming the financial landscape for consumers in the U.S.?

Mr. CHOPRA. Yes. I think the more we can give people the ability not to just solely be judged by a three-digit score but also their financial history, being able to give that data, to be able to get a better term, to avoid illegal conduct, to really have more of a driver’s seat, I think this is really a way to make banking a way to give consumers a wider range of options. And I think smaller entities are really going to be able to compete more easily with the big players this way. Rather than being locked in with one provider, local institutions or startups will have more of a chance to win on the merits.

Mr. NICKEL. Yes. Under this proposed rule, the CFPB would rely on a separate standard-setting organization to establish the technical standards and certifications for consumer permission sharing. Given that this organization would be a separate entity from the CFPB and not subject to its oversight, how would you ensure that all parties have a seat at the table and that this arrangement doesn’t result in anticompetitive behavior, while also meeting its standard-setting obligations in a timely manner?

Mr. CHOPRA. It is a huge concern to make sure that there are not a small set of actors who get to dictate, in an anticompetitive way, so we would have oversight. Under our proposed rule, the CFPB would have to recognize the standard-setting body, and pursuant to longstanding guidance, that body would need to be inclusive of all perspectives. It can’t just be the incumbents or it can’t just be the fintechs. It really has to have everybody. We are collecting comments on that now, but that is going to be a big piece in determining how open banking accelerates.

Mr. NICKEL. Thanks so much. And in the remaining time, I want to just touch on credit repair scams. I have been working on legislation in a bipartisan way to finally stop credit repair scams, and

I know we have talked about this in my office. I appreciate your work and your leadership here. These companies market themselves to financially-distressed consumers, falsely promising to increase credit scores while charging exorbitant fees in monthly subscription services that can cost thousands of dollars but yield few positive results. While the Bureau took enforcement action against one of the largest credit repair organizations earlier this year, are you concerned that these scams will continue by new organizations, especially as household debt increases?

Mr. CHOPRA. Yes. I am also worried about how they might be targeted using very sensitive information about people, particularly on social media, but not exclusively. We are trying to look at how people can actually navigate ways to address their debt issues without ending up worse off in the process.

Mr. NICKEL. Thanks so much, and I yield back.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, Mr. Chairman. And thank you for being here, Director Chopra. I think we are discussing really important topics.

Let me go back to your opening statement, if I can, for just a minute. In your opening statement, you noted that credit card debt is increasing now north of a trillion dollars. Auto loans are increasing north of \$1.6 trillion. Mortgages have increased dramatically. The median mortgage in the United States, over the course of 3 years, went from \$1,200 to \$2,400. That is significant. It is a major concern. The driver of that, I think should be noted, is largely the inflationary policies put in place by the Biden Administration, in particular, reckless spending, the war on energy, and paying people not to work after the pandemic. And as we look at the drivers of increasing debt for Americans, I would encourage my colleagues on the left side of the aisle to join us to work to bring down inflation. That is outside your wheelhouse, but I wanted to put that out there because I think it is a really important point to your earlier points and your opening remarks.

Let me jump into Earned Wage Access (EWA), which gives individuals access to wages that they earned. Improving the connection between pay and work in a more timely manner, I think is a great opportunity that is out there. You commented in the press that the CFPB is re-examining the 2020 guidance that maintained that EWA was not a credit product. Can you give me an update as to when you expect the review to be completed?

Mr. CHOPRA. I am hoping we will be able to answer more of the questions that we have been getting in the next few months, and, specifically, there has—

Mr. STEIL. So, you expect that in the next few months, that rule-making process will be concluded?

Mr. CHOPRA. I think we are going to try and provide additional guidance on it. The original guidance that was provided a few years ago covered a pretty narrow set of circumstances. It is essentially ones that were free, so earned wage advance, earned wage access, some of it is with the employer, and some of it is separate from the employer—

Mr. STEIL. There is a significant development in the public space—

Mr. CHOPRA. There have been significant developments in the last few years.

Mr. STEIL. So, you are expecting that in the next few months, you will be coming forward with that. As you are going through that process, I would like you to make sure that we are not reducing consumer access in that space.

Let me follow up on my colleague, Andy Barr's, earlier comment as it related to nonsufficient funds and your review of that. I would echo his comment that I think it is important that these rules are enforced prospectively and not retroactively in light of the previous guidance from the CFPB.

I will jump to one more topic here, the proposed rule that the Bureau's new supervisory powers, in particular, as it relates to digital apps in wallets. You noted in your remarks that consumer complaints is one justification of the proposed rule, so if you could expand on how much complaints rose and over what period of time?

Mr. CHOPRA. I can't recall. As part of that rule, we are supposed to look at risk using a multifactor analysis, and—

Mr. STEIL. No, I understand, but if you could get back to me on the complaints, how they came back?

Mr. CHOPRA. Yes.

Mr. STEIL. Is there a portal at the CFPB where someone could issue a complaint, or do you know how the CFPB would receive those complaints from individuals?

Mr. CHOPRA. Yes. We receive them through our website, through the phone, and other ways. We receive thousands each week.

Mr. STEIL. Okay. And then, an analysis is taken into account on how many complaints are resolved?

Mr. CHOPRA. Certainly, we look at all of those factors, but with respect to that proposed rule, that is one issue, but there are many, many other reasons for the rationale for that proposal. It really focuses on the consumer payment apps.

Mr. STEIL. No, I understand. In the proposed rule, it is noted that one of the justifications for this is a rise in consumer complaints. If there are consumer complaints, I would like to know.

Mr. CHOPRA. Yes.

Mr. STEIL. I think that is a valid thing that we should be thinking about on this committee.

Mr. CHOPRA. Totally.

Mr. STEIL. I am just looking for some clarity as to what the rise in consumer complaints is, and I understand you don't have know off the top of your head. That is fine, but if you can get back to me in writing as to what that is in a numerical analysis, I would appreciate it.

Mr. CHOPRA. Yes. We will answer questions for the record, and we will provide numbers of where we—

Mr. STEIL. Perfect. Let me do one final piece here. Last year, when you testified in front of the committee, I asked if your speeches, press releases, and blog posts are reviewed by attorneys. You responded that it is sometimes the case. You were kind of open to the feedback that we had because I think your words have very serious implications for consumers and markets.

And I remain concerned that some statements that you have made are more in light of shaming businesses into doing what the agency wants rather than going through a traditional rulemaking process. So, I would just continue to encourage you to engage legal counsel in the review of your posts on blogs or at other locations because I do think they have market-moving influence. I am concerned that that is outside of the functional rulemaking process, and I appreciate you being here. Mr. Chairman, I yield back.

Mr. FITZGERALD. The gentleman yields back. We now recognize the gentleman from Texas, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ. Thank you, Mr. Chairman, and thank you, Director Chopra, for being here with us today.

Let's talk about medical debt. The State of Texas has the highest rate of uninsured working-age adults in the country, in part due to the State Government and the Governor who refuses to comply with Federal law to expand Medicaid. Most of my constituency is severely unbanked or underbanked and do not have the up-front capital to pay for healthcare costs, leaving many with medical debt. The ding on their credit report for medical debt, which is not an accurate measure, as you know, of credit risk, also means it is harder for them to access traditional sources for credit like bank loans and credit cards. I was excited to learn of the proposal announced in September of this year by the CFPB that would address this issue head on. If this goes into effect, could you outline the steps for the CFPB, the steps they would take to ensure that creditworthy consumers are not unduly prevented from attaining credit or even a job simply because of a debt they owe or a debt they owe from a loved one who has gotten sick?

Mr. CHOPRA. Yes. Thanks for the question. I think really our lodestar on this has been the real challenges of accuracy, and, again, I mentioned to your colleagues, it is not like a normal loan, and it is often a bill that is put on your credit report. You mentioned uninsured, but a lot of the issues are even people with insurance. There are many parties. There is a provider. There is a facility. There is an insurance company. There is a patient. There is a debt collector. There is a credit reporting agency. And over many years, I think there is been a consensus that there is extremely limited predictive value of this. And given the inaccuracies, you worry a lot that people, when they are applying for a job or credit, are just paying something that they don't owe. The big credit reporting conglomerates have taken some steps, but we are looking at whether we might propose a rule to address it more directly, and we are currently collecting feedback from small entity representatives on that, and that will inform any proposed rule.

Mr. GONZALEZ. I can't agree with you more, and thank you for these steps you are taking. Also, as you know, in 2012 the CFPB implemented its remittances rule requiring companies that offer remittances to provide consistent disclosure regarding the price of a transfer before consumers make payments. While the remittances rule created essential protections for millions of immigrants, servicemembers, students, and others who send money to other countries, providers have found ways to get around it. According to consumer and immigration groups, U.S. consumers lose approximately \$8.7 billion a year due to hidden fees, or they sometimes

can change it under exchange rates and recover it in the other country.

In June of 2023, you testified before this committee and recognized this issue. Like my colleague, Mr. Vargas, has stated in the past—he calls them junk fees, which I agree with, and they have impacted our constituents who send remittances to their families abroad. The money earned by these hardworking people should not be lost to hidden fees or extra fees but go to their families. So I ask, what is the CFPB doing to protect consumers and ensure hidden fees aren't being folded into exchange markup rates? Is there a plan in place to prevent remittances providers from continuing this practice?

Mr. CHOPRA. Yes. We have taken a number of actions against providers that have egregiously violated the law on this front, but I think there is this question of, how will a consumer be able to get a competitively-priced remittance? They are paying for it, and when you are looking at multiple levers, the exchange rate, sometimes, there is an advertisement where it says, “free,” and you know when it is really not free. That is what we are really focused on. We are seeing if that is working or not. There are a lot of other places where people may have options on sending remittances that they may not even be aware of, so we are looking at all of that.

Mr. GONZALEZ. Yes. Certainly, things have improved since the 1990s, but the concern is whomever their partners are in the receiving country—

Mr. CHOPRA. The other side.

Mr. GONZALEZ. Right. And I know for Mexico, for sure, they get shortchanged on the exchange rate, and I think that is happening around the world. Thank you for the work you are doing, and we hope that you continue looking into this issue that impacts millions of people here and around the world.

Mr. CHOPRA. I appreciate it.

Mr. GONZALEZ. Thank you, and I yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from South Carolina, Mr. Timmons, is now recognized.

Mr. TIMMONS. Thank you, Mr. Chairman. The CFPB has kicked off a massive rulemaking to revise Regulation V, which implements the Fair Credit Reporting Act (FCRA). The FCRA and Regulation V set strict guidelines for the credit reporting system, and these guidelines enable our credit economy to function. Thus, changes to this foundation should not be made lightly, nor should they be rushed.

Accordingly, I have concerns with the FCRA SBREFA proposal that seeks to designate specific data breaches as FCRA violations. Numerous Federal and State laws already mandate data security measures and breach notifications to consumers. Nevertheless, the CFPB seems inclined to introduce a strict liability standard concerning data breaches or unauthorized access to consumer data by third parties.

But before I move on, the CFPB had its own data breach impacting a quarter million Americans. Would a strict liability standard be appropriate for the CFPB's own data breach?

Mr. CHOPRA. Just to be clear, we have not proposed a rule. We have been looking at multiple options on data brokers as well as

how there may be access to data, but of course, the situation at the CFPB with an insider threat was very, very serious. We did the consumer notifications and we erred on the side of making sure it was clear. We talked to our supervised entities. In some ways, there were automatic triggers that led us——

Mr. TIMMONS. How will they be made whole? How will the victims be made whole? If it was a private business or a bank, they would have to pay restitution. The CFPB has hundreds of millions of dollars. Is there any restitution that is going to be offered to these victims?

Mr. CHOPRA. Fortunately, we have no indicia, and it is really based on the type of data that it could be used for any type of identity theft. It didn't include——

Mr. TIMMONS. Like filing unemployment claims fraudulently?

Mr. CHOPRA. It didn't include the type of information that could lead to that, but of course, I take your point. It was very serious, and we are taking steps to address it. And with respect to that outline, we are really trying to make sure we are guarding privacy, and I agree with you that actually the credit reporting system is foundational, and we want to be judicial.

Mr. TIMMONS. Do you know of any other example of data security and breach notification requirements that are enforced with a strict liability standard?

Mr. CHOPRA. I do believe that some State laws do have that, but I can look it up and answer the question for the record.

Mr. TIMMONS. Okay. That would be great. I guess I am just concerned about what impact this standard would have on economic activity. Almost every corner of the financial services industry will tell you that their cybersecurity teams spend more time and money on compliance than on actually keeping their data safe. I think the last thing we need is yet another redundant regulation taking resources away from these entities providing actual cybersecurity.

Mr. CHOPRA. And we don't want to do anything redundant, that is for sure.

Mr. TIMMONS. Thank you for that. Director Chopra, it has been reported that the CFPB is readying a proposal focused on bank overdraft fees, and apparently doing so just conveniently right after your appearance on Capitol Hill this week. Is this report accurate, and what are you proposing in that rule?

Mr. CHOPRA. We did put on our regulatory agenda many months ago that we would be looking at overdraft and NSF. We haven't made any decisions on it, but one of the places that we got input on is people wanted some clarity on what the rules would be. There have been guidance documents. There are a number of places. We are trying to sift through all that and ideally propose something that makes sure that there are not overdraft abuses.

Mr. TIMMONS. I guess overdraft is a service provided by financial institutions for consumers to manage their finances. I am curious, given your previous statements today about attempting to foster competition in the banking sector, why do you think it is a good idea for government to set the price for a clearly-disclosed service offered to customers in the private sector?

Mr. CHOPRA. It is not about setting a price. I think there have been certain places where prices are a safe harbor to avoid some

of the cost of compliance, but what we are looking for is for there to be a competitive market. When people are borrowing, we want them to have lots of choices and to be able to get it in a way that is the function of the market.

Mr. TIMMONS. I guess that is just the free market. If they want to go to a different service provider to get a better rate, they should. I am just worried that such a rule will merely result in denying overdraft protection for millions of Americans. These are the Americans who need it most, and if we start impacting the free market, I fear that they are not going to be able to have access to overdraft protection, so the people who need it most, their transactions will ultimately be declined. I appreciate the intent, but the outcome will be detrimental to those that you are seeking to protect. As you consider this issue, just appreciate that the banks are not going to offer overdraft protection if they are not able to charge a fee for it.

With that, Mr. Chairman, I yield back. Thank you.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentleman from New Jersey, Mr. Gottheimer, for 5 minutes.

Mr. GOTTHEIMER. Thank you, Mr. Chairman. Hello, Director Chopra. While I know that you don't have direct oversight over tolling, you do have oversight over our financial institutions, particularly with regard to revenue from exorbitant fees charged to consumers. It has come to my attention that some financial institutions are providing favorable credit terms to New York's Metropolitan Transportation Authority, the MTA, based on enormous and outrageous fees, including a new \$23-a-day congestion tax just to drive into New York City. That will be paid by hardworking families, particularly my constituents in New Jersey, and you are a Jersey guy, so you know about these issues I am talking about.

We are talking about charging nurses, cops and firefighters, labor, restaurant workers, and other hardworking families \$23-a-day just to drive into New York City. You understand consumer fairness perhaps better than anyone else in this room. Are you concerned at all that these banks will be making money off of gouging middle-class Americans with exorbitant tolls from their new congestion tax, and will you commit to investigating the revenue that financial institutions are making from this congestion tax?

Mr. CHOPRA. I actually have not heard this. I am from outside Philadelphia, but my uncle worked for the New York MTA for a long time. But I will look into this and get back to you.

Mr. GOTTHEIMER. I would really appreciate if you would do that. I would be very grateful, and I will follow up with you.

I am working with Representative Cartwright on legislation that would require the 6-percent interest rate cap for loans made to active-duty servicemembers to apply to all applicable accounts held by the servicemember at a particular financial institution. This is an issue I have been following closely, and I know the CFPB released a credit card market report last month which found that many credit card companies are not proactively checking servicemembers' military status to ensure that they receive the benefits they have earned in return for their sacrifices and service to our great nation. What needs to be done to make sure that more credit card companies are proactively checking?

Mr. CHOPRA. This is a very good point, by the way. With higher interest rates, you actually have a lot more people, including on their mortgage, where the Servicemembers Civil Relief Act protection is going to kick in. We released some analysis about the low levels of take-up for National Guard and reserve who were activated. Our Servicemember Affairs Office and I put out some recommendations on what institutions can do to make sure that they are covering everyone. It is voluntary. We know some are doing it, but I do think there are some good questions about whether it should be required to simply make it go through the process rather than having the servicemember deal with every single notice through that process, and there is a database. So, we can get back to you with some further details on that, but it is a good, worthwhile idea.

Mr. GOTTHEIMER. Yes. I would really like to follow up with you on that as well. That would be great.

And Director, this committee, as you might know, has recently discussed Earned Wage Access, known as EWA, products which offer individuals the ability to draw money from their paychecks before payday. Several States, such as Maryland and Connecticut, have classified EWA products as credit products. Other States, like Nevada and Missouri, do not recognize EWA providers as lenders. Director, does the CFPB view EWA as forms of credit, and if so, does the Bureau plan to treat this product on a level playing field with other credit products, including by requiring the providers to disclose the cost of credit?

Mr. CHOPRA. Yes. Earned Wage Access (EWA) is often a branding term. It can be an earned wage. It is a cash advance. Sometimes, it is through the employer, and sometimes, it is not. The CFPB, a few years ago, did issue some guidance that was pretty narrow. It essentially involved free earned wage advance, so we know the market has developed a lot. Of course, Federal law still applies. There is Federal and State law. We live with federalism. We are looking, as I mentioned to your colleague, at updating the guidance, given all the evolution in the marketplace.

Mr. GOTTHEIMER. Thank you so much. It is critical we classify, in my opinion, and govern these products appropriately.

I would like to shift gears quickly to open banking. One of the most prominent consumer protections is protecting consumers from fraud, as you would agree, and as you know, fraudsters' practices are evolving constantly, and the industry needs to be able to continue to innovate to be more effective in curbing bad actors. I am concerned that the open banking rule as written will hinder critical industry efforts to fight fraud by prohibiting the use of consumer data to develop or improve fraud identification products. Can you please clarify how the proposal permits the development and improvement of antifraud tools?

Mr. CHOPRA. I think what you are referring to is there are limitations on secondary uses of the data, in other words, that it is really to prevent fraud. We don't want someone baiting a consumer to hand over their data, and say, I am going to give you an auto loan, when in reality, they are using it for all sorts of other purposes. Really, the goal is to protect the consumer, to reduce bad actors. I think there are some questions in the notice of proposed

rulemaking about how data can be used. We are collecting comments on that, but of course, we do want to make sure that fraud is reduced. Congressman Foster raised the issue of identity verification. There is really a lot to work on, on this front. Thank you.

Mr. GOTTHEIMER. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentleman from South Carolina, Mr. Norman, for 5 minutes.

Mr. NORMAN. Thank you, Director Chopra, for testifying today. I am going to move through a couple of questions, and for any we can't get through, we will write a letter, and if you could just get back to us.

One question that has come up has been the funding for the CFPB before the Supreme Court. You mentioned that you all have undertaken a pretty extensive review of expenses, trying to cut the costs, I guess, of the CFPB. Has that been successful?

Mr. CHOPRA. Just to make sure it is clear, we are always looking at ways to sunset old contracts that are no longer in use, and reduce waste. We try our best to constantly be doing that and to find more ways to get value out of every dollar with our procurement, and I have seen places where we are making inroads on it. At the same time, we have to execute our mission, and that requires expenditure.

Mr. NORMAN. When you look at what the history is, I think what the CFPB has done is, they can issue a 1-page letter to the Federal Reserve and fund up to 12 percent of the Federal Reserve's expenses. In 2021, it was \$717 million for Fiscal Year 2021, and then, in 2022, it was \$734 million. Has 2023 seen an increase from the \$734 million?

Mr. CHOPRA. Yes, I believe so, and, in fact, we have to consider a number of factors, and, of course, a big driver is wages and compensation. That is our biggest piece.

Mr. NORMAN. But it's fair to say it has gone up?

Mr. CHOPRA. Oh yes, it has gone up. I don't think the projections are out of line with other banking regulators. I think, in some cases, it is lower.

Mr. NORMAN. I think it was brought up about how we voted on doing away with the CFPB. I was one of 148 to vote to do away with it because of funding. Congress ought to have some type of oversight, and that a governmental agency can just submit a 1-page letter and get funded, I think is unfair to the taxpayers.

In a sweeping change of topics, I think the CFPB has removed or is in favor of removing all medical debt from credit reports. Is that right?

Mr. CHOPRA. No. We haven't proposed it yet, but we are collecting feedback from small entity representatives on that. And I think, again, it is interesting because it is not like another loan, and the inaccuracies and dispute rates on them are extremely high compared to other products, and we also see that FICO, and others—

Mr. NORMAN. You wouldn't be in favor of taking it off the—

Mr. CHOPRA. Oh, we haven't proposed it yet, but that is one serious consideration that we are collecting comments on.

Mr. NORMAN. What is your opinion of it, briefly, because I want to get to another one.

Mr. CHOPRA. Based on the data over the past 10 years, I do think that the harms associated with inaccurate medical debt reporting cause a nightmare for people——

Mr. NORMAN. So, you would take it off?

Mr. CHOPRA. ——relative to the benefits. I kind of want to see how it all works.

Mr. NORMAN. Okay.

Mr. CHOPRA. The difference is, medical debt, we think of separately from the medical bills that you don't apply for in advance as opposed to the medical loans and——

Mr. NORMAN. I get it. Let me ask you this. You have a Small Business Review Panel. Whom have you dealt with, or, I guess, whom have you gotten opinions from? Has it been from medical providers? Have you interviewed them?

Mr. CHOPRA. Yes. In terms of the panel, we will need to get you more information on who is on it, but I have personally talked to a number of medical professionals, including medical debt collectors who are inside the hospitals, inside the——

Mr. NORMAN. You have met with them to get their opinion of this?

Mr. CHOPRA. Yes, and I think——

Mr. NORMAN. And I will get a letter if you could just respond who you have gotten with.

Mr. CHOPRA. And we can even share with you some conferences where we have given presentations. What is interesting is many of the hospitals actually don't send it to credit reporting, so there is a lot of heterogeneity in the practices.

Mr. NORMAN. Okay. I am out of time.

Mr. CHOPRA. Okay. Sorry.

Mr. NORMAN. If you get can the information to us.

Mr. NORMAN. Now, on Regulation F, where consumers can consent to receive accounts receivable via text, you have certain companies that are blacklisting, that are not sending texts, even though the consumer wants them to, like in Operation Choke Point. Do you think this is right?

Mr. CHOPRA. Wait. Say that again, some——

Mr. NORMAN. If a consumer asks for the accounts receivable to be received, the information on it via text, some companies just are not doing that.

Mr. CHOPRA. Let us know about it. I will say the regulation doesn't require that debt collectors provide information by text. It just allows them if that is a choice, but we are happy to follow up with you on it.

Mr. NORMAN. Okay. Thank you so much. I appreciate it.

Mr. FITZGERALD. The gentleman's time has expired. We now go to the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. Welcome, Director Chopra. It's good to see you again. Thank you for all your good work.

I wanted to ask you about the proposed rulemaking that was announced in November. We have a bunch of these larger fintech firms that are using digital wallets, and in a way, they are sort of

blurring the line between regular commerce and banking. I know that the original announcement was that you were going to look at some of these larger firms and require them, because they are in a good part of the banking business, to report, as we require small banks and credit unions. I wanted to just get some of your thinking behind that on how big does a fintech firm need to be before they would come under this reporting, which I think is appropriate for some of these larger and busier firms?

Mr. CHOPRA. It is interesting. You have a lot of nonbanks, particularly with apps, that are transmitting, I think it is now trillions of dollars globally. In many ways, they look a lot like what we see emerging in China where large tech firms have a lot of ability to collect data, and move payments.

Mr. LYNCH. Yes.

Mr. CHOPRA. We have proposed bringing in some of those firms and subjecting them to supervision. We already have enforcement authority over them.

Mr. LYNCH. Right.

Mr. CHOPRA. We think the supervision actually makes sure there is a level playing field between the banks that are doing it and the nonbanks. There are a number of issues—fraud, privacy—but I think there is going to be a lot of value in that. We are collecting comments on the specific threshold, but we estimate it is about 1 or 2 dozen that could come under.

Mr. LYNCH. I was reading that one of your enforcement cases recently was Inova. Was that the name of it?

Mr. CHOPRA. Yes, Inova.

Mr. LYNCH. They actually went in and took money out of their customers' accounts.

Mr. CHOPRA. Yes. Can I just share, Congressman?

Mr. LYNCH. Yes, please.

Mr. CHOPRA. We have a lot of situations where people are able to get information about a customer, and then they can just grab the money. There are lots of issues that impacts. So, making sure that our payment system has a lot of fidelity is so important to the lowest-income people in our country because a wrongful debit in their account can send them into a tailspin.

Mr. LYNCH. Right, and there are credit rating issues there based on much of that difficulty. I know one of my colleagues raised an issue earlier today about, I think it was Citibank, and there was a discrimination issue there with Armenian-sounding names, I guess.

Mr. CHOPRA. It was actually names, particularly, that ended in Y-A-N and I-A-N.

Mr. LYNCH. I have a big Armenian population in my district, so I am quite familiar with that.

Mr. CHOPRA. And those are obviously going to impact the Armenian community.

Mr. LYNCH. Where does that come from? Do you have any sense of—

Mr. CHOPRA. As we have investigated in the enforcement action, they actually filed false reports to those borrowers as to why they were declined, and they ostensibly said it was to detect and prevent fraud. But we allege, and I think provided very strong evidence

that it was prohibited national origin discrimination. We have laws on the books that don't allow it to say, "you type of people."

Mr. LYNCH. These are Armenian Americans, though, aren't they?

Mr. CHOPRA. Yes.

Mr. LYNCH. Yes, in this country. I was just curious what the underpinnings of what the motivation might have been there, if anything, during your investigation.

Mr. CHOPRA. Yes. We can share more, but they were excluding people from the Glendale, California, area, which has a very high concentration of Armenian Americans, as well as people with that last name suffix.

Mr. LYNCH. Okay. Maybe, we can talk offline about that. I do appreciate your good work, however, and how readily available you have been to members of this committee. I think it is commendable the way you have handled your responsibilities. Thank you, and I yield back.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentleman from Pennsylvania, Mr. Meuser, for 5 minutes.

Mr. MEUSER. Thank you, Mr. Chairman. And thank you, Director Chopra. It's good seeing you, and I, too, believe that your work is focused on improving situations, but I can't help but have a number of questions, and maybe you can help clear some things up for me.

Your mission at the CFPB, part of it anyway, is to aim to make consumer financial markets work for consumers, and responsible providers, so both, and the economy as a whole, to protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law. However, there are many in the banking and business communities that think that the CFPB is guilty of practices that are unfair and perhaps abusive and that there is tremendous overreach, and that very often, rather than the bright-line concept, there is ideology over specific rules. And this isn't just from one set of resources. It is from large banks, small banks, super large banks, super regionals, \$1 billion banks, \$10 billion banks.

I put out a text a little while ago to a few banks saying, "Hey, give me some of your thoughts on the CFPB." And my phone is blowing up with negative comments, for instance, "1071, it will impose significant costs on banks, costs that will be felt most acutely by small community banks that will negatively affect their small business customers." This was from a group.

From another group, "The proposed rule's scope is unnecessarily far-reaching. It would exempt very few community banks, define small businesses so broadly as to include tens of thousands of large businesses, and require institutions to collect and report data on numerous data points, in addition to the congressionally-required data points."

Next one: "The CFPB 1071 rule would create onerous reporting requirements for both small business owners and financial institutions." Here is one as well: "The biggest issue with the CFPB—and I know this person personally, a small bank, with probably a billion dollars—is the regulations restrict banks from residential lending, limiting options for borrowers, and forcing community banks to lend to more commercial customers."

I will leave it to you. How is this working? Everybody, what a great job is being done. Okay. I would love to see a great job being done. I want consumers to be protected. I don't want bad characters to be able to play out, and that should be a good thing. But the fulfillment of all of this needs to have a feel that there is some sort of synergy or at least improvement in line with what is best for the economy as a whole. That is a somewhat general question, Director, but I will ask you to comment on some of those comments I read.

Mr. CHOPRA. It is true that when regulators are doing their job, we won't always be the most popular when it comes to those whom we enforce the laws for, when it comes to detecting where there are potential crimes. I get it. Many of the things you mentioned are things that Congress enacted in order—

Mr. MEUSER. We are talking about 90 percent of the banking community here whom I am referring to—

Mr. CHOPRA. I hear from a lot of financial providers who are eager for us to crack down on some of the abuses that we see, because they have to compete with these people. They have to be the ones competing online often with these misrepresentations. So, we take all the feedback. I have met, I think, with every State bankers association representing people on this committee, and maybe even more. We want to make sure that the law-abiding businesses are not disadvantaged by those that—

Mr. MEUSER. I understand that, but—

Mr. CHOPRA. And, again, it is not a popularity contest.

Mr. MEUSER. You are not receiving the feedback that, and you said to me in the last hearing that you would reach out more and have more of a comprehensive relationship or even get feedback from those who are knocking themselves out. You went to the Warren School of Business. I know you have to believe in capitalism to an extent. It is a competitive marketplace. They are trying to win customers. They are not trying to abuse their customers. That would be ridiculous because they would go out of business. That is how it works. The 81 total data points, the questions that were added, last time we spoke, you said it is not 81. I forget what you said. It is, like, 18 or something—no, it is, in fact, 81.

Mr. CHOPRA. It is not 81. If you are asked a multiple choice question of what State do you live in, that is not 50 questions. That is one.

Mr. MEUSER. You expanded upon congressionally-authorized questions that you were given. Why is sexual orientation something that a bank is supposed to ask—

Mr. CHOPRA. Because in the statute, there are requirements on—

Mr. MEUSER. Not that.

Mr. CHOPRA. —the demographic—

Mr. MEUSER. Not in the statute.

Mr. CHOPRA. The Supreme Court has ruled that discrimination based on sex—

Mr. MEUSER. That is an overreach. It is not in the congressional statute. I yield back, Mr. Chairman.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentleman from New York, Mr. Torres, for 5 minutes.

Mr. TORRES. It is always a pleasure to see you, Director, and I have found you to be as impressively communicative and responsive as any agency head in the Federal Government. Thank you for your commitment to protecting working people from predatory fees.

My first question is about remittances. I represent a district in the Bronx where families have to pay excessive fees in order to transfer their own money to loved ones abroad, and the high fees and long delays of the existing remittance system imposes a hardship on the lowest-income Americans, particularly immigrants. And as a nation of immigrants, as you know, the United States is by far the largest source of remittances, with \$72 billion in 2021 alone. In your view, what can and should be done to create a better, cheaper, and faster remittance system for the most-vulnerable among us?

Mr. CHOPRA. There is so much. One, we need to make sure that the existing providers are not engaged in bait and switch, that they are telling the truth about how much it costs, and they are not hiding things with junk fees, but I think with digitization, we have also have to think more broadly. Lots of you have constituents who send money abroad. I see how in big commercial contexts, there are often agreements between large banks, between central banks. We should be thinking about the plumbing of the financial system so that people can send things cheaply and safely, and I think that requires the attention of us, the Federal Reserve Board, and many others.

Mr. TORRES. I have a question about blockchains and stablecoins in the context of remittances. Blockchains can enable real-time transactions. Stablecoins can digitize the dollar. Do you believe that the combination of blockchains and stablecoins, if properly regulated, has the potential to play a role in creating a better, cheaper, and faster remittance system?

Mr. CHOPRA. Yes. We have seen that some digital apps and other products have been able to actually help people send money to a family member who is in a very remote area.

Mr. TORRES. Yes.

Mr. CHOPRA. They may not actually live near a bank or a place that has a remittance provider and are sometimes able to use that in ways that really kind of bridge the divide. Now, on the underlying technology, obviously, it is complicated. We want to make sure that it is well-regulated, that there is not fraud, that people have a fair sense of what it is, but I am totally open to working with all of you as you think through that.

Mr. TORRES. Much has been said about AI, and AI is the most revolutionary technology of our time. I have found the discourse about AI to be pessimistic to the point of apocalyptic. So, I am curious, what do you see not only as the greatest risk, but also the greatest reward of AI when it comes to consumer protection in the field of financial services?

Mr. CHOPRA. Yes. In some ways, AI is not totally new. It is really advanced computational methods. There are lots of good ways to prevent fraud. There may be ways in which you could detect some sort of error in your finances, to help you automatically dispute something. There are certainly going to be consumer use cases. I think a little bit of where we should be cautious is throwing it out

into the world and just kind of seeing what happens. I think we should be thoughtful about how are the different use cases, generative AI and copying of biometric data lending and how it would work in algorithms. So we should be precise on it, but I think there are opportunities. I am not apocalyptic, but I want to make sure we are being cautious.

Mr. TORRES. Is the CFPB exploring how to harness the power of AI to enhance enforcement?

Mr. CHOPRA. Yes. I think we are always looking at more advanced tools on how we analyze our compliance data, and other data to detect and deter wrongdoing, just as other law enforcement does.

Mr. TORRES. On the subject of crypto regulation, the agencies that typically come to mind are the CFTC and the SEC. What is or should be the role of the CFPB in the field of crypto regulation?

Mr. CHOPRA. It is less about the underlying technology and more about the use case. There has not been a huge intersection, but, certainly, if you have a stablecoin that very rapidly scales on one of these payment apps, like another consumer payment, that is certainly a consumer use case there, so that is a real place that we are watching it. But most of the other uses that we see in the financial markets are indeed outside of consumer financial products.

Mr. TORRES. What are your existing authorities with respect to stablecoin regulation?

Mr. CHOPRA. The relevant ones that come up a lot are the Electronic Fund Transfer Act, which is kind of fraud movement of digital money, and privacy and the Gramm-Leach-Bliley Act privacy provisions, but there are some other ones that get implicated as well.

Mr. TORRES. I see my time has expired. Thank you for your service.

Mr. CHOPRA. Thank you.

Mr. FITZGERALD. The gentleman yields back. I am now going to recognize myself for 5 minutes.

I would like to insert a letter into the record from the Consumer Bankers Association commenting on today's hearing.

Without objection, it is so ordered.

Director Chopra, your recent Fair Credit Reporting Act proposal on data brokers and consumer data doesn't include a fraud exemption when an entity is using data to help verify a customer's identity. The treatment of credit header data described in the outline would prohibit financial institutions from using it for the essential antifraud purposes, for what it is used for today, I guess. As you know, identity verification and consideration for creditworthiness are two distinct actions with their own legal frameworks, KYC laws and the FCRA. Have you consulted with prudential regulators and the Financial Crimes Enforcement Network (FinCEN) to understand how capturing identity verification activities under the FCRA may impede compliance with the Know Your Customer requirements if, in fact, the data is considered a consumer report?

Mr. CHOPRA. Yes. Just to be clear, we have not put forth a proposed rule. One of the places that we know there is a huge desire for fraudsters to take control over is really that identity-related data. So, we are trying to think of all the ways in which we can

protect it but not undermine what banks and lenders are legitimately trying to do for financial services. To answer your question, yes, certainly we have discussions with the Treasury, FinCEN, and others on a wide range of issues, and I can assure you that I hear your message here loud and clear.

We don't want to do anything that undermines some of the legitimate financial companies' work, and I think it also goes back to something Mr. Foster said about identity verification. I really think all of us need to work on what is the future of identity verification because it can open up a lot of questions for harms in the country if we don't have a robust one.

Mr. FITZGERALD. Very good. Let me shift gears here. A small pediatrician office in Sheboygan, Wisconsin, has estimated that the CFPB's proposal to remove medical debt from credit reports will lead to a revenue decrease by 11 percent, or \$11,000. I worry that further reducing the information that lenders have on borrowers is just going to result in higher costs and higher rates for all. Is there any way that CFPB has studied this or tried to figure out what the impact would be on individual medical clinics?

Mr. CHOPRA. Yes. I think we are thinking about it in two different contexts: the medical provider facilities; and then, separately, the lenders. You raised two parts: what will be the impact for them; and what would be the impact on the credit reporting system? On the second part, there has actually been a move away because of the limited predicted value of medical bills on credit reporting. We have talked to a number in the medical industry, and many of them actually don't put it on credit reports, and actually for most small players, I believe they don't. We are really looking at all of that, and, again, we have not proposed a rule. We are going through the process of collecting input in advance of proposing. We will then have public comments before we pursue it. But I will tell you, I am concerned about widespread inaccuracies in medical debt credit reporting.

Mr. FITZGERALD. Very good. One more on privacy. We have heard from many Wisconsin bankers in discussions with their small business customers about the 1071 reporting requirements, which have been discussed many times today. They are concerned about the public release of the data.

Mr. CHOPRA. Yes.

Mr. FITZGERALD. We are talking about villages of a thousand people, and some counties, actually, would find themselves, I think, in a similar situation. It would be very easy for somebody to sit down and kind of figure out who this is or which family this is. Considering how important privacy is to the Bureau, why wouldn't you first publish the results of the re-identification study and then take comments, as required by the Administrative Procedure Act (APA), to balance the risks and the benefits of the disclosure?

Mr. CHOPRA. We are pretty far away from any publication on it, and let me just share with you that compared to mortgage data under the Home Mortgage Disclosure Act, the data here is going to be totally different. Like you said, there may only be one type of small business type in an area, so we are going to look at that. I will take that suggestion about how we might proceed with that, but we are many years away.

Mr. FITZGERALD. Very good. I yield back. And at this time, I recognize the gentlewoman from Colorado, Ms. Pettersen.

Ms. PETTERSEN. Thank you, Mr. Chairman, and it's great to see you, Director Chopra. It is wonderful to have you here. You do a very good job of being in the hot seat.

Being last, all of my questions have been asked, but one thing that I have thought a lot about sitting through this is what it was like to live in poverty, what it was like when I was younger, having multiple jobs while I worked my way through college, putting myself through school, being just one financial emergency away from being unable to pay for rent and put a roof over my head. And when I think about those life experiences that are so important to have when you are sitting in these seats, and understanding what people are struggling with every day, and how important your work is in fighting for regular people, and who these junk fees can really have an enormous impact on, or zombie debt. So, I just want to thank you for the work that you and your team do every day.

And when I think about zombie debt in particular, I was reflecting on when I was younger, in high school, and I had to go to the emergency room. I paid for it. Later on, when I was qualifying to buy a house, it showed up again.

Mr. CHOPRA. Credit report?

Ms. PETTERSEN. No, I paid for it, but then it was sold off. So zombie debt, where it is paid years later, and you have no proof, oftentimes lose that, and they know that, so they sell it off knowing that is likely, and so many people in my life have dealt with this. And I remember being a young person and feeling like there was no accountability, nowhere to go. And I know recently, the CFPB had a field hearing on this issue around zombie mortgages specifically, and I wanted to see how you all are thinking about what to do about zombie mortgages and how they are targeting seniors, but also if there are gaps that Congress should consider addressing?

Mr. CHOPRA. Yes. Thank you for that, and let me just share one of the things that is really great about the work we do is that we actually get to hear directly from thousands of people a day about exactly those situations, and how it affects them, and how we can fix things for them.

On zombie mortgages, there was, and we think this is quite targeted in a few metro areas, but maybe nationwide, second mortgages that were considered satisfied, but that have reemerged and are targeting people sitting on home equity, often seniors, zombie debt, more broadly, of things that just keep popping up over and over again, and the consumer is often put in a place to prove they have paid it, even though it may be long ago. I think there are a lot of ways in which the credit report, too, is used to coerce people into paying this debt, debt parking.

We do use our authorities under the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, but I think it is worthwhile to think if we need any sort of enhancements to it in order to make sure that this type of what I see often as fraud doesn't recur.

Ms. PETTERSEN. Great. Thank you for that. I know that you are trying to change behavior by doubling down on going after junk fees, and I don't know if you want to talk quickly about how you

all are identifying junk fees, and then also what you are seeing with behavior changing from businesses and what that means for consumers?

Mr. CHOPRA. Yes. I think we have seen a number of very large banks which engage in some hyper-aggressive illegal practices. We reached two major enforcement actions: Wells Fargo, and Regions Bank. It was pretty bad conduct. We have seen, though, a pretty big shift in the market of moving away from some of these junk fees, and I think we have tried to go to other industries to see where are they charging something that really is for nothing. I mentioned earlier to your colleague that we found a paper statement fee that they didn't print or mail, so we have to make sure that this is just not another way to cheat people. We are very proud of that work, and I think it has made a difference of billions of dollars.

Ms. PETTERSEN. Great. With 20 seconds remaining, is there anything else you want to add? I know that there were a lot of talk—

Mr. CHOPRA. I have known some of you now for many years, and I do hope that there are some things that we all see eye to eye on, including protecting data privacy, and junk fees. I think there is a lot we can do to really row in the same direction, so I appreciate all of you who have met with me to really help inform our work.

Ms. PETTERSEN. Thank you very much. I yield back.

Mr. FITZGERALD. The gentlewoman's time has expired. We will now go to the gentleman from New York, Mr. Garbarino.

Mr. GARBARINO. Thank you, Mr. Chairman. Director, it is good to see you. It is great that Ms. Pettersen just asked about junk fees, because one of my other colleagues asked about it before as well, and I am trying to get an actual answer. Are fees for negative business transactions, late fees, overdraft fees that are part of the contractual services provided by financial institutions to customers who sign up for products such as credit cards and checking accounts—would you consider those junk fees? Would you consider if someone signs up for a credit card or a bank account, a late fee or an overdraft fee?

Mr. CHOPRA. Some of it is how it is assessed. For example, I mentioned those two enforcement actions. Sometimes, they assessed it by mixing around the transactions, and sometimes, they didn't even deliver it.

Mr. GARBARINO. I agree. If they don't deliver, if there is no overdraft and they charge an overdraft fee, that is a problem, but if the statement says if you are late with your payment or if the contract says if you are late with your payment, we are charging you a late fee, or if you overdraft and it is a legitimate overdraft, we are charging an overdraft fee.

Mr. CHOPRA. Yes.

Mr. GARBARINO. Are those junk fees? Would you consider—

Mr. CHOPRA. I think I am in agreement with the spirit of what you are saying. The issue is that it can't override Federal law, so there can't be deception around it. There are other congressional prohibitions. And again, like Congresswoman Pettersen said, I do want to recognize that the industry has made some real moves on this, which I think are commendable.

Mr. GARBARINO. I get that, but late fees and overdraft fees aren't blatantly junk fees.

Mr. CHOPRA. It depends on how——

Mr. GARBARINO. I agree, but——

Mr. CHOPRA. Yes, I take your point. Look, the way we define junk fees are ones that are not subject to the competitive process, really are hidden, or are sometimes for things that are not even services or not even provided.

Mr. GARBARINO. I get that.

Mr. CHOPRA. We try and focus on where it is illegal, or fraudulent, but there are other places where you have a lot of honest banks out there competing on the upfront price and then others building a business model off of something.

Mr. GARBARINO. I understand that. My point is, if a contract says that if you are late paying your credit card statement, we are going to charge you \$25, and somebody is a week late, it is pretty straightforward.

Mr. CHOPRA. Yes. It also has to comply with Federal law.

Mr. GARBARINO. Of course, yes. I want to move on to something else. I want to talk about an issue, and it is related to the Fair Credit Reporting Act (FCRA) proposal and the data brokers. From what I understand, the CFPB is considering significant changes to the FCRA, including broadening the scope of what constitutes a consumer reporting agency to basically any entity that compiles and makes available consumer financial information, whether or not it is used for eligibility decisions. Currently, the Bureau's authority is limited to regulations that are necessary and appropriate to carry out the objectives of the FCRA. However, the SBREFA includes a broad and novel definition of, "data broker," which seems to contradict decades of regulatory guidance, case law, and congressional intent. It also creates conflicts with the KYC requirements.

Given those contradictions, where in the CFPB's limited rule-making authority does it have the ability to create the new definition of, "data broker?"

Mr. CHOPRA. Yes. I don't agree with what you just shared there. One of the pieces of input you all have given us is to try and avoid, where we can, regulation by enforcement. There are a lot of companies out there that meet the definition and activities of a consumer reporting agency. Yes, we could go and litigate it, bring enforcement actions. The goal is, in some ways, to provide some clarity about the business model of a consumer reporting agency, which now you have a lot of different firms that are collecting these dossiers on us, and to create a level playing field around it.

You mentioned the issue of KYC fraud. As I shared with Congressman Fitzgerald, we are taking that very seriously and looking at all of the uses of it. But I think we need to be careful about data brokers often compiling information about Americans and often selling our most-sensitive data to bad actors overseas, including to defraud people.

Mr. GARBARINO. I understand, but I just want to make sure, so you think you already have the authority, the CFPB already has the authority to do all this with the new——

Mr. CHOPRA. Yes, because we have to make sure that we are administering the Fair Credit Reporting Act, and if you look at even the legislative history——

Mr. GARBARINO. You believe you have it under the——

Mr. CHOPRA. Yes. We can't propose a rule on anything that we wouldn't have it.

Mr. GARBARINO. I understand. I think there is a disagreement of whether or not——

Mr. CHOPRA. We can talk about it. I am happy to talk about it.

Mr. GARBARINO. Okay. I appreciate that. I have another question, but I am down to 10 seconds, and I know I won't get it out. I will submit it to you for the record.

Mr. CHOPRA. Sure.

Mr. GARBARINO. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. Next, we have the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the ranking member as well, who is not here at this time, but I also thank Ms. Garcia. And I thank you for appearing today, sir. It is my belief that if we did not have the CFPB, we would need to create it, and what I would like to do is explore some of the rationale for my contention.

The staff has done an excellent job in providing intelligence. There is an indication that the agency has required financial firms that violate the law to pay more than \$4.1 billion in civil penalties. As a former litigator, I understand the difference between a class action and a small action. What would these persons have to do, if not for the CFPB, to collect this amount in penalties? What would they have to do without the CFPB?

Mr. CHOPRA. Yes. We have obtained, I believe, about \$20 billion in forfeitures. There is no way that people would have been able to get all of this on their own, and in some ways, Congressman, they may not have even known about the error or the mischarge. We have been using our complaints and sometimes can see the trends that it is not just 30 or 40, but it is 30,000 or 40,000, and I think we have had maybe tens of millions of people who directly benefited from those. And look, we should want a marketplace where people are playing by the rules, and we try and help firms that do, but where they don't, we do have to take action.

Mr. GREEN. I am proud that you do. Let's explore one additional area: illegal discrimination. We found that a certain bank—no need to mention the name—discriminated and was ordered to pay \$25.9 million. This type of litigation usually is long term, meaning it would be 3 to 5 years. This is what the consumer would have to suffer, just the time alone, and then to find a lawyer who would do this for an individual, you would have to have some deep pockets. Explain, if you would, as tersely as you would like, why it is so important that you engage in these illegal discrimination actions?

Mr. CHOPRA. Many times, people wouldn't even know they were the victim of it. In the case you mentioned, those individuals were given fake reasons why they were denied, but in reality, it was because they were Armenian American. They wouldn't have even

known to do it, and so we have to make sure that we are detecting it and taking action.

Mr. GREEN. I started with the premise that if we didn't have the CFPB, we would need to create it. Sadly, this Congress would never do it. Thank God, we have it now, because we couldn't get it if we didn't already have it. I yield back the balance of my time.

Mr. FITZGERALD. The gentleman yields back. We now go to the gentlewoman from California, Mrs. Kim.

Mrs. KIM. Thank you. And, Director Chopra, thank you for being with us today. From its inception, the way the CFPB was designed disregarded longstanding checks and balances. Under our Constitution, no one agency or person shall have absolute power to do as they please. Even the President is accountable to Congress and to the power of the purse, and the CFPB should not be the exception to longstanding constitutional rules. I think we agree on that.

And I do agree with the mission that consumers must be protected from bad actors. The CFPB, in the name of consumer protection, is being used to divert the public's attention from the real challenges faced by individuals and families. And the CFPB, under your watch, Mr. Chopra, has not addressed the root causes of indebtedness, of poor economic conditions for millions of Americans. And in your testimony, you highlight that for the first time ever, credit card debt eclipsed \$2 trillion last year, and you also mentioned the cost of high interest rates for consumers, but unfortunately, you don't mention inflation once in your testimony.

You are a member of FSOC, and so you should have been privy to discussions on how fiscal expansionary measures fueled inflation. If you recall, everyone in the Biden Administration was stating that inflation is transitory, when, in fact, we all know that it wasn't. Why did you fail to mention inflation in your testimony?

Mr. CHOPRA. Certainly, higher cost of goods—I think I specifically mentioned examples of it, I am happy to look back at it, and the examples of higher vehicle prices. There are certainly issues with higher home prices. Of course, prices and the rate environment, we do see both as being drivers. The rate environment, I think, has also, as mentioned by one of your colleagues, dramatically increased the price of new mortgage origination. So, they are both certainly something we think about in consumer financial products.

Mrs. KIM. Thank you. Since consumers had to pay more for goods and services, would you agree that inflation played a role in increasing indebtedness to Americans?

Mr. CHOPRA. If you look at the amount of household debt relative to net worth, we can share with you the trend lines, but it is not our job to really look at what exactly is happening with respect to each individual good. But we, of course, know that when there are higher prices, when there are higher rates, that is going to affect people, and certainly the Federal Reserve Board is the one that—

Mrs. KIM. Thank you. I mentioned that, because we had a peak of 9.1 percent inflation in 2022, I think around June, and that was the highest rate in 40 years, so I just wanted to point that out. I know Chairman McHenry mentioned this earlier, and I share his concern, because back in August of last year or this year, I led a letter with the Chair of our Financial Institutions Subcommittee,

Chairman Andy Barr, and there were 17 of my colleagues who sent a letter voicing our concerns regarding the announcement of the informal dialogue between the CFPB and the European Commission, and in that letter, we specifically asked the CFPB to brief this committee. I want to ask you again, will you commit to briefing this committee, because we want to ensure that the EU is not exporting their financial laws and regulations in the United States.

Mr. CHOPRA. Certainly. Let me be clear, we are not cutting and pasting anything from there. We are having a meeting, a series of meetings because many of the issues, particularly——

Mrs. KIM. I just need your commitment. We haven't gotten the briefing——

Mr. CHOPRA. Actually, if I could just finish——

Mrs. KIM. ——that we asked for.

Mr. CHOPRA. We face some serious global threats when it comes to some of the issues, particularly from bad actors based in China and Russia, and I do think that we need some global cooperation on this. Yes, we will brief you——

Mrs. KIM. Okay. Thank you.

Mr. CHOPRA. ——but we are having meetings with them.

Mrs. KIM. Then, we can have that further conversation——

Mr. CHOPRA. We are having meetings with them——

Mrs. KIM. ——when you come and brief us——

Mr. CHOPRA. ——because there are some very serious issues.

Mrs. KIM. Let me reclaim my time, because I do want to ask another question regarding the CFPB's SBREFA outline because on that, the FCRA proposal raised concerns about legal versus factual disputes, and there is considerable case law and supervision guidance around factual disputes because those questions can be determined by reinvestigation. The resolution of a legal dispute depends upon information that is generally not reported to a consumer reporting agency, so how could a credit bureau make a determination on a legal matter?

Mr. CHOPRA. Mr. Chairman, may I respond?

Mr. FITZGERALD. The gentlelady is out of time.

Mr. CHOPRA. We will answer for the record.

Mr. FITZGERALD. We can get that in writing, I am sure.

Mrs. KIM. Okay. Thank you.

Mr. FITZGERALD. What we are going to do is, because there is an open roll call going on right now, we are going to go to Congressman Flood, and then we are going to recess. We have four more members, but it should be very quickly because there are only two votes, and then we will come back in and finish with those four members. Next, we will recognize the gentleman from Nebraska, Mr. Flood.

Mr. FLOOD. Thank you to the very capable chairman from Wisconsin. Mr. Chopra, I would like to focus on the CFPB's recent rulemaking for larger participants in the market of digital consumer payments. This rulemaking covers a lot of ground, from third-party platforms used in small businesses across the country, to digital asset wallets. Let's start with the implications for digital assets.

When describing the supervisory authority that the Bureau's larger participant rulemaking would give to the CFPB, there is a

footnote explaining, and it says, “The CFPB’s supervisory authority is not limited to the products or services that qualified the person for supervision, but also includes other activities.” In my view, this footnote signals that the rulemaking will cover far more than the, “general use digital consumer payment applications.” Can you comment on the CFPB’s intentions surrounding the scope of this rule-making?

Mr. CHOPRA. I wouldn’t misread that. We are looking to make sure there is a level playing field between the banks and credit unions that offer these services and the large nonbanks. We already have enforcement authority over all of these entities that would be covered. It wouldn’t create any kind of new jurisdiction, but what we are doing is going through the rulemaking process to establish for certain larger participants, are they following the existing law? We could go through that process by an enforcement investigation. That is more adversarial.

I think this is a little bit more of a way to make sure that there are not harms, given some of them really are touching tens of millions of customers. But I think I hear the concern, which is kind of going outside of the jurisdiction, but we can only supervise and enforce the laws that Congress has specifically designated for us.

Mr. FLOOD. Given that the rule does not cover some digital asset transactions, like an investor purchasing bitcoin through a brokerage account, but does cover others, how would the CFPB distinguish between the different types of transactions conducted by the same digital asset wallet?

Mr. CHOPRA. Yes. We are going to have to deal with that. I think most of what we are going to be doing is focused on ones where it is really consumer payments. Inasmuch that they are doing two different activities, we have a lot of familiarity with how to do this. Many of our banks have broker-dealers affiliated with them. They have commercial businesses that we don’t cover, so when we do an examination, we explain we are covering the activities under Federal consumer financial protection.

Mr. FLOOD. Do you think the CFPB has Regulation E authority over transactions using a digital asset, like a stablecoin, to purchase a consumer good or service?

Mr. CHOPRA. The Electronic Fund Transfer Act covers the transfer of funds. There are certain exceptions for when it is for trading of securities. I think there are other exceptions there. Overall, when you have a consumer payment for household use, I think the case law would suggest that is covered, but we are collecting comments on this just to make sure, and we have been pretty judicious on this point. I have raised with Chairman McHenry and others that, inasmuch that you all enact anything, we will need to make sure that it is well-reflected.

Mr. FLOOD. I would like to quickly switch gears and discuss some of the non-digital asset implications of the rule. Given that third-party payment processing tools are popular among small businesses, how can you be sure that this rule wouldn’t result in some of the cost of compliance being passed down to these small businesses?

Mr. CHOPRA. The rule proposes only for larger participants, so we proposed a threshold for which we are getting comments, so it is

really not supposed to implicate small businesses, and it is really focused on those consumer payments. I will keep my eye out for that, but again, there is not any kind of new authority. We currently have enforcement and other authorities over these firms already.

Mr. FLOOD. I appreciate that. The cost-benefit analysis in this rule states that the Bureau lacks sufficient information to predict how compliance costs would be, "borne by providers or passed on to the consumers." However, you certified that the proposed rule would not have significant impacts on small entities, and therefore, the rule wouldn't need to go through the small business panel process. I have 20 seconds left, so quickly, how can you assert the rule will not have an effect on small businesses if the analysis fails to even attempt to weigh the rule's compliance costs?

Mr. CHOPRA. I think the proposal exempts small business.

Mr. FLOOD. Okay. I will look at that. Thank you, Mr. Chairman.

Mr. CHOPRA. I will let you know if it is something different.

Mr. FLOOD. Thank you.

Mr. FITZGERALD. The gentleman yields back. We will now take a brief recess.

[recess]

Mr. FITZGERALD. Director Chopra, thank you for hanging in there, and we will go first to the gentleman from Iowa, Mr. Nunn, for 5 minutes.

Mr. NUNN. Thank you, Mr. Chairman, and thank you, Director Chopra, for hanging in here. It is a marathon today, but it is important for all of us to be able to go through this.

I want to follow up on a number of items that were brought up from some local bankers in my community in Iowa. There are many folks in the Midwest who are trying to do the best they can to keep up with what seems like an ever-changing regulatory environment, and it puts both an economic burden on them as well as just a challenge to be able to support the customers and communities that I exist in. Some of the words that they have described to me in their dealings with your agency have been that the guidance is unclear. It is not always concise. In fact, sometimes it is conflicting. Some have called it partisan, and others have said that it is analytically weak.

To get us all on the same page here, I would like to just go over what the CFPB has that is unique to your organization, that is different from a lot of others. First, let's be clear: You are not under the appropriations clause, correct?

Mr. CHOPRA. The appropriations clause?

Mr. NUNN. Yes. You are funded by the Federal Reserve, not directly through any appropriations?

Mr. CHOPRA. The appropriations clause is in the Constitution.

Mr. NUNN. Right, and you are not under it, correct?

Mr. CHOPRA. Not right now.

Mr. NUNN. Yes. Second, you don't have an independent Inspector General, do you?

Mr. CHOPRA. Our Inspector General is with the Federal Reserve. They oversee both of us.

Mr. NUNN. They oversee the Federal Reserve, but you don't report to the Inspector General. They oversee the entire aspect of it. Do you have an executive board?

Mr. CHOPRA. No.

Mr. NUNN. Okay. I find the collection of those three things concerning, and that is an issue for Dodd-Frank that we can take up as we go forward. Now, when you and I last spoke, we came on the heels of roughly a quarter of a million Americans who had had their data hemorrhaged by the CFPB. I was hopeful that when we spoke in June, we were going to get a written after-action report on this. Has your office had the time to review this and provide any kind of written after-action report on what happened with that leak?

Mr. CHOPRA. Again, the misappropriation theft of data by an insider threat was completely serious. We are continuing to cooperate with all law enforcement related to that, including any criminal law enforcement. With respect to changes we have made, we are happy to brief you—

Mr. NUNN. I am asking you, Director, if you have provided a report to Congress on exactly what happened?

Mr. CHOPRA. We have complied with all of the pieces of it. If there are specific questions about what happened—

Mr. NUNN. I want to make sure this doesn't happen again.

Mr. CHOPRA. I do, too.

Mr. NUNN. Please provide us with a written after-action report on what occurred so we don't have this again. Thank you.

I want to turn now to Section 1071. I know it has been part of an ongoing conversation today, and you are statutorily obligated under Dodd-Frank to collect a number of data points. As I understand it, it has now swollen to 81. In fact, you have exceeded your mandate by about 25 points.

Mr. CHOPRA. Sorry. Just to be clear, that is not accurate.

Mr. NUNN. Okay. Please describe to me where I am incorrect?

Mr. CHOPRA. There are 81 data fields, so I am just going to give an example, which is not in the rule, but it helps to—

Mr. NUNN. I think that we can equivocate over how you want to call it.

Mr. CHOPRA. But if you—

Mr. NUNN. There are 81 different items that members who want to review this would have to fill out. Is that correct?

Mr. CHOPRA. Again, I am trying to explain that. There are not 81 different items. We create a template for how people can report. So if you have a first name, a middle name, a last name, and a suffix, in order for the data to be cleanly understood, that might count as five—

Mr. NUNN. So, there are a total of 81 different fields that need to be filled out. I am going to follow up on this because, again, you went above and beyond the requirement here by 25 additional requests. I want to understand how this information is going to be used. Let's be very clear here. Is this information going to be publicly available?

Mr. CHOPRA. There is not going to be personally identifiable information. We're going to—

Mr. NUNN. Will any of the information be publicly available?

Mr. CHOPRA. If you will let me finish, we are going to go through a process, just like exists in mortgage data, to figure out what type of—

Mr. NUNN. Director, are you going to provide this information publicly, or is it going to stay internal to the CFPB?

Mr. CHOPRA. As I just shared, just like the Home Mortgage Disclosure Act data, there will be certain analyses and data that will be made public, but that is years away.

Mr. NUNN. I believe it is the intent of the CFPB right now to potentially publicly shame a number of organizations, including my bank, Union State Bank, in East Peru, Iowa. It has 15 employees, a population of 200 citizens, and they have a very different profile than what may be in a place like Pittsburgh. But East Peru, for them, if they don't meet the standards that you have laid out here in your diversity and inclusion, there is a real chance that they could be publicly shamed.

Mr. CHOPRA. No, that is not true, but the data that will be used for the Community Reinvestment Act are not going to be duplicative data. I am out of time, but I am happy to take that question.

Mr. NUNN. I want to—

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

Mr. NUNN. I yield back.

Mr. FITZGERALD. Next, we will go to the gentlewoman from Texas, Ms. De La Cruz.

Ms. DE LA CRUZ. Thank you, Mr. Chairman, for holding this hearing today, and thank you, Director Chopra, for appearing before us today.

I serve a largely rural community, a Latino community in deep South Texas, south of San Antonio, and my constituents rely heavily on smaller banks, community banks, and credit unions. And this is really important for their livelihoods, and for the economic development of our communities. It worries me increasingly, as I hear from these community banks that your agency remains insulated and unchecked by Congress while creating rules that directly impact constituents in my area.

The rule that really concerns me is the 1071 rule. We have heard over and over today how it is going to affect community banks, how it is going to affect small business owners like myself, and, ultimately, who is most important are the consumers, the entrepreneurs. So, I hope that today you are hearing the message that the 1071 rule is just simply not working. It is not going to work for community banks, it is not going to work for communities that want to thrive, and it is not going to work for small business owners.

This seems to be an expensive endeavor for community banks to implement, not only with training for staff, but implementation of new software. For the people listening right now on C-SPAN, we are talking about going from 15 data points to 81 data points. That is an incredible increase, and what it is really doing is profiling customers who have never been profiled before. Not only is it going to take a significant amount of time to profile these customers, asking questions such as sexual orientation, which, remember, banking has been built on being able to look at a project, look at credit scores, look at debt ratios, and to be able to make an analysis away

and apart from profiling customers. Now, because of the 1071 rule, they are actually going to have to start implementing and profiling customers. I am worried about the costs that it is going to take to comply with the 1071 rule.

I want to know, do you recognize that this rule may result in less availability of credit to small businesses that it targets, particularly if it leads to smaller banks having to pull back from lending due to the costs associated to the 1071 rule?

Mr. CHOPRA. Let me just share with you what we saw during the Paycheck Protection Program (PPP), that actually the small community institutions you mentioned really punched above their weight class when it comes to serving small businesses. Many of them have those relationships, so we were under a court order to complete the final rule by March of this year. The CFPB was sued a few years ago for not doing the rule. We complied with the court order. We increased the loan threshold, which exempted a large number. I don't have the exact number of small banks, but, of course, I share with you that we want a robust and really fair small business lending market. This is really the fabric—

Ms. DE LA CRUZ. I am going to reclaim my time quickly here. When was the last time you actually spoke to a community bank about this rule?

Mr. CHOPRA. I have conducted sessions with, I think, every single bankers association represented in this committee and more. I think I have met now with thousands of community bankers, and you are right, many of them, in fact, do mention this and other issues. I have done branch visits as well in several places—

Ms. DE LA CRUZ. And I am going to reclaim my time again. I think it is more than just a couple of them or some of them. Every single community bank that I hear from says this is a problem, and this is going to create a lot of problems for not only the banks, but the consumers, the small businesses, and for the economic well-being and prosperity of our communities. I yield back.

Mr. FITZGERALD. The gentlewoman yields back. We now go to the gentlewoman from Indiana, Mrs. Houchin.

Mrs. HOUCHIN. Thank you, Mr. Chairman. Thank you to the ranking member. And thanks, Director Chopra, for your testimony and for being here on this long day.

Since you were last here a few months ago, the CFPB has continued to put forward what I view as politically-motivated rules that go beyond your statutory authority. Despite my colleagues and I making our concerns known to you at the last hearing, I still frequently hear from constituents about the lack of input on rule-making, the failure to tailor regulations towards smaller institutions, and an almost impossible-to-navigate landscape that comes from the CFPB's continued regulation by press release. It is beyond concerning, and we are going to continue to push on these issues.

Director Chopra, my colleagues and I have previously made our concerns known to you about the continued pattern of regulation by press release, and when that fails, regulation by enforcement. To one of my colleagues earlier in this hearing, you said that the Bureau has, "tried to articulate guidance through the various laws that we have enforced." How is a business supposed to know what guidance exists if they aren't made aware of any wrongdoing until

the CFPB alleges misconduct has occurred and forces a business to pay a fine?

Mr. CHOPRA. I don't think that is the case. I think that we try our best, and based on feedback from many industry groups, including the Consumer Bankers Association (CBA), to be able to publish information that answers questions about how to comply.

Mrs. HOUCHIN. I am glad you mentioned the Consumer Bankers Association. They recently reached out to me on Dodd-Frank Section 1034(c) and the advisory opinion that was recently published by the Bureau. They are concerned that it is difficult to understand, and it is vague in what is the scope of it and what isn't. It is a significant policy. Stakeholders are required to comply with this within 2 months. And I understand that the Consumer Bankers Association recently reached out to request a meeting with CFPB staff, but the CFPB rejected their meeting request. Why would your staff reject a meeting with an important stakeholder like the CBA, and will you ensure this is corrected so that industry stakeholders can engage with you and get a deeper understanding of what is required?

Mr. CHOPRA. You actually raised such a good example. Congress passed that part of the statute. That is law. It is the law of the land.

Mrs. HOUCHIN. My question is, why would——

Mr. CHOPRA. If I could finish.

Mrs. HOUCHIN. The question is——

Mr. CHOPRA. Instead of just bringing——

Mrs. HOUCHIN. I am reclaiming——

Mr. CHOPRA. ——an enforcement action——

Mrs. HOUCHIN. You are not answering my question, respectfully. Why would your staff refuse a meeting with the CBA, and will you ensure it is corrected so these stakeholders can engage with you to get an understanding——

Mr. CHOPRA. I am happy to look into that and make sure that——

Mrs. HOUCHIN. Will you, yes, ensure that you will meet with the CBA?

Mr. CHOPRA. I think our staff meets with associations all the time, but I will check into that for you.

Mrs. HOUCHIN. Will you commit that your staff will meet with the CBA?

Mr. CHOPRA. Sure.

Mrs. HOUCHIN. Okay.

Mr. CHOPRA. We will have someone meet——

Mrs. HOUCHIN. Thank you.

Mr. CHOPRA. They have meetings with us regularly.

Mrs. HOUCHIN. Perfect. I want to go back to this regulating by press release. Under what authority does the CFPB govern by press release, and why is it not clearly declaring rules and going through the appropriate regulatory and administrative processes, such as the APA?

Mr. CHOPRA. We are complying with the APA, and if you want to share more detail about, "regulation by press release," I don't even actually know what that term means. We put out regulations through the regulatory process. We have received feedback that we

should publish important developments, and yes, we do post information on our website.

Mrs. HOUCHIN. So until a rule is made final, any announcements you have made to the fact are not enforceable?

Mr. CHOPRA. No, the regulation and the statute is what governs it.

Mrs. HOUCHIN. Great.

Mr. CHOPRA. The press releases are there to say we are collecting comments. We have published this guidance. We have issued this report.

Mrs. HOUCHIN. So, you are not making enforcements based on rules that have not been promulgated 100 percent?

Mr. CHOPRA. We would not win those in court.

Mrs. HOUCHIN. But the question is not would you win them in court, but are you making enforcement actions?

Mr. CHOPRA. If you have a specific example of that, I am happy to discuss it with you, but we are often attempting to issue the guidance in response to industry questions. This is a program that Director Kraninger, my predecessor, started that we have continued. And I am happy to address real concerns wherever they emerge.

Mrs. HOUCHIN. Do you agree with the well-established principle that if an action is establishing a new obligation on covered entities, it must go through the notice-and-comment rulemaking process in order to be enforceable?

Mr. CHOPRA. The statute often creates the obligations. We often issue guidance to say this is really how we intend to supervise for it. It is for transparency. I am trying to also react to you are saying that there is regulation by enforcement. We are doing all these things to help avoid that.

Mrs. HOUCHIN. I just want to know if you are, and I would be happy to talk to you—

Mr. CHOPRA. We are complying with the Administrative Procedure Act (APA).

Mr. FITZGERALD. The gentlewoman—

Mrs. HOUCHIN. —further about this. I appreciate it.

Mr. FITZGERALD. The gentlewoman's time has expired. We now go to the gentleman from New York, Mr. Lawler.

Mr. LAWLER. Thank you, Mr. Chairman. Director, thanks for being here today, and you are here today at a time of significant economic concern, as concern continues over inflation, rising interest rates, and families struggling with expenses. I know some of my colleagues have alluded to significant concerns about the effects of regulations coming out of your agency and the potential cost-benefit analysis. And clearly, we have serious concerns about how you are ensuring the cost of regulations and other CFPB actions do not outweigh any potential benefit, particularly since those costs will likely be passed on to consumers.

The fintech sector has helped to provide credit access, particularly for low- and middle-income individuals, and many of these providers are also pioneering strong consumer protection. I am concerned that overly-broad regulations threaten to kill innovative, law-abiding fintechs, registration of nonbanks, for instance, or the 1071 small business lending rule. What kind of cost-benefit anal-

ysis is the CFPB engaging in to make sure that you are not harming vulnerable consumers in the name of protecting consumers?

Mr. CHOPRA. Certainly, with respect to rulemaking, we are under certain obligations to publish a regulatory flexibility analysis, including to look at where the costs are. Sometimes, when it comes to benefits, such as the benefits of getting a credit report corrected, or avoiding an illegal foreclosure, it can be hard to estimate, but we comply with all of that. And let me just share, I agree with you that we want all sorts of companies, particularly small and new ones, to be able to compete against the big guys, and ideally, rules, including laws that you pass, can be clear and even bright line so that there is no ambiguity about it. And sometimes we strive for that, but often the laws that are passed, new situations come up, and we are trying to figure out how to make sure that those small and nascent players can really compete to the benefit of everyone.

Mr. LAWLER. Are there instances where you could see low- and middle-income consumers being harmed by an overly-aggressive CFPB regulatory regime?

Mr. CHOPRA. Certainly, I have seen many instances. I used to be a Commissioner at the Federal Trade Commission, and that agency, many years ago, used to have a history of targeting small businesses who couldn't defend themselves, and strong-arming them into settlements, and that kind of fear, obviously, could impact those entrepreneurs and those consumers.

Mr. LAWLER. Do you see that happening now at the CFPB?

Mr. CHOPRA. No. Actually, one of the things we have done is we really try to focus, especially on the enforcement side, on repeat offenders, large players, those who know they were engaged in wrongdoing. We also make sure that in our supervision program, we are really tailoring it based on risk and not overburdening. Again, I take the feedback seriously. We always need to push ourselves to make sure that the system is serving everybody well, and there is fierce competition.

Mr. LAWLER. Previously, the CFPB's Office of Innovation was focused on encouraging consumer-friendly innovation by creating approved safe harbors, removing barriers to entry, and enhancing competition in the marketplace. In 2019, the CFPB rolled out several policies, including the Compliance Assistance Sandbox Policy and the No Action Letter Policy, to facilitate compliance and promote innovation. Just 3 years later, however, the CFPB rescinded these policies entirely. Why did the CFPB reverse its decision to help emerging fintech companies enter the market, especially considering the Bureau's focus on the importance of competition?

Mr. CHOPRA. Pretty recently, we have made sure that some of those programs are still doing work. We approved an application for those representing small banks on construction loans to do alternatives, and we are going through that process. Some of the programs you mentioned, we did a review of, and they basically did nothing to spur innovation or competition, and we found that the recipients of those letters were, in some cases, marketing themselves as endorsed or approved. So, I think what we are focused on is programs that affect lots of market participants, but don't crown one winner. Government shouldn't be picking winners and losers like that.

Mr. LAWLER. My time is expiring, so I yield back.

Mr. FITZGERALD. The gentleman yields back. We now recognize the gentleman from Florida, Mr. Donalds, for 5 minutes.

Mr. DONALDS. Director Chopra, how are you doing? It's good to see you again.

Mr. CHOPRA. It's good to see you, too, sir.

Mr. DONALDS. Okay. It has been a long day. Hey, listen, from what I understand, the CFPB is considering significant changes to the Fair Credit Reporting Act, including broadening the scope of what constitutes a consumer reporting agency to basically include any entity that compiles and makes available consumer financial information, whether or not it is used for eligibility decisions. The Bureau's authority is limited to regulations that are necessary and appropriate to carrying out the objectives of the Fair Credit Reporting Act. The Small Business Regulatory Enforcement Fairness Act outline includes a broad and novel definition of, "data broker," which seems to contradict decades of regulatory guidance, case law, and congressional intent. In your view, where is the CFPB getting the authority, under its limited rulemaking provisions, to create this new definition of a data broker?

Mr. CHOPRA. I am happy to share more information with you from the outline, but we have lots of data brokers assembling dossiers on all of us that are being used for a whole set of purposes, including sales to state and nonstate actors.

Mr. DONALDS. I understand that, but—

Mr. CHOPRA. We are trying to—

Mr. DONALDS. Hold on.

Mr. CHOPRA. Go ahead.

Mr. DONALDS. But, Director, where does the CFPB get the additional authority to make a rule around this or to expand that definition, because that is a congressional provision? That is not for an agency to make that determination.

Mr. CHOPRA. If it is a consumer reporting agency, and I shared this before, I think it is better for us to go through the process of explaining what are the indicia that would trigger these obligations. We can pursue it through an enforcement-only process, but we are studying the market to see how these consumer reporting agencies have evolved over time. We have lots of background screening companies, tenant screening companies, and others. They all comply.

Mr. DONALDS. I am well aware—

Mr. CHOPRA. That is what we are trying to do. We are only going to use the statute as Congress has written it.

Mr. DONALDS. I would say that sounds good, but looking at the history of agencies in Congress, when we are initially told, "we will only use it for," it is always expanded at some point in the future. That is my concern. But I want to switch gears.

Mr. CHOPRA. You should amend the statute, then.

Mr. DONALDS. Now, that is something that I think we probably would find agreement on—

Mr. CHOPRA. I totally support—

Mr. DONALDS. Congress should do its job and amend statutes as necessary.

Mr. CHOPRA. I totally support that, and it is easier for the agencies when you all agree on these privacy issues, emerging issues. We are very happy to work with you on them. It makes things easier.

Mr. DONALDS. I am going to reclaim my time.

Mr. CHOPRA. Sorry.

Mr. DONALDS. One thing I would say is that I think that if Congress actually takes its article on power seriously, which I think we should, we should go through and review a whole host of financial regulatory statutes to make sure that the credit raising and capital disbursement mechanisms of our economy are clear and not bogged down by red tape, which, unfortunately, has occurred over many decades, far before you and before me, and we have to get that cleared up.

One thing I want to discuss quickly is dealing with data breaches. It appears that the CFPB intends to include a strict liability standard with respect to data breaches or unauthorized accesses to credit report information by third parties. Do you think the compliance costs are overly burdensome on these institutions if, essentially, the institutions are going to have a strict liability standard tied to them?

Mr. CHOPRA. Yes.

Mr. DONALDS. It is not like the companies are begging to get breached.

Mr. CHOPRA. I think the question is often on unauthorized access. We have not proposed that. It is something that we are talking to the small entity representatives through the SBREFA process about how a set of data might be used or shared. There is sometimes an issue where they are sharing it, but then it says that it was unauthorized, so we are working through all of that before we propose—

Mr. DONALDS. Okay. The one thing I would vehemently stress is we should not be assigning strict liability standards to any of these institutions. Obviously, the regulatory burdens here in the United States of America are large enough as is. Applying strict liability over data breaches when it is clear that unless there is proof that the institutions actually invited the data breach on purpose, we should not be applying that level of liability to them. Nobody wants to see data breaches, I want to be clear on that, but we have to be careful and mindful of the fact that our financial institutions don't want that either.

Quickly, the Section 1071 rule compilation of data for minority- and women-owned businesses, and obviously understanding that we want everybody to have full access to capital in our economy, do you feel that the level of data being proposed in this rule is actually going to be more of a hindrance and a burden as opposed to opening up flows of capital in the United States?

Mr. CHOPRA. I am hopeful that, based on how we incorporated the comments, we complied with the statutory requirement, and there are lots of use cases for it, but we are doing exactly what Congress asked us to do.

Mr. DONALDS. I would argue that what Congress asked for under the Dodd-Frank Act was ridiculous, but that was another time. I hope to change that as well. I yield back, Mr. Chairman.

Mr. CHOPRA. Thank you.

Mr. FITZGERALD. The gentleman yields back. I would like to thank Director Chopra for his time today and his testimony.

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

I ask Director Chopra to please respond no later than December 29, 2023.

And with that, this hearing is adjourned.

VOICE. Good job, Mr. Chairman.

Mr. FITZGERALD. Thank you.

[Whereupon, at 2:53 p.m., the hearing was adjourned.]

A P P E N D I X

November 29, 2023

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

BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2023**

Statement Required by 12 U.S.C. §5492
The views expressed herein are those of the Director and do not necessarily reflect the views of
the Board of Governors of the Federal Reserve System or the President.

Chairman McHenry, Ranking Member Waters, and Members of the Committee, thank you for inviting me to this hearing to present the Consumer Financial Protection Bureau's (CFPB) submission of its Semiannual Report to Congress.

I am pleased to share that the CFPB has reached important milestones on critical priorities, including personal financial data rights and credit reporting, while continuing to enforce the law and deliver results for consumers and law-abiding businesses. Today, I will share some observations about household financial stability and highlight our progress on important areas of work.

As we enter the holiday season after a sustained period of high interest rates, the CFPB is sharpening its focus on the evolving patterns of household debt. Over the past few years, borrowing has accelerated across many key products, including credit cards and auto loans, and consumers are increasingly utilizing new ways to borrow, like buy now, pay later.

Americans now owe more than \$17 trillion in household debt. Total outstanding credit card debt eclipsed \$1 trillion last year for the first time since the CFPB began tracking it. Auto loans have grown quickly to an estimated \$1.6 trillion.

The CFPB's analyses have found that rates and fees are contributing to persistent credit card debt for a growing number of consumers. Americans paid \$130 billion in interest and fees on credit cards last year, while annual percentage rates rose far above the cost of offering credit. The CFPB is taking a number of steps to increase competition in this highly concentrated market.

The return to repayment for federal student loans continues to be an area of concern for many borrowers, causing families to reallocate funds toward student loans after a three-year pause. We are carefully monitoring the practices of loan servicers, given their influence on borrower outcomes. We will also be evaluating the effects of student loan repayment on consumers' other obligations to better understand the full impact of the return to repayment and the payment pause itself.

Outstanding auto loan debt has also grown, particularly given the higher cost of vehicles and higher interest rates. Auto loan payments are consuming a greater share of income for many consumers, and we are actively monitoring credit performance and repossession activity.

Residential mortgage activity has declined precipitously during the last few years, while interest rates, fees, discount points, and other costs have increased. The result is that homebuyers are paying much more: average monthly payments on 30-year fixed rate loans increased by more than 46 percent from 2021 to 2022. We believe these trends persisted during 2023 given the rate environment.

The CFPB is examining ways to facilitate more refinancing activity if and when prevailing mortgage interest rates subside to ensure that borrowers who experience financial distress can navigate alternatives to foreclosure and to streamline rules and procedures for servicers to offer loan modifications.

Since our last Semiannual Report, the CFPB has proposed a rule to accelerate the shift to “open banking” in the United States, giving consumers the ability to more easily switch to new providers, while taking care to safeguard their personal financial data. We have also initiated a process to improve accuracy and accountability in credit reporting, especially for data brokers. We are also taking steps to address widespread inaccuracies on Americans’ credit reports when it comes to medical bills.

The CFPB’s supervision and enforcement program is protecting both consumers and honest financial firms who must compete against those who egregiously violate the law. In the last two years, we have obtained orders totaling \$8 billion in victim redress and penalties. We have focused on large, repeat offenders. Families across the entire country are benefiting from this work.

The CFPB has also tackled the scourge of junk fees that have been creeping across sectors of the economy and interfering with normal market forces. We have even uncovered a number of illegal junk fee practices across consumer financial products.

As Director, I have made it a priority to ensure that the CFPB continues to modernize its approach to keep pace with a fast-changing financial services industry. The CFPB has shifted supervisory resources toward nonbanks to account for the significant role they play in financial services today. For example, in payments, Big Tech companies and nonbank payment apps have become ubiquitous in the United States. The CFPB has taken steps this year, including a proposed rule, to ensure that these companies adhere to the same rules as large banks, credit unions, and other financial institutions.

In August, our complaint database reached four million submissions. Every week, we send more than 20,000 complaints to companies for responses. I am proud of the CFPB’s work in getting consumers the resolutions they deserve, often through referrals from local organizations, Congressional offices, and many others.

Thank you for the opportunity to appear before you.

[BANK LETTERHEAD]

Barr
insert.**Federal Business Loan Data Collection Election Form**

Dear Customer:

The Consumer Financial Protection Bureau ("Bureau"), an agency of the Federal government, as part of your loan application process, directs our bank to obtain information about your business and its owners. We are required to send the information we collect to the federal government.

The information we collect, and provide to the federal government, includes: (i) the type and purpose of the loan or other credit being applied for; (ii) the amount of the credit or credit limit applied for; (iii) the census tract in which the principal place of your business is located; (iv) whether your business is women-owned, minority-owned, or a small business; (v) for certain applicants, the gross annual revenue of your business in the last fiscal year; (vi) the race, sex, and ethnicity of the principal owners of your business; plus (vii) any additional data that the federal agency administering this law directs us to collect.

Under federal law, 15 U.S.C. §1691c-2(f)(2)(B), the information shall be "made available to any member of the public, upon request, in the form required by regulations prescribed by the Bureau;..." Further, the information we collect shall "annually be made available to the public generally...in such form...as determined by the Bureau..."

It takes our bank time and expense to collect and report this data. If you direct us to collect and report this data to the Bureau, we will follow your direction and will charge you a federal data collection and processing fee of \$100 (example).

The law that requires us to collect the information also expressly states that you "may refuse to provide any information requested." 15 U.S.C. §1691c-2(c). Thus, we ask for your instructions. Your answer will not affect how we evaluate your request for credit. Please check one below.

☐ I exercise my federal right to refuse to provide information. Please proceed with processing my credit application.

☐ I want to provide you with the information the federal government wants to collect, and I agree to pay the \$100 (example) fee for your work in collecting and submitting it.

Customer Name_____
Signature and title_____
Date



November 27, 2023

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 O'Neill House Office Building
Washington, D.C. 20515

Dear Chairman McHenry and Ranking Member Waters:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled "The Semi-Annual Report of the Bureau of Consumer Financial Protection." We appreciate the committee's continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

Under the current leadership, the Bureau seeks minimal input from the industry it is responsible for overseeing. This is in contrast to the open dialogue that the banking industry experienced with multiple previous CFPB Directors, regardless of party affiliation. Furthermore, the current Director's nearly constant and public attacks on banks erode consumer confidence in the banking system and undermine efforts to bring more consumers into highly regulated and time-tested depository institutions. The Bureau frequently establishes new requirements for regulated depository institutions outside of the rulemaking process required by the Administrative Procedure Act (APA) though advisory opinions and press statements that do not have the same weight or clarity as a rule and leave banks seeking clarity to ensure they remain compliant to avoid negative repercussions, such as costly enforcement actions.

In this letter, we offer legislative and regulatory suggestions to lawmakers and the Bureau for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals. Topics discussed include:

- **Credit Card Late Fees Rule:** The CFPB should be required to conduct a rigorous cost-benefit analysis of this proposed rule and how it would affect (1) the cost and availability of credit, particularly with respect to non-prime borrowers, (2) the safety and soundness of credit card issuers, and (3) the use of risk-based pricing.
- **Section 1033 Rulemaking:** The Bureau's final Section 1033 rule should broaden the coverage of data providers, address liability more robustly, and meaningfully sunset the practice of screen scraping.
- **Overdraft:** The CFPB should hold off on an overdraft rule that would substantively change how banks offer overdraft services to their customers until other rules have been finalized and banks can assess the effects those changes will have on their ability to provide free checking.
- **Section 1034(c) Advisory Opinion:** The Bureau should withdraw its advisory opinion and propose it as a formal rulemaking pursuant to the APA.
- **Section 1071 Implementation:** The CFPB should provide at least 36 months for small business

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lenders to comply with the final rule.

Credit Card Late Fees

On February 1, 2023, the CFPB issued a notice of proposed rulemaking (NPRM) on credit card late fees that would drastically alter the rules on late fees charged by credit card issuers. Comments were due on May 3, 2023, and a final rule is expected to be issued in the coming months. This NPRM is part of the Biden Administration's overarching campaign regarding "junk fees," which seeks to reduce fees charged to consumers by several industries, including but not limited to hotel and lodging, transportation, and entertainment. Of note, the "war on fees" campaign received national recognition in the President's 2023 State of the Union Address—signaling unprecedented coordination between the CFPB and the White House. This degree of coordination between the CFPB and the White House—when viewed in light of the fact that the CFPB has refused to give industry sufficient time to provide data on credit card late fees and late payments in its responses to the proposed rulemaking, as well as the CFPB's decision not to utilize its market monitoring authority to engage in requests for information on this topic—suggest that the CFPB is not truly seeking meaningful responses or data, and instead has prejudged the outcome of the rulemaking and the amount of "consumer savings." This is further evidenced by the White House incorporating a presumed \$9 billion of consumer savings into its communications strategy.

Under current Federal Reserve regulations, (1) the credit card late fee safe harbor is \$30 for the first late payment and \$41 for a subsequent late payment, (2) these safe harbor amounts are adjusted annually for inflation, and (3) late fees cannot be more than 100% of the required minimum payment. The NPRM proposes to (1) reduce the safe harbor amount to \$8, (2) eliminate the annual inflation adjustment, and (3) cap late fees at 25% of the required minimum payment.

The long-term costs and impacts of this rulemaking on consumers are unclear. However, initial analysis from industry and even the CFPB suggests a majority of consumers could see their costs increase because of this proposal. As discussed below, the rule departs from traditional risk-based pricing practices required by prudential regulators, resulting in high cost of credit and reduced credit access for consumers who pay their bills on time. Banks are required by their prudential regulators to manage and offset credit risk, and severely limiting the ability for credit card issuers to discourage late payments and limit losses would reduce access to credit for consumers with subprime credit profiles.

While the CFPB and Biden Administration may frame this as "the rich subsidizing lower-income consumers" or "prime credit consumers subsidizing subprime consumers," the CFPB's own research shows that nearly 50% of subprime issuers pay their bills on time. The Bureau claims that this rule could help some credit card customers, but the proposal itself confirms that the Bureau lacks data analysis that is needed to truly understand its consumer impact. **The Bureau acknowledged that cardholders who never pay late—which the CFPB's own data indicates is 74 percent of all Americans with credit cards—¹ will not benefit from the reduced fees and could experience "...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits.**

¹ https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf



Additionally, **the proposed rule would reduce competition in the credit card marketplace by forcing some card issuers to exit the market entirely because they will be unable to cover the costs associated with funding card operations. Dramatically reducing the safe harbor would also provide a weak or nonexistent deterrent effect,** likely resulting in a greater share of late-paying and delinquent accounts, which may ultimately cause more consumers who have delinquent accounts to have negative information reported to credit bureaus, leading to lower credit scores.

Furthermore, the CFPB did not conduct a thorough analysis of the available economic research on the effects of late fees, and the little analysis that the CFPB did perform was not done in a transparent and consistent manner. Finally, a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel is required when a proposed rule will have a significant economic impact on a substantial number of small entities. CBA and other associations stated in their joint trades response to the ANPR on credit card late fees that a SBREFA panel should be required because “[o]f the approximately 824 credit card-issuing banks, more than half (452) have assets less than \$750 million, and of the 3,172 credit card-issuing credit unions, nearly 85 percent (2,682) have assets less than \$750 million.”² Even the Small Business Administration’s Office of Advocacy has raised concerns about the CFPB’s disregard for statutorily required economic impact analyses.³ Despite this, the Bureau has failed to hold a SBREFA panel.

In light of all of these concerns, the CFPB should be required to conduct a rigorous cost-benefit analysis of this proposed rule and how it would affect (1) the cost and availability of credit, particularly with respect to non-prime borrowers, (2) the safety and soundness of credit card issuers, and (3) the use of risk-based pricing.

Dodd-Frank Section 1033 Implementation

On October 19, 2023, the CFPB released its notice of proposed rulemaking (NPRM) to implement Section 1033 of the Dodd-Frank Act, which addresses consumers’ personal financial data rights.⁴ Comments are due on December 29, 2023, and the CFPB expects to finalize the rule in fall 2024. CBA has several fundamental concerns with the rule as proposed, and, accordingly, CBA urges the Bureau in the final rule to: (1) broaden the coverage of data providers, (2) address liability more robustly, and (3) meaningfully sunset the practice of screen scraping.

First, the scope of data providers covered by the rule remains too narrow. The proposed rule only covers insured depository institutions and credit card issuers, as well as “other payment facilitation providers.” CBA has urged the CFPB to adopt a broad scope of coverage not only for asset accounts, but also for credit products beyond credit cards, like captive auto loan accounts and non-bank credit alternatives, such as buy now pay later products. The CFPB has stated it will cover other consumer financial products and services through a supplemental rulemaking, though no time frame has been provided for such supplemental rulemaking and there will be little time after the finalization of the current rule for this CFPB to initiate a follow-on rulemaking.

² <https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-comment-letter-late-fees-anpr>

³ U.S. Small Business Administration Office of Advocacy, Letter to Rohit Chopra (May 3, 2023), <https://advocacy.sba.gov/wp-content/uploads/2023/05/Comment-Letter-CFPB-Credit-Card-Penalty-Fees-508c.pdf>.

⁴ <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/required-rulemaking-on-personal-financial-data-rights/>



The rule as proposed would massively increase the flow of consumer data without any real attempt to address liability for breaches. Under the Electronic Fund Transfer Act and Regulation E, banks would generally be held liable in most cases even if a third party accessing the consumer's data or third-party data aggregator suffered the breach, but consumers could also be liable for fraudulent or erroneous transactions in some instances. The CFPB's failure to engage in a more fulsome discussion of liability is surprising because the proposal already requires third parties to make certifications relating to a wide range of issues, so the CFPB could have required third parties accessing consumer data to certify that they will be liable for fraudulent and erroneous transactions resulting from a data breach of their systems or their vendors' and clients' systems.

The NPRM does not expressly prohibit screen scraping, and as drafted, it appears to permit third parties to bypass their obligations under the NPRM if they engage in screen scraping rather than accessing covered data through a developer interface. The CFPB has left it to data providers to detect and block screen scraping by third parties. The CFPB could have declared that it would be a violation of the rule if a third party screen scrapes information that could instead be accessed via a developer interface, yet the CFPB placed the onus on data providers to police third parties.

Moreover, industry has expressed significant concerns about the length of the comment period for the NPRM. The Bureau has provided only 70 days for industry to comment, yet offered at least 90 days for notice and comment at previous points in the Section 1033 rulemaking process. To ensure that a final Section 1033 rule is properly crafted and durable, the Bureau must provide a reasonable period of time for stakeholders to submit comments.

Beyond these concerns, there are serious questions about whether the Bureau has exceeded its authority under the Dodd-Frank Act. Section 1033 is half of a page of statute that discusses making data available to consumers in a usable electronic format, yet the CFPB has used this language to propose a rule requiring the banking industry to subsidize an open banking marketplace.

Potential Damaging Changes to Overdraft Policies

In its most recent rulemaking agenda,⁵ the Bureau listed a pre-rule item pertaining to overdraft services provided by financial institutions. Currently, little is known about the specifics of what such a proposal would entail, but the Bureau indicated it is considering treating overdraft fees as finance charges under the Truth in Lending Act (TILA) and Regulation Z.

Treating overdraft fees as finance charges would make it impractical, if not impossible, for depository institutions to offer overdraft services to their customers. Each overdraft would be considered an extension of credit, forcing financial institutions to provide consumers with a TILA disclosure regarding the specific transaction. The consumer would have to agree to the terms and the financial institution would have to approve the overdraft, all before a consumer could make an everyday purchase. When the Federal Reserve constructed Regulation Z almost 50 years ago, it intentionally excluded overdraft because it was clear that applying TILA and Regulation Z to overdraft would be impractical. At the time, overdraft was used mainly in the context of paper checks, as debit cards were not yet prevalent. Now, consumers use overdraft with debit purchases every day, making these near-constant disclosures wholly unworkable.

⁵ <https://www.consumerfinance.gov/rules-policy/regulatory-agenda/>



Making matters worse with this proposal is the fact that millions of consumers have significant short term financing needs, and eliminating overdraft as an option would direct them to sources of credit which are far more costly and less regulated than the banking industry. Research by Curinos⁶ has found consumers make highly informed choices about when to use overdraft services. Consumers, especially overdraft users, continue to demonstrate a deep understanding of overdraft and available alternatives. More than 60% of overdrafts come from consumers who intend to use the service, and more than 80% of overdraft transactions come from consumers who opted into debit card overdraft programs with the clear intention of using it to cover their payments.

Beyond that, according to the CFPB's own data, banks have made significant progress reducing overdraft fees by 48% since the beginning of the pandemic.⁷ Banks have proactively implemented new overdraft policies such as elimination of overdraft fees, elimination of account transfer fees to cover overages, de minimis exceptions to cover small overages, grace periods for customers to make accounts whole before overdraft fees are assessed, access to small dollar loans, elimination of extended overdraft fees, elimination of returned items fees, and more. Banks have accomplished this progress by competing with one another and innovating, resulting in highly tailored programs that are specific to the needs of their customers. A CFPB rule that would apply Regulation Z to overdraft services would likely undo all of the progress made by banks by forcing the banking industry into a one size fits all commodity product that will likely fall short of meeting consumers' liquidity needs. It would require significant retooling of the bank programs already in place, reduce competition and innovation, and ultimately harm consumers.

More recently announced changes to overdraft programs are projected to save consumers \$18.3 billion from 2021 to 2025, more than \$3.5 billion per year. Overdraft fees are projected to have declined by 82% since 2008, or \$167 of annual savings per U.S. adult.⁸ These developments demonstrate that additional heavy-handed overdraft restrictions are not necessary.

CBA also believes the CFPB should hold off on a rule for overdraft services until other issues such as changes to Regulation II's allowable debit interchange amounts have been finalized and banks can properly assess the effect such changes will have on their ability to provide free checking. Similarly, under the Basel III Endgame proposal, banks may have to hold capital against credit created under Regulation Z for overdraft services, applying even more pressure on their ability to offer cost-effective checking accounts. It would be helpful to give banks the ability to understand what those costs may be, which at this time is unknown, before undertaking what will certainly reduce banks' ability to provide quality checking products to their customers.

We also urge the CFPB to conduct a cost-benefit analysis that evaluates harm to consumers when they have to use non-bank services (or cannot access credit at all) when they are unable to access bank-offered overdraft services. These may include the cost of not making rent, missing a utility payment, or missing other important obligations.

⁶ <https://curinos.com/our-insights/competition-drives-overdraft-disruption/>

⁷ <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/>

⁸ <https://curinos.com/our-insights/update-competition-drives-overdraft-disruption/>



The Bureau's Advisory Opinion on Dodd-Frank Section 1034(c)

The Bureau has recently adopted the practice of issuing advisory opinions that, in some instances, effectively change bank practices and procedures without engaging in an APA rulemaking process. On October 11, 2023, the Bureau issued an advisory opinion on Section 1034(c) of the Dodd-Frank Act.⁹ The CFPB Director has confirmed on many occasions that guidance does not establish new regulatory requirements and does not have the force of law, but this advisory opinion establishes new obligations on covered entities and offers inadequate guidance for how to comply with those requirements. As such, this guidance should have been promulgated as a formal rulemaking pursuant to the APA. By outlining these requirements through an advisory opinion rather than a rulemaking, the CFPB has also bypassed performing a meaningful cost-benefit analysis of the impact these new requirements would have on industry and consumers. The murky, insufficiently detailed scope of what is covered by these requirements has generated significant uncertainty for industry in evaluating their compliance costs. To address both these deficiencies, it is necessary for the CFPB to withdraw its advisory opinion and instead promulgate these requirements through a formal rulemaking.

In the advisory opinion, the Bureau asserts authority to regulate and restrict fees, which the Bureau believes are "excessive," that financial institutions may charge for the provision of certain customer information. However, the statute does not require regulated entities to provide this information to customers for free, or state anything about fees—just that customers must be provided with the information upon request. Additionally, the guidance provides that a financial institution may not impose conditions for consumers' information requests that "unreasonably impede" the customer's ability to request and obtain account information— but this term does not appear anywhere in the statute. The Bureau instead reasons that imposing conditions that "unreasonably impede consumers' information requests" would be a violation of the obligation to "comply" with the consumer's request, and that requiring a consumer to pay a fee or charge to request this information is one type of action that would "unreasonably impede consumers' information requests." Beyond that, this troublesome advisory opinion addresses many other issues aside from fees, and the Bureau could attempt to apply it in a variety of other contexts. This is yet another example of the Bureau attempting to assert broad authority that Congress has not provided to it, and it warrants Congressional scrutiny.

Dodd-Frank Section 1071 Implementation

On March 30, 2023, the CFPB released its long-awaited final rule implementing Section 1071 of the Dodd-Frank Act.¹⁰ Section 1071 requires small business lenders to compile, maintain, and report information regarding loan applications made by woman- and minority-owned small businesses, with the goal of expanding access to credit in underserved communities. Implementation of these requirements is an enormous undertaking, so much so that some institutions may choose to terminate their small business lending programs altogether because of the compliance costs.

The most fundamental change that needs to be made to the final rule is an extension of the

⁹ https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf

¹⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/>



implementation deadline. The final rule requires larger lenders, defined as originating at least 2,500 small business loans a year, to collect 1071 data starting October 1, 2024, just 18 months after the final rule was issued. Two federal district courts have issued injunctions blocking implementation of the rule until the Supreme Court issues a ruling on whether the Bureau's funding mechanism is constitutional. These injunctions are expected to provide several months of additional time for lenders to comply with the rule, but **the current implementation period is not sufficient and the CFPB should extend the deadline to 36 months to ensure that small business lenders are not forced to pause their small business lending programs to come into compliance with the rule.**

Conclusion

The CFPB was established in 2011 by the Dodd-Frank Act, and there have been no significant changes to its structure or its rulemaking procedures since its inception. The Bureau has been a politically charged agency from the beginning, instead of a steady and consistent voice for consumer protection expected from a world class regulator. The consumer financial services marketplace thrives when the regulators overseeing the institutions that provide products and services to consumers and small businesses issue policies that are developed through a transparent and consistent regulatory process. Further, consumers are best protected when financial products and services are subject to consistent consumer protections, not frequent changes to regulation due to one particular ideological view. CBA stands ready to work with Congress and the CFPB to implement legislative and regulatory improvements to the Bureau to achieve these goals, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Johnson", written over a horizontal line.

Lindsey D. Johnson
President and CEO
Consumer Bankers Association

Remarks of CFPB Director Rohit Chopra at White House Roundtable on Protecting Americans from Harmful Data Broker Practices

AUG 15, 2023

Thank you to White House National Economic Council Director Lael Brainard and White House Office of Science and Technology Policy Director Arati Prabhakar for convening this roundtable on protecting Americans from harmful data broker practices.

The United States has a long history of recognizing the sanctity of protecting against unwanted intrusions into our homes and our lives. The Fourth Amendment protects against unreasonable search and seizures. State Peeping Tom laws prohibit looking into private places in person or through the use of devices. And there's many more examples of how our country has sought to create boundaries.

Today, "artificial intelligence" and other predictive decision-making increasingly relies on ingesting massive amounts of data about our daily lives. This creates financial incentives for even more data surveillance. This also has big implications when it comes to critical decisions, like whether or not we will be interviewed for a job or get approved for a bank account or loan. It's critical that there's some accountability when it comes to misuse or abuse of our private information and activities.

The Consumer Financial Protection Bureau is pleased to be part of an all-of-government effort to tackle the risks associated with AI. After conducting an inquiry into the practices of data brokers in the surveillance industry, we have decided to launch a rulemaking to ensure that modern-day digital data brokers are not misusing or abusing our sensitive data. During our formal inquiry, the CFPB learned more about the significant harms - from the identification of victims for financial scams to the facilitation of harassment and fraud.

11/29/23, 3:24 PM Remarks of CFPB Director Rohit Chopra at White House Roundtable on Protecting Americans from Harmful Data Broker Practic...

While these firms go by many labels, many of them work to harvest data from multiple sources and then monetize individual data points or profiles about us, sometimes without our knowledge. These data points and profiles might be monetized by sharing them with other companies using AI to make predictions and decisions.

In many ways, these issues mirror debates from over fifty years ago. In 1969, Congress investigated the then-emerging data surveillance industry. The public discovered the alarming growth of an industry that maintained profiles on millions of Americans, mining information on people's financial status and bill paying records, along with information about people's habits and lifestyles, with virtually no oversight.

Of course, today's surveillance firms have modern technology to build even more complex profiles about our searches, our clicks, our payments, and our locations. These detailed dossiers can be exploited by scammers, marketers, and anyone else willing to pay.

While there are many efforts to expand personal data protections at the federal and state level, particularly when it comes to AI, we also have to make sure we're using our existing laws on the books.

In 1970, Congress enacted the Fair Credit Reporting Act. The law covers a broad range of background reports assembled on consumers, even beyond those used for extending loans. The law granted people new rights and protections, including: (1) safeguards to ensure accurate information, (2) the right to dispute errors, (3) the right to access your own information, and (4) restrictions on how others can use your information.

To ensure that modern-day data companies assembling profiles about us are meeting the requirements under the Fair Credit Reporting Act, the CFPB will be developing rules to prevent misuse and abuse by these data brokers.

Two of the proposals under consideration are worth highlighting here:

First, our rules under consideration will define a data broker that sells certain types of consumer data as a "consumer reporting agency" to better reflect today's market realities. The CFPB is considering a proposal that would generally treat a data broker's sale of data regarding, for example, a consumer's payment history, income, and criminal records as a consumer report, because that type of data is typically used for credit, employment, and certain other determinations. This would trigger requirements for ensuring accuracy and handling disputes of inaccurate information, as well as prohibit misuse.

A second proposal under consideration will address confusion around whether so called "credit header data" is a consumer report. Much of the current data

11/29/23, 3:24 PM Remarks of CFPB Director Rohit Chopra at White House Roundtable on Protecting Americans from Harmful Data Broker Practic...

broker market runs on personally identifying information taken from traditional credit reports, such as those sold by the big three credit reporting conglomerates – Equifax, Experian, and TransUnion.

This includes key identifiers like name, date of birth, and Social Security number that are contained in consumer reports generated by the credit reporting companies. The CFPB expects to propose to clarify the extent to which credit header data constitutes a consumer report, reducing the ability of credit reporting companies to impermissibly disclose sensitive contact information that can be used to identify people who don't wish to be contacted, such as domestic violence survivors.

Any updated rules under the Fair Credit Reporting Act can be enforced by the CFPB and state law enforcement across sectors of the economy. The Federal Trade Commission, the Department of Transportation, the Department of Agriculture, and other agencies can enforce these rules for specific sectors under their jurisdiction.

The CFPB's data broker rulemaking will complement other work occurring across levels of government, especially by the FTC, which is leading so many efforts on privacy and data security.

Next month, the CFPB will publish an outline of proposals and alternatives under consideration for a proposed rule. We'll soon hear from small businesses, which will help us craft the rule. We are encouraging small businesses looking to participate in the process to contact us. We plan to propose the rule for public comment in 2024.

We look forward to obtaining public input on the proposals under consideration. More importantly, as AI increases the processing of sensitive personal data, we hope this will bring much-needed accountability to the dark corners of the data broker market.

Thank you.


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The CFPB Targets an Antiterror Tool - WSJ

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The CFPB Targets an Antiterror Tool

The FBI stopped an ISIS attack in 2015 using credit-header data, which the bureau wants to restrict.

By Stewart Whitson

Nov. 28, 2023 12:53 pm ET



The Consumer Financial Protection Bureau headquarters in Washington, May 14, 2021. PHOTO: ANDREW KELLY/REUTERS

I led an investigation for the Federal Bureau of Investigation that caught a terrorist plotting an attack on U.S. soil. The Consumer Financial Protection Bureau is moving to block access to an essential tool my team used.

The CFPB is considering a proposal that would effectively ban credit-reporting companies from selling credit-header data to law enforcement agencies. These data include identifying material such as a person's name, current and former addresses, Social Security number and phone numbers—but not financial information. The CFPB's proposal would force law-enforcement officers to subpoena this information—a process that can take weeks or months—instead of obtaining instant access.

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The CFPB Targets an Antiterror Tool - WSJ

Quick access is essential. In May 2015, a police officer killed two ISIS terrorists before they could carry out an attack in Garland, Texas. The FBI identified a third member of their group, Abdul Malik Abdul Kareem, who was plotting an attack in Arizona. While surveilling him, we saw him driving toward a house. Using credit-header data, we found the name and cellphone number of the man living in the house. A few hours after the suspect left the house, my partner and I called the occupant and arranged a meeting at a safe location. The man told us Mr. Kareem had tried to intimidate him. Earlier, the same man had unknowingly helped the terrorists find a location to train for the Garland attack. He became a key witness in our investigation.

Without the credit-header data, we might not have been able to contact the occupant for a while, giving Mr. Kareem more time to carry out his attack. Instead, we arrested Mr. Kareem in June 2015. He was sentenced in 2017 to 30 years in prison.

I worked on hundreds of terrorism-related investigations at the FBI, all of which relied on credit-header data. Why doesn't the CFPB want law enforcement to have quick access to this information? The agency didn't reply to my request for comment, but it seems to be taking action in response to a February letter from special-interest groups. The letter expressed concern that credit-header data could help police find people "who do not wish to be located," including "undocumented immigrants." I investigated many suspects who fit this description; terrorists certainly don't wish to be found.

It is legal for law enforcement agencies to access credit-header data as long as they are acting with a lawful purpose—such as investigating terrorists. If the CFPB moves forward, the process will become much slower. Law-enforcement agencies would have to request subpoenas from the local U.S. Attorney's Office, which would then need the blessing of a judge or grand jury. The subpoena would be served to the relevant credit bureau, which would mail the information to law enforcement.

Terrorists stand to gain the most from this cumbersome process. The threat of a terrorist attack is high, perhaps higher than it's ever been. Will the CFPB really make it more difficult to stop terrorists and save American lives?

Mr. Whitson is legal director of the Foundation for Government Accountability.

PATRICK McHENRY, NC
CHAIRMAN



MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rauburn House Office Building
Washington, DC 20515

December 8, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Director Chopra:

Thank you for testifying before the House Committee on Financial Services on November 29, 2023, at the hearing titled "The Semi-Annual Report of the Bureau of Consumer Financial Protection." Per the instructions announced at the conclusion of the hearing, Members submitted additional questions for your response. Please respond to the questions below and submit your response by December 29, 2023.

Should you or your staff have any questions or need additional information, please contact Rachel Collins at (202) 225-7502.

Sincerely,

A handwritten signature in blue ink that reads "Patrick McHenry".

Patrick McHenry
Chairman

Rep. French HillLarge Participants Rule

- The recent Large Participant proposal argues that the CFPA’s definition of “funds” includes digital assets but then provides an exception to the definition of a “consumer payment transaction” for those made “for the purpose of exchanging one type of funds for another.”
 1. Could you provide a more thorough explanation of the CFPB’s thinking around what’s covered and not with respect to crypto transactions?

Response:

It’s critical that federal regulators appreciate the dynamic nature of our financial markets. Today’s market for consumer payments is no exception.

The CFPB published a Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications to conduct supervisory examinations of larger players in the market for general-use digital consumer payments. Some of these firms touch more consumers than the bulk of banks and credit unions currently subject to examination.

Our notice of proposed rulemaking seeks to provide clarity and an even-handed approach for payments made for personal, family, or household purposes.

With regard to the specific exclusion you note, the proposed rule provides examples of transactions that would be excluded, including: “transactions consumers conduct for the purpose of exchanging one type of funds for another, such as exchanges of fiat currencies (i.e. the exchange of currency issued by the United States or of a foreign government for the currency of a different government), a purchase of a crypto-asset using fiat currency, a sale of a crypto-asset in which the seller receives fiat currency in return, or the exchange of one type of crypto-asset for another type of crypto-asset.” However, no final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.

2. Is it fair to say that fiat-to-crypto and crypto-to-crypto trading activity on an exchange wouldn’t be covered? So large crypto trading platforms would probably be excluded from the rule?

Response:

The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications would define a market for general-use digital consumer payment applications that would cover specific activities. The proposed market definition generally includes nonbank covered persons that provide funds transfer or wallet functionalities through a digital application for consumers’ general use in making consumer payments transactions as defined in the proposed rule. The proposed rule defines “consumer payment transactions” to include payments to other persons for personal, household, or family purposes. That

definition excludes certain transactions, including purchases of crypto-assets using fiat currency, a sale of a crypto-asset in which the seller receives fiat currency in return, or the exchange of one type of crypto-asset for another type of crypto-asset. However, no final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.

3. Would two people transferring digital assets between their own self-custodied wallets, off-exchange, be covered?

Response:

The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications seeks comment on the two criteria that comprise its proposed test for larger participant status – a 5 million annual transaction volume threshold and a small entity exclusion. In general, activities conducted by individuals in consumer finance markets usually would not be substantial enough to render individuals a “larger participant” subject to supervision under the relevant larger participant rule. However, no final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.

4. Would payment applications that allow people to buy goods or services using crypto, including stablecoins be covered?

Response:

The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications sets out a market definition to ensure clarity of coverage. Accordingly, under the proposed rule, there is no exclusion for payments for goods or services using funds in the form of crypto assets. That said, crypto assets are not a focus of the proposed rule and today's digital asset market largely operates outside of consumer payments. The CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.

5. Do you think the CFPB has Reg E authority over any crypto transactions, including those just described?

Response:

The Electronic Fund Transfer Act (EFTA) and Regulation E lay out the types of electronic fund transfers that are covered. In many cases, this is quite fact-specific and may involve certain exemptions. The CFPB is constantly looking for ways to provide guidance to market participants and we welcome your advice here.

- The proposal also mentions that the Bureau's supervisory authority extends to the service providers of the larger participants it oversees, which ostensibly includes the nonbank providers of digital wallets and payment apps. In fact, it states that “there are likely hundreds of service providers to potential larger participants on the proposed market, particularly in light of the market complexity.”

1. Did the Bureau consider any particular type of service provided to the nonbanks in

proposing this rule?

Response:

As explained in the proposal, the Consumer Financial Protection Act (CFPA) authorizes the CFPB to supervise service providers encompassed by CFPA section 1024(a)(1), which includes larger participants of markets for consumer financial products or services defined by rule.

2. Are there specific types of services that give you particular concern?

Response:

The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications would not address service providers.

1033

- I'd like to follow up on my line of questioning during the November 29th hearing. In my questioning, I was trying to ascertain your position as to who should bear the liability in the case of a data breach under the Beau's 1033 proposed rule. It sounds like you and I agree that if one financial institution or data aggregator receives a customer's data from another financial institution, and then subsequently suffers a data breach while in possession of that data, the receiving institution should be liable for the breach. In your testimony, you seemed to indicate that there were certain challenges to including this concept within the proposed rule.
 1. Please outline the challenges you see in spelling out liability in the rule, as well as what your overall intention is within the rule of assigning liability.

Response:

The Proposed Rule on Personal Financial Data Rights would greatly mitigate issues related to data breach liability by moving the open banking system in the United States away from risky data collection practices such as credential sharing and screen scraping.

Under the proposed rule, data providers would be obligated to make a secure developer interface available for third parties to access data with consumer authorization and would not be permitted to rely on credential sharing or screen scraping to comply with this obligation. The proposed rule would also allow data providers to deny interface access to third parties based on particular concerns related to risk management and data security obligations. It would also require third parties to make specific commitments to consumers about their data security practices. However, no final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal.

Rep. Mike Lawler

Cost-Benefit Analysis:

- At your hearing before the House Financial Services Committee last week, I asked you about the cost-benefit analysis that the Bureau utilizes in assessing its rules, and you indicated that the Bureau follows the requirements under SBREFA. My understanding is that SBREFA only requires the CFPB to look at cost-benefit analysis as it applies to small businesses. However, the CFPB's rules impose costs on consumers and on other financial and non-financial institutions. Does the Bureau have any formal mechanism to obtain information about the costs and benefits aside from that received during the formal outside comments received as part of the notice and comment process? Does the Bureau do any independent analysis aside from that required by SBREFA? If not, then how does the Bureau assess and balance the costs and benefits of the rule on all affected parties?

Response:

The CFPB's rulemaking process adheres to the Administrative Procedure Act (APA).¹ The process used considers estimated costs and benefits of a rulemaking, including implementation. It is CFPB policy to provide for open development of rules and to encourage full public participation in the rulemaking process. Consistent with the APA, the information that the CFPB relies on in formulating a proposed rule is described in the Federal Register notice published in conjunction with a rulemaking.

- I am very concerned that the Bureau's apparent lack of a cost-benefit analysis means that it is not adequately considering the benefits of enabling credit access to consumers – particularly subprime consumers – against concerns about the cost to consumers. During your analysis of proposals related to consumer lending, how does the Bureau weigh such benefits and costs?

Response:

Section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 requires the CFPB to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets, and the impact on consumers in rural areas. The CFPB fully complies with this requirement.

- You also indicated in your testimony that there is apparently no effort or requirement for the Bureau to assess costs or benefits of a cumulative set of rules, including those that may conflict with rules from other agencies/regulators. Do you believe there is no legitimate concern from the

¹ 5 U.S.C. § 553(c) (APA) and the Regulatory Flexibility Act. 5 U.S.C. ch. 6 § 601 et seq.

cumulative impact of multiple rules that at least warrants an analysis of the costs and benefits as new rules are added?

Response:

The CFPB invests in soliciting public and stakeholder input and complies with all statutory and regulatory requirements when issuing rules, including the Administrative Procedure Act, and each proposed rule the CFPB issues contains a detailed cost-benefit analysis.

Bank-Fintech Partnerships

- At the hearing, you stated that you supported the goal of having small and new players compete with big companies. What role do you see small banks and their responsible fintech partners playing to better compete with larger, entrenched financial institutions?

Response:

Promoting competition and preserving relationship banking have been key priorities for me. The CFPB has held sessions with small banks and credit unions throughout the country to discuss the stumbling blocks they face when challenging large incumbents. Many report that they offer products and services with superior rates and features, but often cannot get to market because of hurdles imposed by dominant providers.

The CFPB is approaching this problem on multiple fronts, including lowering the costs of switching providers through the proposed Personal Financial Data Rights Rule. We are also engaging with small financial institutions exploring partnerships with technology providers that allow them to enter new markets, like credit cards. When done in a responsible way, this will help local institutions grow and diversify their revenue models, while also promoting competition.

- What type of hurdles exist, if any, to small banks partnering with innovative fintech companies? And what, if anything, is the CFPB doing to help identify and reduce those hurdles?

Response:

One significant hurdle that many small banks face when partnering with certain tech partners is their ability to conduct adequate due diligence. This is particularly true when it comes to large tech partners, like cloud service providers and core service providers. We are working on many fronts to deal with these issues. The CFPB is co-leading an effort with the private sector on issues associated with cloud service provider implementations. We have also worked with our Community Bank Advisory Council and Credit Union Advisory Council to address core service provider concerns. When it comes to partnerships with nonbanks, we are working on a number of fronts, including providing relevant guidance on a range of topics.

- What benefits exist, in your opinion, from bank-fintech partnerships?

Response:

When conducted responsibly, small banks can leverage technology, including partnerships, to lower their costs of customer acquisition and manage risk, while also providing needed competitive pressure on large entities.

Small Dollar Credit:

- What is the CFPB doing to encourage banks to expand small-dollar lending in a responsible manner?

Response:

I appreciate this question. Expanding access to small-dollar loans has long been a goal for those who care about financial inclusion. I have closely looked at this issue, and I am not optimistic about banks extending small-dollar loans on a non-revolving basis at scale. However, the bulk of small-dollar loans in the United States are actually originated through revolving lines of credit. These revolving lines, such as credit cards and overdraft lines of credit, can be offered at scale and can leverage widely used payment networks. We are looking at a number of ways to identify the roadblocks banks face when expanding into this type of lending.

Rep. Josh Gottheimer

1. Director Chopra, I hear from my constituents that they appreciate having the CFPB as the “cop on the beat” to protect them from financial harm. I also hear that they find it hard to follow the rules of the road when the speed limit isn’t posted. The CFPB announced a few months ago that it had provided the GAO with information explaining how it identifies risks posed to consumers by non bank financial institutions. Would you share that information with my office?

Response:

The CFPB has instituted an updated systemic process for understanding, prioritizing, and responding to identified risks. The CFPB’s submission to GAO described this process for the divisions to conduct risk-identification activities and provide information on a regular basis to the Director’s Office.

Rep. Ann Wagner

1. Director Chopra, during our exchange regarding the CFPB’s Credit Card Late Fee Notice of Proposed Rulemaking (“Late Fee NPRM”), I asked you about whether consumers who pay their bill on time will have to pay more, to subsidize the small fraction of cardholders who pay late. You indicated that consumers who pay on time would *not* have to subsidize those who pay on time.

However, the Late Fee NPRM states the opposite, noting that “[c]ardholders who never pay late will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response”.¹ The CFPB has not qualified the magnitude of these changes, despite, again, admitting that they are likely.²

In response to my questions about issuers raising costs to recover loss late fee revenue, you noted that the “vast majority of the market” uses risk-based pricing. In particular, you explained that card issuers engaging in risk-based pricing can use penalty pricing by charging consumers more if they pay late.³ However, contrary to your response to my question, the CFPB recently indicated that issuers do not rely on this type of penalty pricing. Further, the CARD Act report even says the CFPB will scrutinize card issuers to determine if they use penalty pricing in the future.⁴

¹ 88 Fed. Reg. at 18,934-35 (“Sophisticated consumers, inasmuch they would have been cross-subsidized by naïve customers’ costly mistakes, may pay higher maintenance fees or interest or collect fewer rewards if the issuer offsets the revenue lost to naïve consumers. The Bureau considers that to the extent there are offsetting changes to card terms, some of these changes are likely but has not quantified their magnitude...”).

² *Id.*

³ The CARD Act, as implemented by Regulation Z, permits the “delinquency exception” where issuers increase rates when a consumer does not pay at least the minimum periodic payment within 60 days after it is due, *see* 12 C.F.R. § 1026.55(b)(4).

⁴ *See* Consumer Fin. Prot. Bureau, The Consumer Credit Card Market Report, 7, 57 (Oct. 2023).

The CARD Act report indicates that CFPB will monitor for reliance upon penalty repricing ⁵, but your testimony suggests that the CFPB encourages issuers to use this practice. Please clarify these conflicting statements.

- In lieu of late fees, does the CFPB encourage issuers to rely on penalty repricing for consumers who pay late?
- If so, does the CFPB plan on re-issuing the Late Fee NPRM to analyze the benefits and costs of this alternative relative to the existing late payment fee safe harbor?

Please describe how the CFPB sees risk-based pricing in the credit card market.

- Other than penalty repricing, what other tools does the CFPB encourage card issuers to effectuate risk-based pricing with their products?

The Late Fees NPRM indicates that APRs will rise for consumers who pay their bill on time.⁶

- Has the CFPB modeled how much APRs will rise, how much credit card reward benefits will decrease, or other tangible costs that consumers who pay their bill on time will incur?
- Does the CFPB believe it is fair to give short-term preferential treatment to a small minority of frequently late paying consumers at the expense of the vast majority of consumers who pay their bill on time? What about the 50% of subprime cardholders who pay their bill on time?

Response:

The CFPB will carefully review all data gathered as a part of the rulemaking process for the Credit Card Penalty Fees proposed rule. The CARD Act provides two exceptions to the limits on increasing consumers' APRs – including for underlying index increases and delinquency exceptions. The CARD Act report described the CFPB's findings that while the Federal Reserve rate increases triggered upward repricing on most general-purpose cards, issuers continued to price well above the prime rate. The CFPB monitors many aspects of the credit card market, including issuer practices related to late fee assessments, reliance on penalty repricing, debt collection practices, disclosures and other practices.

2. According to the Department of Justice, in 2020 just one of the large data aggregators was connected to more than 200 million consumer bank accounts. Until the CFPB actually bans screen scraping, data aggregators will continue to be a honeypot for cyber-attacks that puts millions of consumers personally identifiable information at risk. How can you ensure that consumers are protected from this risk?

Response:

In the Proposed Rule on Personal Financial Data Rights, the CFPB proposed a variety of measures to mitigate unauthorized transfer and privacy risks to data providers and consumers, with the goal of giving consumers more control over their financial lives and ensuring more security protections for sensitive financial data. Many companies currently access consumer data through screen scraping, which often requires people to share their usernames and passwords with third parties. This proposal seeks to move the market away from these risky data collection practices and help drive market adoption of safer data sharing practices. The CFPB is carefully considering all comments received in response to the proposed rule.

3. I was pleased to see that the CFPB's 1033 proposal "would require third parties to certify to limit their collection, use, and retention of covered data, including limiting the duration and frequency of collection and the provision of data to other third parties, to what is reasonably necessary to provide the consumer's requested product or service." Do the use and retention restrictions apply to data that third parties or data aggregators have collected before the rule is effective?

Response:

The Proposed Rule on Personal Financial Data Rights is aimed at ensuring that third parties access covered data for the consumer's benefit, that consumers retain meaningful control over their data when authorizing third party access to that data, and that consumers are best-positioned to understand the scope of that authorization and not reluctantly acquiescing to data collection, use, and retention that they do not want. The CFPB is carefully considering all comments received in response to the proposal, including with respect to implementation.

⁵ *Id.*

⁶ *Supra* note 1.

Rep. Andrew Garbarino

Question 1. Director Chopra, your agency recently published a rule to implement Section 1033 of the Dodd Frank. Within that proposal, your agency seeks to allow consumers to access and share data from their savings accounts, checking accounts and credit card data. This is a limited subset of what most consumers consider their financial information and excludes very important consumer financial information such as mortgages, car loans and investment data. Your press release announcing the proposed rule even acknowledges this by stating that the Bureau "... intends to cover additional products and services in future rulemaking." It has taken you over four years to get this far - how are you going to speed up the process to allow consumers to access other types of financial information in the near future?

Response:

The CFPB has found that transaction data from a consumer's deposit accounts and credit card accounts are critical to facilitating open banking, and that transactions from other products and services, like mortgages, are often reflected in these covered accounts. Therefore, in the Proposed Rule on Personal Financial Data Rights, the CFPB preliminarily determined that the scope of the proposal should cover those accounts to advance competition goals across a broader range of markets. The CFPB is carefully considering all comments received in response to the proposal.

Question 2. Director Chopra, the intent of Dodd-Frank Section 1033 is to put consumers in control of their financial information and empower them to decide who can access their data and for what purposes. Yet, in the proposed rule that your agency released, it actually takes this power out of their hands by including language that defines how their data can be used as well as explicitly defining how it cannot. Do you feel that U.S. consumers are not able to adequately decide what's right for them? Is the Bureau in a better position to determine what's right and what's not for all U.S. consumers?

Response:

It is critical that open banking in the United States not become a haven for misuse and abuse of data. Consumers should be able to provide their personal financial data in connection with a specific financial service without having that data harvested and used for unrelated purposes. The Personal Financial Data Rights proposal seeks to give consumers meaningful control over how their data is used and shared. The CFPB solicited feedback on the appropriate restrictions on uses of data and are carefully considering all comments received in response to the proposal.

Question 3. Director Chopra, your agency recently announced plans to significantly change the Fair Credit Reporting Act (FCRA) rules (Regulation V). Unlike other large rulemaking activities, the Bureau did not issue an Advanced Notice of Proposed Rulemaking (ANPR) to collect the perspective of those that would be impacted by these changes. Why is that? The changes to FCRA that you are proposing could increase consumers' susceptibility to financial fraud and inhibit the financial services sector's ability to innovate by essentially declaring anyone that

touches consumer financial data a data broker. I also understand that these changes run counter to your Dodd-Frank 1033 rulemaking that seeks to let consumers determine when and how their financial information is used. How are you ensuring that all of these rule changes are aligned with each other and don't have unintended consequences?

Response:

In conjunction with the rulemaking, the CFPB will consider potential consequences of the rulemaking for consumers and for entities that participate in the credit reporting ecosystem. Prior to proposing or finalizing any new regulation, the CFPB analyzes the potential costs and benefits of the regulation pursuant to section 1022(b)(2) of the Consumer Financial Protection Act and analyzes potential impacts on small entities pursuant to the Regulatory Flexibility Act. Many of the Healthcare Financial Management Association and American Association of Healthcare Administrative Management member hospitals have reported to the CFPB that they no longer have their collection agencies furnish medical debt to credit reporting companies, and medical debt collectors have also told us that many hospitals no longer require such furnishing. Further, any CFPB rulemaking to amend Regulation V, which implements FCRA, would be subject to public notice and comment.

Rep. Andy Barr

1. The CFPB is using its authority to supervise financial institutions that it decides pose risks to consumers.

- a. Could you please tell us what you mean by "risk"?

Response:

In the Consumer Financial Protection Act of 2010, Congress authorized the CFPB to supervise a nonbank financial company where the CFPB has reasonable cause to determine, after giving the company notice and a reasonable opportunity to respond, that the company is engaging, or has engaged, in conduct posing risk to consumers.² Such conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. The CFPB may base such reasonable cause determinations on tips, complaints collected by the CFPB, or on information from other sources, such as judicial opinions and administrative decisions. The CFPB may also learn of such risks through whistleblower complaints, state partners, federal partners, or news reports.

- b. In response to a GAO report that came out in 2018, the CFPB announced in September that it provided the GAO with information and documents relating to

² 12 U.S.C. 5514(a)(1)(C).

how it identifies consumer financial risks. Would the CFPB be willing to provide that same information to the Committee?

Response:

The CFPB has instituted an updated systemic process for understanding, prioritizing, and responding to identified risks. The CFPB's submission to GAO described this process for the divisions to conduct risk-identification activities and provide information on a regular basis to the Director's Office.

2. You've stated concern that consumers might not understand the credit products that they are using. Under your leadership, how much testing has the CFPB conducted evaluating consumer understanding of loan products?

Response:

Part of the core function of the CFPB is researching the consumer experience with financial products and monitoring financial markets for new risks to consumers. Specifically, the CFPB prepares reports on a variety of subjects including financial well-being, consumer complaints, debt collection and lending practices, mortgage origination and servicing, payday lending, among others. The CFPB has developed and continuously maintains financial education programs and products that support the ability of consumers to spot risks and warning signs. For instance, Ask CFPB is an online educational tool that provides answers to common questions about consumer financial products and services. Since its launch, the Ask CFPB portal has provided answers to over 48 million unique visitors. The CFPB also regularly conducts user testing when making changes to improve consumer facing resources on the website.

Our work has highlighted that not all traditional installment loan products are easy to understand. For example, in August 2023, the CFPB sued a high-cost installment lender, as well as several of its subsidiaries for illegal loan-churning practices that harvested hundreds of millions in loan costs and fees.³ Many of the borrowers were either older Americans living on fixed incomes or were single-parent wage earners. And in May 2023, the CFPB ordered an installment lender to pay \$20 million in redress and penalties for failing to refund interest charged to 25,000 customers who cancelled purchases within a purported "full refund period," and for deceiving borrowers about needing to purchase add-on products to receive a loan.⁴

In May 2023, the CFPB also released a research report on medical payment products – including specialty medical credit cards and installment loans – which found that promotion and use of these products is growing.⁵ The research shows that these payment products typically have less favorable terms than other general credit products and can encumber patients with significant amounts of deferred interest.

3. Does the CFPB conduct cost-benefit analysis with each CFPB action? Do you make that analysis public including any source date, and if not, why not?

³ <https://www.consumerfinance.gov/enforcement/actions/heights-finance-holding-co-aka-southern-management-corporation-et-al/>.

⁴ <https://www.consumerfinance.gov/enforcement/actions/onemain-financial-holdings-llc-et-al/>.

⁵ <https://www.consumerfinance.gov/data-research/research-reports/medical-credit-cards-and-financing-plans/>.

Response: Yes, each proposed rule the CFPB issues contains a detailed cost-benefit analysis.

4. Do you agree with the well-established principle that if an action is establishing new obligations on covered entities, it must go through the notice-and-comment rulemaking process?

Response:

The CFPB invests in soliciting public and stakeholder input and complies with all statutory and regulatory requirements when issuing rules, including the Administrative Procedure Act.

5. In a recent statement you suggested that big banks, contrary to the wishes of their customers, have abandoned relationship banking. What evidence do you have that banks are not filling the needs of their customers?

Response:

As documented in the most recent CFPB Consumer Response Annual Report, the CFPB analyzed roughly 1,287,000 consumer complaints received in calendar year 2022.⁶ Reports from consumers show the decline of relationship banking has deprived some consumers of customized advice, responsiveness, and care. Customers report a struggle to obtain basic information and poor customer service, including that it takes too long to get problems solved, that they have to repeat information to multiple people, and that employees aren't knowledgeable about their situation.

Personal Data Rights Rulemaking (Section 1033)

6. I want to commend you on your decision to include a phased-in approach for smaller entities as it relates to your recent rulemaking on Section 1033. I know first-hand how vital small and local banks are to our constituents, and the impact that each small bank closure has on the communities they serve. Would you briefly describe this on ramp and discuss in greater detail how CFPB made its decision with respect to smaller financial institutions?

Response:

The CFPB has proposed staggered compliance dates for when a data provider is required to grant access to the interface required under the Proposed Rule on Personal Financial Data Rights, to consumers and third parties, based on asset size or revenue, and the type of data provider it is. Under the proposal, a data provider would fall within one of four compliance dates: six months, one year, 2.5 years, or four years.

- *Depository institutions that hold at least \$500 billion in total assets, and nondepository institutions that generate at least \$10 billion in revenue in the preceding calendar year or are projected to generate at least \$10 billion in revenue in the current calendar year would be provided approximately six months to comply.*
- *Depository institutions that hold at least \$50 billion in total assets but less than \$500 billion in total assets, and nondepository institutions that generate less than \$10 billion in revenue in the preceding calendar year and are projected to generate less than \$10 billion in revenue in the current calendar year would be provided approximately one year to comply.*

⁶ https://files.consumerfinance.gov/f/documents/cfpb_2022-consumer-response-annual-report_2023-03.pdf

- Depository institutions that hold at least \$850 million but less than \$50 billion in total assets would be provided approximately 2.5 years to comply.
- Depository institutions with less than \$850 million in total assets would be provided approximately four years to comply.

In the years leading up to the release of this proposed rule, the CFPB held a number of outreach meetings with financial institutions, trade associations, nondepositories, aggregators, community groups, consumer advocates, researchers, and other stakeholders regarding the CFPB's proposed rule. Findings from such market monitoring activities informed the CFPB's proposed rule, including its preliminary determination that it is necessary to provide some data providers with a longer compliance period than others. The CFPB received feedback during the SBREFA process for the Proposed Rule on Personal Financial Data Rights and from other stakeholders that a number of factors may affect how quickly a data provider could comply with the proposal—for example, a data provider's size, relative technological sophistication, use of third party service providers to build and maintain software and hardware systems and in the case of many data providers, the existence of multiple legacy hardware and software systems that impact their ability to layer on new technology. The CFPB preliminarily determined that the use of asset size, revenue, and provider type appropriately balances the need to provide relief to the smallest data providers that may not be as technologically sophisticated as larger providers while providing a longer timeline for compliance to entities that may need more time. The CFPB is carefully considering all comments received in response to the proposal, including with respect to the proposed compliance dates.

7. Some financial institutions may turn to an external service provider to help facilitate digital access to their customers' account data. In fact, I recently learned about how the biggest banks have already created their own proprietary data access platform – which could be used to exert outsized control. Too often, when the biggest players team up, consumers are harmed and new players are discouraged from entering the market – whether it is FinTech, or a small and rural bank. You have said you are “exploring safeguards to prevent excessive control or monopolization by one, or even a handful of firms.”⁷
 - a. How does your proposed rule ensure consumers have fair access and autonomy over their own data? How does the proposed rule ensure existing financial institutions may not engage in anti-competitive behavior to discourage shopping or account-switching?

⁷ [Rohit Chopra, Prepared Remarks at Money 20/20, Oct. 2022](#)

Response:

In the Proposed Rule on Personal Financial Data Rights, the CFPB proposed a variety of steps to ensure consumers have straightforward access to their financial information. The proposal is intended to foster a data access framework that is: (1) safe, by ensuring third parties are acting on behalf of consumers when accessing their data, including with respect to consumers' privacy interests; (2) secure, by applying a consistent set of security standards across the market; (3) reliable, by promoting the accurate and consistent transmission of data that are usable by consumers and authorized third parties; and (4) competitive, by promoting standardization and not entrenching the roles of incumbent data providers, intermediaries, and third parties whose commercial interests might not align with the interests of consumers and competition generally. For example, the proposed definition of covered data would ensure consumers have access to key pricing terms, transaction and balance information, payment initiation information, and terms and conditions. This would facilitate consumer choice, including the ability of consumers to change providers of products or services. However, no final rule has been issued and CFPB is carefully considering all comments received in response to the proposal.

8. We must ensure that the costs of the Section 1033 rule will be passed along to consumers. How do you envision this rule working without creating unnecessary hurdles or imposing unreasonable costs on consumers when they access their own data?
 - a. : Would it be reasonable for a financial institution to charge a fee each time a third party seeks to access the account data of their mutual user?

- b. Would it be reasonable for a service provider to pass that cost of data production on to the consumer or their chosen data recipient?

Response to (8a-b):

In the Proposed Rule on Personal Financial Data Rights, the CFPB proposed to prohibit a data provider from imposing any fees or charges for establishing or maintaining the interfaces required by the proposal or for receiving requests or making available covered data through the interfaces. The proposed rule requested comment on this approach and the underlying analysis, and no final determinations have been made.

9. Cutting off the use of secondary data in a rigid way, as in your Section 1033 rule, will have unintended consequences. It could handicap use cases that make digital finance safer and more dynamic, such as development of anti-fraud tools, which are not the sort of thing a consumer opts into directly but which the financial industry depends upon to keep us all safe from bad actors. How do you plan to protect consumer privacy while ensuring this rule does not lead to a less safe marketplace?

Response:

In the Proposed Rule on Personal Financial Data Rights, use of covered data that is not reasonably necessary to provide the consumer's requested product or service—i.e., secondary uses—would not be permitted as part of the third party's authorization to access the consumer's covered data. The CFPB preliminarily concluded that the proposal to prohibit secondary uses of covered data would appropriately ensure that third parties accessing covered data are acting on behalf of consumers, while providing sufficient flexibility to third parties to provide consumers with their requested products or services. For clarity, the proposed rule included examples of uses that would be permitted as reasonably necessary, such as uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability. The CFPB requested feedback on this and all other aspects of the proposal.

10. It could be challenging for stakeholders to provide informed feedback on an FCRA rule given the potential – even if unintentional – intersection with the Section 1033 proposal. The Section 1033 proposal suggests that a financial institution would be required, upon the request of a consumer, to share information with a third-party. Based on the outline for the FCRA rulemaking, the Section 1033 proposal could make almost any financial institution a “data broker” when it provides “consumer information provided to a user [an “authorized third-party”] who uses it for a permissible purpose... regardless of whether the data provider knew or should have known that the user would use it for that purpose” and therefore a credit reporting agency (CRA), even if the financial institution does not intend to engage in covered activities, frustrating the optional reporting regime *central* to the FCRA.

- a. Has the CFPB considered if it would be helpful to finalize its proposed Section 1033 rule before issuing a “data broker” rule under the Fair Credit Reporting Act?

Response:

The CFPB received some comments in response to the Proposed Rule on Personal Financial Data Rights on its relationship with the Fair Credit Reporting Act and is in the

process of considering those comments. The CFPB appreciates that clarity is important for stakeholders in complying with the law. The CFPB will work diligently to provide clarity to all covered entities and will carefully consider all comments received pursuant to the proposed rules prior to finalizing them.

Section 1034(c) Advisory Opinion

11. Director Chopra, you have stated many times that guidance does not establish new regulatory requirements and does not have the force of law. However, the 1034(c) advisory opinion establishes new obligations on covered entities and offers inadequate guidance for how to comply with those requirements. As such, this guidance should have been promulgated as a formal rulemaking pursuant to the Administrative Procedure Act.

- a. Do you agree with the well-established principle that if an action is establishing new obligations on covered entities, it must go through the notice-and-comment rulemaking process?

Response:

Yes, under the Administrative Procedure Act, the notice and comment rulemaking process is required when establishing new, binding standards and rules to effectuate and enforce existing law, or when otherwise instructed to do so by Congress.

- b. In the advisory opinion, the CFPB asserts authority to regulate and restrict fees, which the CFPB believes are “excessive,” that financial institutions may charge for the provision of certain customer information. However, the statute does not require regulated entities to provide this information to customers for free, or state anything about fees—just that customers must be provided with the information upon request. What provision of law gives you authority to regulate fees in this manner? The guidance also provides that a financial institution may not impose conditions for consumers’ information requests that “unreasonably impede” the customer’s ability to request and obtain account information— but this term does not appear anywhere in the statute. What is the legal meaning of “unreasonably impede?”

Response:

Section 1034(c) requires large banks and credit unions to provide complete and accurate account information when requested by accountholders. In its recent advisory opinion, the CFPB interpreted that section to prohibit large banks and credit unions from imposing unreasonable obstacles on customers for basic information about their own accounts. As described in the CFPB’s advisory opinion, depending on the facts and circumstances, such conditions or obstacles could include charging excessive fees, forcing consumers to endure excessively long wait times to make a request to a customer service representative, requiring consumers to submit the same request multiple times, requiring consumers to interact with a chatbot that does not understand or adequately respond to consumers’ requests, or directing consumers to obtain information that the institution possesses from a third party instead.

- c. How can the requirement to “comply” with a consumer request be read as saying “institutions must not unreasonably impede consumers’ information requests” and that charging a fee is an unreasonable impediment on a request? This seems several steps removed from what the statute states.

Response:

As explained in the CFPB’s advisory opinion regarding Consumer Information Requests to Large Banks and Credit Unions, section 1034(c) of the Consumer Financial Protection Act provides that large banks and credit unions “shall, in a timely manner, comply” with consumer requests for information regarding their accounts for consumer financial products or services. It is well established that when the term “shall” is used in statutes, it generally means that something “is required.” The addition of the word “comply”—which creates the phrase “shall ... comply”—further indicates that section 1034(c) creates a mandatory obligation to do what the consumer requests. Under the plain language of section 1034(c), then, if a consumer makes a qualifying information request and a large bank or credit union refuses to provide that information unless the consumer satisfies an unreasonable condition, the bank or credit union has failed to “comply” with the request.⁷ Such unreasonable conditions, if permitted, would allow large banks and credit unions to frustrate and effectively nullify the right granted in section 1034(c). Section 1034(c) thus grants consumers a right to request and receive account information that falls within the scope of the provision and imposes a concomitant legal obligation on large banks and credit unions to respond to the consumer’s request and to provide such account information.

12. The CFPB issued an Advisory Opinion on October 11, 2023, relying on its authority under Section 1034(c) of the Dodd-Frank Act. The CFPB claims the Advisory Opinion (AO) is just “guidance” and does not impose any new requirements on the banks and credit unions to which it applies.⁸ However, the AO imposes new legal obligations on banks with respect to both fees and the avenues provided for consumers to request information pursuant to this new standard. These new requirements on covered depository institutions constitute more than an “interpretation” of the law.

Yet, the AO is incredibly vague, making it nearly impossible for a company to devise systems to comply. For example, the AO doesn’t address whether financial institutions can assess ATM balance inquiry fees when the customer uses a *third-party* operators’ ATM. For example, the AO does not clarify if financial institutions are required to create specific reports tailored to requests such as a customers’ preferred format that may be different than an intra-month statement normally provided.

The CFPB has said they will soon move to examine companies for compliance with Section 1034(c). Footnote 3 of the AO states that, “the CFPB does not intend to seek monetary relief for violations of section 1034(c) that occur prior to February 1, 2024.”

- a. Would the CFPB consider clarifying the Advisory Opinion to address questions about common market practices?

⁷ 12 U.S.C. 5534(c).

- b. After providing these clarifications, would it not be reasonable to provide more time for companies to comply with the AO? The CFPB is not just attempting to limit fees – it is suggesting that banks come up with entirely new customer service systems.

Response (12a-b):

The CFPB has met with industry representatives regarding the Advisory Opinion on Consumer Information Requests to Large Banks and Credit Unions. The CFPB will continue to engage with industry representatives to understand their perspectives regarding efforts to comply with section 1034(c) of the Consumer Financial Protection Act.

But as the Advisory Opinion itself explained, application of section 1034(c) will generally be a fact-specific inquiry that depends on the relevant context. So, while the CFPB has not generally attempted to definitively determine whether particular practices violate the statute, the CFPB is committed to finding ways to help individual institutions and the industry at large answer compliance questions as they arise. For example, the ongoing dialogue between institutions and CFPB Supervision staff provides an opportunity for these institutions to raise any questions or provide information about compliance with Section 1034(c). The CFPB will also continue to consider whether additional guidance or rulemaking might be appropriate to resolve generally applicable questions.

13. Furthermore, President Biden made comments on the AO this week, stating, “*For example, some banks and credit unions were charging as much as \$30 for basic services, like — want to check my balance. Costs you 30 bucks. Retrieving old bank records will cost you that much money. Looking into the balance on a loan, they charge you that money. We took action. The action we’ve taken? All that is now illegal —illegal.*”⁹

- a. Director Chopra, you have stated numerous times that guidance— such as the CFPB’s 1034(c) advisory opinion— does not have the force of law and does not establish new obligations on regulated entities. But earlier this week, the President stated that certain fees charged by banks are “now illegal.” Congress has not passed any legislation on this matter, so I am unsure how those fees recently became illegal. Do you have the power to make law by issuing guidance?

Response:

No.

⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-halt-large-banks-from-charging-illegal-junk-fees-for-basic-customer-service/>

⁹ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/11/27/remarks-by-president-biden-on-new-actions-to-strengthen-supply-chains-lower-costs-for-families-and-help-americans-get-the-goods-they-need/>

Larger Participant Rulemaking (Digital Payment Applications)

14. On November 7, 2023, the CFPB issued a proposed rule to define a market for general-use digital consumer payment applications. The proposed market would cover providers of funds transfer and wallet functionalities through digital applications for consumers' general use in making payments. Larger participants of this market would be subject to the CFPB's supervisory authority under the Consumer Financial Protection Act (CFPA).

According to the Proposal, the CFPB's supervisory authority "is not limited to the products or services that qualified the person for supervision, but also includes other activities of such a person that involve other consumer financial products or services or [*emphasis added*] are subject to Federal consumer financial protection law."

Elsewhere, the CFPB states, "*the Proposed Rule would not impose new substantive consumer protection requirements or alter the scope of the CFPB's other authorities.*"

- a. Does the CFPB have the authority to supervise aspects of a company unrelated to consumer financial protection law? For example, could the CFPB supervise a company's social media business line if it also happens to offer payments services?

Response:

The CFPB's supervisory authority over larger participants in markets defined by rule is set forth in section 1024 of the CFPA. As noted in the Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications, the CFPB would have authority to examine a larger participant in the proposed market for associated consumer financial products and services it provides, such as selling, providing, or issuing of stored value or payment instruments. The proposed market definition is not based on providing a social media line of business.

Fair Credit Reporting Act/Regulation V Rulemaking

15. The changes you propose to Regulation V – the rules for our credit reporting system – could blind lenders and creditors to certain debts owed by consumers. For now, you are proposing to ban medical debt. You may ban another legitimate category of debt that is politically unpopular next year. This of course does not remove the debt that is owed. If you are removing valid, legitimate debt from credit reports, lenders may decide not to extend credit to some consumers. They will not lend because they do not know if their debts are so high that they might not be repaid, as doing so could risk safety and soundness. Have you sought and received input from prudential regulators about additional risk among lenders and creditors?

Response:

The CFPB issued an outline of proposals under consideration related to the Fair Credit Reporting Act (FCRA) and held a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to receive feedback from small entities. This rulemaking is in the early stages and the CFPB will consult with other federal regulators as appropriate. As you may know, the CFPB is required by law

to consult with the appropriate prudential regulators or other federal agencies prior to proposing a rule, and during the comment process, regarding consistency with prudential, market, or systemic objectives administered by such agencies.

16. Your agency's sweeping outline of proposals to amend Regulation V—the rules for our credit reporting system—states, “the CFPB is considering a proposal to clarify the extent to which credit header data constitutes a consumer report.”¹⁰ A recent American Banker op-ed titled, “Why Does the CFPB want to undermine a key tool of law enforcement,” by former House Financial Services Committee Chairman Jeb Hensarling and former CFPB deputy director Brian Johnson raises concerns that making “credit header data” subject to the Fair Credit Reporting Act (FCRA) would effectively cut off law enforcement use and access to this data, which is critical for law enforcement efforts.¹¹
- a. Has the CFPB discussed potential changes to the treatment of “credit header data” with the Department of Justice, Drug Enforcement Administration, Secret Service, U.S. Marshals Service, or State law enforcement? Has the CFPB analyzed how it might impact law enforcement's efforts to find and catch criminals? Or how about any analysis on how this might be detrimental to helping find missing children as the National Center for Missing and Exploited Children uses this information to help resolve missing child cases?
 - b. Will you commit that the CFPB will work with law enforcement agencies to ensure any efforts to make “credit header data” subject to the Fair Credit Reporting Act will not hinder these important efforts?

Response (16a-b):

The CFPB issued an outline of proposals under consideration related to the FCRA and held a SBREFA panel to receive feedback from small entities. The CFPB is still gathering information and has not yet proposed any rules. As a law enforcement agency, the CFPB is committed both to upholding consumers' privacy and to ensuring that government officials have the tools they need to enforce the law. The CFPB does not intend to issue a rule that will prevent law enforcement from accessing such tools. The intent of this future rulemaking would be to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, fraud, harassment and use by foreign state and non-state actors. The CFPB is committed to working with law enforcement agencies and other relevant stakeholders as any regulatory proposals related to credit header data are developed.

¹⁰ Consumer Financial Protection Bureau, “Small Business Advisory Review Panel for Consumer Reporting Rulemaking,” Sept. 2023.

¹¹ Hensarling, Jeb, Johnson, Brian, “Why does the CFPB want to undermine a key tool of law enforcement,” Nov. 2023, available at, <https://www.americanbanker.com/opinion/why-does-the-cfpb-want-to-undermine-a-key-tool-of-law-enforcement>.

¹² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports/>

17. On September 21, 2023, the CFPB issued an Outline of a potential rule that it would issue under the FCRA. The Outline was issued subject to the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA) that requires the CFPB to convene a panel of “small entities” on which a rule could pose a “significant economic impact.” The press release announcing the Outline exclusively – and arguably deceptively – only highlights the CFPB’s intent to “Remove Medical Bills from Credit Reports.”¹² This is certainly an aspect of the proposals considered in the Outline, but there is much more to this rulemaking. The Outline characterizes the FCRA as a far-reaching data privacy law and states “[o]ne of the FCRA’s principal goals is to protect consumer privacy,” however, the CFPB has not been vested with general authority by Congress to broadly regulate privacy. This is a major question reserved for Congress. The FCRA is limited to the accuracy of consumer reporting – not fulfilling unrelated privacy goals. Importantly, this Committee and others in Congress have been working extensively on comprehensive data privacy legislation: The Data Privacy Act.

- a. Why do you believe the CFPB has general privacy authority under the Fair Credit Reporting Act?

Response:

The CFPB is concerned that modern-day data companies are assembling and selling profiles of American consumers containing sensitive data that can be used or exploited for a range of malicious purposes, including identity theft, harassment, and fraud. The CFPB is seeking to ensure that the Fair Credit Reporting Act (FCRA) keeps pace with these market developments by examining, among other issues, the extent to which modern-day data brokers are consumer reporting agencies covered under the FCRA. Accordingly, the CFPB issued an outline of proposals under consideration related to the FCRA and held a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to receive feedback from small entities. The CFPB has not yet issued a proposed rule, and this rulemaking is in the early stages. However, the CFPB alone cannot address the range of privacy harms that exist in the market today, and Congress has a critical role to play in enacting comprehensive privacy legislation. I would be happy to discuss how we can work together to accomplish this important task of protecting American consumers’ privacy.

¹² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports/>

18. The outline for a potential rule under the FCRA that does not address the issue of credit repair organizations and their potential impact on the consumer reporting system. Consumer reporting agencies and furnishers have expressed concerns regarding the unscrupulous actions of credit repair organizations and their potential to inundate the system with unsubstantiated disputes. The Federal Trade Commission (FTC) and CFPB have warned consumers about the risk of credit repair organizations and have taken action to prevent unlawful practices. The FTC warns consumers: “Maybe you’ve heard about credit repair companies and are wondering if they can help? Be careful: many are scams. Here’s what you need to know about fixing your credit.”¹³ In August 2023, the CFPB entered into a proposed settlement with a “credit repair conglomerate” that includes a \$2.7 billion judgment against the companies.¹⁴

- a. Could you explain why the CFPB chose not to address credit repair organizations in the SBREFA Outline for this rulemaking?

Response:

The Fair Credit Reporting Act Rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB has prioritized considering the activities of data brokers because their collection and sale of private, sensitive information poses a range of risks to consumers, including identity theft, as well as use by foreign state and non-state actors. The CFPB has prioritized considering medical debt on credit reports because there is significant evidence that the furnishing and credit reporting of medical collection tradelines is plagued by inaccuracies and that medical collection data on a credit report is less predictive of future repayment than reporting on traditional credit obligations. The Federal Trade Commission (FTC) is responsible for issuing rules related to the Telemarketing and Consumer Fraud and Abuse Prevention Act, which includes rules related to credit repair scams. The CFPB enforces such rules consistent with the FTC’s rules and guidance with respect to entities under the CFPB’s jurisdiction. The CFPB continues to monitor the credit repair market, including, as appropriate, bringing enforcement actions where consumer financial law violations are found, and will continue to evaluate additional actions.

¹³ <https://consumer.ftc.gov/articles/fixing-your-credit-faqs>

¹⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-reaches-multibillion-dollar-settlement-with-credit-repair-conglomerate/>

- b. Will the CFPB address this topic if it chooses to later propose a rule?

Response:

The Fair Credit Reporting Act rulemaking is in the early stages. While credit repair organizations are not currently a focus of the rulemaking, I would be happy to meet with you to discuss this important issue.

19. The Outline proposes to treat “credit header” data as a “consumer report,” thus subjecting it to the panoply of requirements under the FCRA (e.g., accuracy requirements, restrictions on permissible purposes, dispute resolution requirements, and adverse action notices). Businesses and financial institutions that rely on credit header data for identity verification purposes would need to institute new compliance programs that are not just more costly, but also could frustrate the consumer experience and could increase the incidents of fraud. The Outline does not identify any risks to consumers stemming from the current treatment of credit header data, nor does it explain why credit header data should be covered under the FCRA. Credit header data is relied on by financial institutions for fraud prevention. Some credit reporting agencies report on credit header data to help both financial institutions and businesses determine whether that data has been associated with previous fraudulent applications, bankruptcies, or reported identity theft. It will be more difficult and time consuming for a consumer acting lawfully to open a bank account, send a payment, or receive a loan if it becomes more complicated or costly for a financial institution to confirm the consumer’s identity. Conversely it will allow bad actors and criminals to evade the law more easily.

- a. What prompted the CFPB to include in the Outline the consideration of including “credit header” data under the requirements of the FCRA?

Response:

“Credit header” data are certain personally identifying data maintained by consumer reporting agencies and have been considered to include, for example, an individual’s name (and previous names), current and former addresses, Social Security number, and phone numbers. The CFPB is aware that some consumer reporting companies sell credit header data for purposes not authorized under the Fair Credit Reporting Act and is examining the risks and benefits to consumers of the sale of this data. The intent of this rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft and use by foreign state and non-state actors.

- b. Will you consider omitting this concept if the agency moves forward with issuing a proposed rule?

Response:

The CFPB is aware of the range of views that some stakeholders have expressed regarding any changes to the treatment of credit header data. The Fair Credit Reporting Act rulemaking is in the very early stages, and the CFPB is carefully considering all relevant information and determining how to proceed. If the CFPB

moves forward with issuing a proposed rule, members of the public, including the industry stakeholders, will have an opportunity to comment. The CFPB will evaluate all available information carefully.

20. The Outline suggests the CFPB will issue a rule that would “prohibit CRAs from including medical debt collection tradelines on consumer reports furnished to creditors for purposes of making credit eligibility determinations.” The Outline attempts to justify this by questioning the “usefulness” and “predictive value” of this information.

- a. Under what authority can the CFPB restrict reporting of information due to its “predictive value”?
- b. What other information does the CFPB believe should not be included on credit reports because it does not have “predictive value”?
- c. Should we next expect the CFPB to attempt to prohibit reporting of student loan debt due to political pressure from the White House due to its “predictive value”?
- d. If a consumer has \$100,000 in medical debt, do you think this would be useful information to a mortgage lender that is conducting an “ability to repay” assessment? Why would you want to blind a lender to a significant debt, medical or otherwise?

Response (20a-d):

The Fair Credit Reporting Act (FCRA) rulemaking is in the very early stages and CFPB has not yet proposed any changes. There is significant evidence that the collection and furnishing of medical collection tradelines is plagued with inaccuracies, and that medical collection data on a credit report is less predictive of future repayment than reporting on traditional credit obligations. The FCRA contains provisions specifically related to use and inclusion of medical information on credit reports. The CFPB is carefully considering all relevant information to determine how best to proceed.

21. The FCRA provides the CFPB with the authority to “prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA], and to prevent evasions thereof or to facilitate compliance therewith.” This authority does not permit the CFPB to create new obligations or change the language of the law by establishing new requirements that ignore the language and purpose of carefully crafted compromises currently in the FCRA. For example, the CFPB proposes in its SBREFA outline to transform data brokers into CRAs through a rule stating that certain kinds of information are “typically used” in connection with an eligibility determination that falls within one of the FCRA’s permissible purposes. Doing so would not administer or carry out any purpose of the FCRA; rather, it would expand the definition of a CRA beyond the current statute.

- a. How will the CFPB ensure that it does not overstep its bounds during this rulemaking?
- b. How does the CFPB view the scope of its rulemaking authority?

Response (21a-b):

The CFPB carefully considers its statutory authority when promulgating regulations. If the CFPB proceeds to a Notice of Proposed Rulemaking, the notice will set forth the authority to issue the proposals and will be available for public comment.

22. The CFPB suggests that many kinds of entities should be CRAs, like data brokers or other information conduits. Is the CFPB considering what kinds of entities or services would *not* be appropriate to subject to the FCRA?

Response:

Yes.

23. The changes reflected in the SBREFA outline are those that affect small businesses. We anticipate that the CFPB is considering proposals that may affect only the nationwide CRAs (Equifax, Experian, and TransUnion).

- a. Given the importance of the nation's credit reporting system, how does the CFPB intend to ensure full stakeholder input for any such proposals?
- b. Will the CFPB commit to meetings with industry as proposals develop?

Response (23a-b):

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds to issue a proposed rule, members of the public, including industry stakeholders, will have an opportunity to comment. The CFPB will evaluate all available information carefully. The CFPB meets regularly with external stakeholders, including industry stakeholders, as we do our work and will continue to do so.

24. The changes you propose to Regulation V would severely restrict access to, and use of, credit header data, which has long been held by courts and regulators as not regulated under the FCRA. The use and disclosure of credit information from financial institutions is, however, comprehensively regulated by the Gramm-Leach-Bliley Act. How is the CFPB thinking about this long-standing precedent as it drafts the rules?

Response:

The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB will carefully consider and evaluate how the Gramm-Leach-Bliley Act and other statutes intersect with the FCRA as the CFPB proceeds.

25. Are you aware that credit header data is a crucial ingredient in fraud detection and prevention services? How do you propose that businesses fill the gap created by restricting use of credit header information to effectively prevent fraud? How will cutting off access to this information help consumers when fraud is at an all-time high, including for certain

vulnerable populations?

Response:

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is aware that some financial institutions use data from third parties, including credit header data from consumer reporting companies, for these purposes. The CFPB is also aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA. The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. The CFPB is carefully considering this and all other issues and determining how best to proceed.

26. Several concerns were raised in connection with FCRA rulemaking about the loss of header data to law enforcement agencies. Has the CFPB, or does it plan to: (1) Reach out to federal, state, and local law enforcement authorities to obtain their concerns about how the proposals will interfere with their ability to detect and deter crime? (2) Reach out to federal, state, and local prosecutors to obtain their concerns about how the proposals will interfere with their ability to prosecute crimes?

Response:

As noted above, the FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is committed to working with law enforcement agencies and other relevant stakeholders as any regulatory proposals related to credit header data are developed.

27. The Safeguards Rule, promulgated under the Gramm-Leach-Bliley Act (GLBA), already requires financial institutions, including consumer reporting agencies, to implement and maintain certain controls to protect the security, integrity, and confidentiality of consumer data. The authority for the Safeguards Rule is vested with the FTC. Has the CFPB considered whether it has the proper authority under the FCRA to implement rules regarding data security measures?

Response:

The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB has carefully considered the extent of the authorities under the FCRA to ensure financial institutions are implementing and maintaining certain controls to protect the security, integrity, and confidentiality of consumer data.

28. How is the CFPB planning on using FCRA Sections 604 and 607(a) setting forth a CRA's obligations related to permissible purposes to create liability of the CRA for all data breaches?

Response:

The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is considering a proposal to address a consumer reporting company's obligation under the FCRA to protect consumer reports from unauthorized third-party access. As you note, for example, the CFPB is considering a proposal to address a consumer reporting company's obligation under the FCRA to protect consumer reports from a data breach or unauthorized access. For example, the CFPB is considering providing that failure to protect against unauthorized access to consumer reports by third parties may violate FCRA sections 604 or 607(a). The SBREFA outline contains a discussion of the proposals and alternatives under consideration and posed a number of questions for feedback. The CFPB is carefully considering all relevant information and determining how best to proceed.

29. An overly broad definition of medical debt to be regulated by the rule could have devastating impacts on consumers' ability to access credit. For example, if the definition is too broad and a credit card charge for Tylenol at the local drugstore would cause the entire credit card account to not be reportable (because a creditor would have to prevent the furnishing since CRAs cannot see the underlying charge data), card issuers may elect to prohibit the transactions from occurring at point of sale terminals, eliminating the consumer's access to use of such credit for everyday purchases. What is the proposed definition being considered by the CFPB?

Response:

The CFPB is considering proposals to revise Regulation V, which implements the Fair Credit Reporting Act (FCRA), to modify the current financial information exception for creditors obtaining and using medical information in underwriting determinations. However, the FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The SBREFA outline contains a

discussion of the proposals and alternatives under consideration, and requests feedback on the proposals under consideration. The CFPB is carefully considering all relevant information and determining how best to proceed.

30. The CFPB is considering proposing a rule that would define any entity that provides certain kinds of data as a credit reporting agency. Is the CFPB considering how data companies may continue to provide non-FCRA services, like identity verification and fraud prevention services, using those categories of data, since there is no identity verification or fraud prevention permissible purpose?

Response:

Yes. The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB is carefully considering all relevant information and determining how to proceed. I agree with you regarding the importance of identity verification and fraud prevention services. The intent of this future rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. If the CFPB proceeds to issue a proposed rule, it will ensure that financial institutions can continue to meet the requirements of the Bank Secrecy Act and welcomes input from industry and other stakeholders on the full range of issues.

31. The CFPB is considering proposing a rule that would deem any information used for an FCRA eligibility purpose as a consumer report, even if the third party obtained the information from a non-CRA and contractually agreed not to use it for such a purpose. If contractual prohibitions may not be sufficient to prevent a data service from becoming a consumer report, is the CFPB considering how non-CRAs may continue to offer data for reasons other than FCRA eligibility purposes without FCRA obligations applying immediately post-dissemination?

Response:

The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds to issue a proposed rule, members of the public, including industry stakeholders, will have an opportunity to comment. The CFPB will carefully evaluate all available information.

32. The CFPB received comments in connection with the SBREFA process for Regulation V, the FCRA. Will the comments filed by small entity representatives (SERs) and non-SERs be made public? If so, when will they be made public? And where will they be published? Are these comments available by FOIA request?

Response:

The CFPB follows the procedures outlined in the Small Business Regulatory Enforcement Fairness Act of 1996. The Small Business Advisory Panel for Consumer Reporting Rulemaking completed a report (Panel Report) on the feedback received from the small entity representatives, and the CFPB will consider that feedback and the Panel Report if we proceed with a proposed rule. The CFPB published the Panel Report on its website on January 9, 2024. Written feedback from small entity representatives is appended to the Panel Report. If a proposed rule is published, the Panel Report will be placed in the public rulemaking record. Feedback from non-SBREFA panel members is not included in the Panel Report.

Abusive Policy Statement

33. The CFPB's *Statement of Policy Regarding Prohibition on Abusive Acts or Practices* was designed in such a way as to cause covered persons to conform to its views on the subject, or risk repeated agency action. Yet, it is not an official rulemaking and therefore did not go through the public notice-and-comment period. Further, it does not adequately define what circumstances would trigger the requirement for covered persons to act in the best interest of consumers. Will you commit to either withdrawing or amending the Policy Statement to provide a public comment period and consider public input from impacted stakeholders?

Response:

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

Nonbank Registry Rulemaking

34. The CFPB's Proposed Rule on the *Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders* is duplicative of the CFPB's existing agreements with local, state, and federal agencies to obtain the relevant information, and therefore serves no purpose other than to publicly name and shame companies. Further, the Proposed Rule would have a significant, adverse economic impact on a substantial number of small entities; these impacts have not been considered or properly analyzed by the CFPB. Can you provide detailed analysis for the potential impacts of this proposed rule on small entities?

Response:

The proposed rule regarding Nonbank Registration of Certain Agency and Court Orders includes a detailed analysis of the proposal's potential impact on small entities. The CFPB is currently considering comments received on this proposal.

35. If a company were to be listed on the registry created under the Proposed Rule entitled

Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, can you define how long it would be listed for?

Response:

Under the proposed rule regarding Nonbank Registration of Certain Agency and Court Orders, if finalized, the CFPB would maintain published information about orders and the entities subject to them on a public website indefinitely, subject to applicable law. The CFPB has received comments on the proposal and is considering them.

Arbitration

36. Arbitration has been shown to be more expedient in resolving disputes, as well as offering more relief to injured parties, than litigation. Moreover, Congress overturned the CFPB's rule prohibiting mandatory pre-dispute arbitration agreements in 2017. Yet, this year the CFPB proposed a nonbank registry rulemaking that would target companies that use arbitration, which will ultimately limit their use. Is the CFPB opposed to consumers receiving more and faster relief?

Response:

No. The proposed rule, entitled Registry of Supervised Nonbanks That Use Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections, would, if finalized, require certain supervised nonbanks to register with the CFPB information about their use of certain terms and conditions in form contracts that seek to waive or limit consumer rights and other legal protections. The CFPB preliminarily concluded that collecting and publishing this information would improve market transparency and enhance risk-based government oversight. However, no final rule has been issued and the CFPB is carefully considering all comments and relevant information.

37. In September, numerous groups filed a petition with the CFPB "to issue a rule addressing the use of mandatory pre-dispute arbitration provisions in contracts between regulated entities and consumers of financial products or services..."¹⁵ A recent report that analyzed CFPB data (2018-2022) regarding consumer complaints and enforcement actions by the Agency demonstrates that:
- There is no statistically significant relationship between the use of arbitration agreements and consumer complaints in the CFPB's database.
 - There is also no statistically significant relationship between the use of arbitration agreements and enforcement actions by the CFPB.¹⁶

¹⁵ <https://www.consumerfinance.gov/rules-policy/petitions-rulemaking/naca-et-al/>

¹⁶ <https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/11/Final-Coalition-Letter-on-CFPB-Anti-Arbitration-Rules-Petition-Nov-2023.11.14.pdf>

Furthermore, the Congressional Review Act bars the rule proposed by the petition. Congress disapproved the CFPB's previous anti-arbitration rule in its 2017 Congressional Review Act resolution. The Congressional Review Act bars an agency from promulgating a rule that is "substantially the same" as a rule invalidated under the Act.

- a. How does the agency view the rulemaking petition? Does it intend to propose a rule despite the overwhelming evidence that consumers benefit from arbitration?

Response:

The CFPB considers petitions from interested persons for the issuance, amendment, or repeal of a CFPB rule, as required by the Administrative Procedure Act.

- b. Do you believe the agency has the authority to propose a rule despite being barred from issuing a rule considering the 2017 Congressional Review Act resolution?

Response:

Under the Congressional Review Act, an agency may not issue a later rule that is "substantially the same" or in "substantially the same form" as the disapproved rule unless it is authorized by a subsequent law. The CFPB considers all applicable legal obligations prior to the issuance of a proposed rule.

Innovation and Fintech

- 38. Would you identify the actions taken by the Office of Competition and Innovation (formerly the Office of Innovation) during your tenure that have encouraged or facilitated innovation?

Response:

Accelerating our country's shift to a more open and competitive banking ecosystem is a key priority for the CFPB. Our staff in the Office of Competition and Innovation have provided critical insights in the development of the proposed Personal Financial Data Rights Rule, which will set the stage for more seamless switching for deposit accounts, loans, and more. There are many other issues the office has worked on, including challenges faced by small mortgage lenders and challenges faced by banks when developing payments apps on mobile devices.

- a. Do you think this approach has worked for consumers and helped address the potential challenges facing entrepreneurs?

Response:

Yes. While there is always more to do, our work focuses on improving market conditions for competition rather than picking winners and losers.

- b. Would you share the number of external engagements the Office of Competition and Innovation has had with market participants this year?

Response:

It is hard to put a precise number on this. The Office of Competition and Innovation meets regularly with a variety of stakeholders including entrepreneurs, investors, and technology professionals. This is in addition to the many engagements our Office of Markets conducts to understand ways to promote competition in individual product and service verticals.

39. Regulators in other countries are in the process of tackling some of the same issues the CFPB is currently examining relating to novel consumer finance products. The FCA in the UK has essentially adopted the view that regulations should be proportional to the potential for consumer harm.
- a. Do you agree with this approach to apply proportionate, risk-based regulations where the riskiest and costliest products and services are subject to stricter regulations compared to low-cost, lower-risk financial products and services?
 - b. If not, how do we stay competitive with the rest of the world, particularly if we don't manage risk proportionately?

Response (39a-b):

In general, I agree with the risk-based approach you describe, and this is consistent with our approach, particularly with respect to allocating supervisory and enforcement resources.

Basel III Endgame

40. Director Chopra, as a member of the FDIC board, you voted to propose issuing a rule to implement the Basel III Endgame in the U.S. You stated, “*The rule would reduce the chance of failure, bailouts, disruptions in the offering of credit and banking services to businesses and households.*”¹⁷ However, a recent U.S. Chamber of Commerce survey of businesses revealed that 68% of respondents believe the proposed capital requirements under Basel III would negatively impact their finances.¹⁸
- a. Will you urge Chairman Gruenberg to study the costs on businesses access to credit and hedging products, and then repropose the rule?

Response:

The rules proposed by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the FDIC were open for public comment. Before finalizing any rule, I will carefully review the comments received, including those related to any projected impact on access to credit.

¹⁷ <https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-member-fdic-board-of-directors-proposal-strengthen-resilience-americas-largest-banks/>

¹⁸ <https://www.uschamber.com/finance/how-business-views-financial-challenges>

Fees

41. Would you designate fees allowed by state law (such as deferment fees or NSF fees), as well as legitimate service fees (such as repo fees) as junk fees?

Response:

Whether a fee is permitted depends upon a number of factors, including federal and state law and may be fact-dependent.

42. Your analysis of fees associated with late payments was junk economics. It did not even attempt to obtain data that could be useful in assessing things like deterrence effects. It simply made unsubstantiated assertions and represented yet another instance of the CFPB acting in an arbitrary and capricious manner. If government agencies, such as the IRS, use late fees to deter delinquent payments, why does the CFPB think that anything but a de minimis late fee charged in the private sector is unreasonable to deter delinquent payments?

Response:

In the CARD Act, Congress required late fees to be reasonable and proportional to the omission or violation to which the fee relates and provides an option for the CFPB to establish a safe harbor. The CFPB has undertaken a rulemaking, the Credit Card Penalty Fees proposed rule, to assess whether a safe harbor is still appropriate, and if so, what the appropriate amount should be.

43. On February 1, 2023, the CFPB proposed a rule “to curb excessive credit card late fees.” The proposed changes would, if finalized: 1) Lower the safe provision dollar amount for late fees to \$8; 2) End the automatic annual inflation adjustment; and 3) Cap late fees at 25% of the required minimum payment. Members of this committee have sent you multiple letters expressing concerns about the agency’s assumptions and approach for attempting to promulgate this rule.

- a. Do you believe it is “fair” for consumers who pay their credit card bills on time to subsidize those who do not? The proposed rule states that consumers who pay on time, “may pay higher maintenance fees or interest or collect fewer rewards if the issuer offsets the revenue lost [to those who pay late].”

Response:

In the Credit Card Penalty Fees proposed rule, the CFPB analyzed the potential benefits and costs of the proposal. Based on the available evidence, the CFPB does not expect that reduced revenue as a result of the proposed lower safe harbor amount would be fully passed through to consumers in the form of higher APRs or other price increases. A full discussion of this analysis can be found in the proposed rule.

- b. Why did the CFPB rely on secret data as the basis for its proposed rule on credit card late fees? The proposal relies on Federal Reserve Y-14 data, but this information is not publicly available.

Response:

As discussed in detail in the Credit Card Penalty Fees Notice of Proposed Rulemaking, the CFPB reviewed and analyzed major issuers' late fee income, collection costs, late fee amounts, and required payment information contained in the Y-14 data, a data source that was not available when the Board set the initial safe harbor amounts in 2010.

The CFPB is one of a number of agencies with whom the FRB shares the data. The Y-14 data also provide one source of data for the Bureau's biennial report to Congress on the state of the consumer credit card market. The data are provided by issuers that account for just under 70 percent of the outstanding balances on U.S. consumer credit cards as of year-end 2020. The data contain reported information on four key metrics: late fee income, collection costs, late fee amount, and total required payments. The Y-14 is one of several sources of data considered by the CFPB in developing the NPRM and is described in detail in the NPRM.

- c. Why did the CFPB rely on data collected from larger financial institutions as the basis for a rule that it proposes to apply to smaller financial institutions? The proposal relies on Federal Reserve Y-14 data, but this data is only collected from bank holding companies, savings and loan holding companies, and intermediate holding companies with more than \$100 billion in assets. This data cannot be extrapolated to make assumptions about smaller credit card issuers, including community banks and credit unions.

Response:

With respect to the Y-14 data, the CFPB was able to examine nearly a decade's worth of data related to pre-charge - off collection costs – data that are more robust and extensive than the data that supported the 2010 Final Rule and that did not exist when the Board was developing the prior rule.

As part of the rulemaking, the CFPB also reviews comments from larger and smaller issuers, including any data provided.

44. According to the proposed rule, the CFPB “*preliminarily determines that a late fee amount of \$8.00 for the first and subsequent violations is presumed to be reasonable and proportional to the late payment violation to which the fee relates.*” Why does the CFPB not show its math? Can you explain how the CFPB reached this figure? Why does the CFPB believe the safe harbor should not be – for example – \$9.00 or \$90.00? As the CFPB acknowledges, this safe harbor figure is one of the most significant elements of the rulemaking.

Response:

In developing the proposed late fee safe harbor amount in the Credit Card Penalty Fees proposed rule, the CFPB carefully considered several sources of data and other information to determine the amount that would cover a reasonable and proportional amount of card issuers' pre-charge-off collection costs. As discussed in detail in the NPRM, the CFPB reviewed and analyzed major issuers' late fee income, collection costs, late fee amounts, and required payment information contained in the Y-14 data, a source that was not available when the Board set the initial safe harbor amounts in 2010. That analysis indicates that late fees generally generate revenue that is multiple times higher than issuers' collection costs. The CFPB also reviewed issuers' stated late fee amounts in card agreements that issuers are required by the CARD Act to submit quarterly to the Bureau. Based on this data, the Bureau expects that even if late fees were reduced to one-fifth of current levels (implying late fees of \$8 or less), most issuers would recover pre-charge-off collection costs. The CFPB is seeking comment on this and all aspects of the proposal.

Rep. Young Kim

Question #1: Director Chopra, you seem to have operated in lockstep with the White House at every step of the rulemaking, development, and even announcement of the late fees rule. It was featured as a done deal in the President's State of the Union address last year. Will you share with the Committee what coordination you had with the White House or its staff related to the credit card late fees rule, and are you willing to share any communication on that subject with the Committee?

Response:

It is CFPB policy to provide for an open development of rules and to encourage full public participation in rulemaking actions. To that end, and consistent with the requirements of the Administrative Procedure Act, the information that the CFPB relied on in formulating the Credit Card Penalty Fees proposed rule is described in detail in the Federal Register Notice.

Question #2: In follow-up responses from your last appearance before our committee, you described a program specific to the subprime and deep subprime credit issue, the CFPB recently announced that it is hosting a tech sprint in partnership with the Census Bureau's Opportunity Project leveraging recently updated Terms of Credit Card Plans survey data. The CFPB intends for the challenge to promote competition in the credit card market by having participants consider how to help consumers improve their ability to shop for credit cards and thereby improve access to credit.

Most subprime and deep subprime consumers cannot access credit cards.

However, there appears to be a lot of innovation and competition emerging in the small dollar credit space, with fintechs stepping up their offerings and services, with some companies dropping or eliminating fees and even helping consumers apply for credit from lower-priced competitors.

Have you considered engaging in a similar effort in the small dollar space, driving innovation and competition there?

Response:

The CFPB was very pleased with the results of our tech sprints to date and will continue to use the tech sprint tool where appropriate tool to collaborate with external stakeholders to find solutions to challenges faced by consumers, including considering whether it would be an appropriate tool to encourage responsible small dollar lending.

Question #3: Has the CFPB studied the impact of blanket fee caps or restrictions may have on the availability of products and services?

Response:

The CFPB is carefully reviewing all available data regarding the Credit Card Penalty Fees proposed rule.

Question #4: Does the CFPB acknowledge that arbitrarily reducing fees may ultimately raise costs for consumers in other areas?

Response:

The CFPB is carefully reviewing all available data regarding the Credit Card late fee proposal.

Question #5: would you agree that in regard to the FCRA the CFPB's authority is limited to regulations that are "necessary or appropriate" to carry out the objectives of the FCRA with respect to persons deemed subject to the FCRA?"

Response:

The Fair Credit Reporting Act and the Consumer Financial Protection Act set forth CFPB authority to prescribe regulations under the Act.

Looking at the SBREFA outline you released on the FCRA rule, there are proposals that create new obligations and change the language of the FCRA by establishing new requirements that ignore the language and purpose extending the scope of the FCRA, and for the life of me I just don't understand where that statutory authority comes from.

For example, the Outline uses a new term – “data broker” – that if used as broadly as proposed would significantly expand what constitutes a “consumer report” and “consumer reporting agency” but fails to rely on, much less reference, applicable authority under the FCRA.

Furthermore, both Congress and the FTC have long recognized that “Credit Header” information does not constitute a consumer report, which is why I am confused why the outline states that the CFPB is considering a proposal to “to clarify the extent to which credit header data constitutes a consumer report.”

Can you explain to this committee specifically where in statute does language exist giving the CFPB the authority to make these changes to the FCRA?

Response:

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds to issuing a Notice of Proposed Rulemaking, the proposal will cite the authority for any proposals and will provide opportunity for public comment.

Question #6: in fighting back criticism of the CFPB and its tactics you often point out all the work the bureau does to prevent and help the victims of fraud and other financial scams. The CFPB constantly updates and highlights the fact that the bureau's enforcement actions have resulted in \$19 billion in consumer relief.

It is concerning to see potential actions by the CFPB weaken the tools financial institutions use to prevent fraud. The SBREFA outline on a potential FCRA rule the bureau recently released states that the CFPB is considering a proposal, “to clarify the extent to which credit header data constitutes a consumer report,” which the CFPB notes “would likely reduce, perhaps significantly, consumer reporting agencies’ ability to sell or otherwise disclose credit header data from their consumer reporting databases without a permissible purpose.”

Besides the fact that this type of regulation would to me be clearly contrary to well-settled regulatory and judicial precedents, it has the potential to harm efforts to prevent fraud and prevent identity theft.

The treatment of credit header data described in the Outline would prohibit financial institutions from using it for the essential anti-fraud purposes for which it is used today. For example, financial institutions are required to comply with the Bank Secrecy Act's “Know Your Customer” requirements to protect consumers against identity theft and fraudulent activity such as opening an account in their name. It may be more difficult and time consuming for a consumer acting lawfully to open a bank account, send a payment, or receive a loan if it becomes more complicated or costly for a financial institution to confirm the consumer's identity.

Response:

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is aware that some financial institutions use data from third parties, including credit header data from consumer reporting agencies, for these purposes. The CFPB is also aware that some consumer reporting agencies sell credit header data for purposes not authorized under the FCRA. The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. The CFPB is carefully considering this and all other issues and determining how best to proceed.

Question #7: The CFPB’s SBREFA outline on the FCRA proposals raises concerns about legal versus factual disputes. [A “factual” dispute would be whether a consumer paid their bill on time and whether that was reported correctly. A “legal” dispute could be around the terms of the original loan contract between the consumer and the lender.] There is considerable case law and supervision guidance around factual disputes because those questions can be determined by a reinvestigation. However, the resolution of a legal dispute depends upon information that is generally not reported to a consumer reporting agency. How could a credit bureau make a determination on a legal matter?

Response:

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB is carefully considering this and all other issues. The CFPB has previously addressed the issue of “legal” disputes in amicus brief filings⁸ and in a blog post.⁹

Question #8: The CFPB is using its authority to supervise financial institutions that it decides pose risk to consumers. Could you please tell us what you mean by “risk”?

Response:

In the Consumer Financial Protection Act of 2010, Congress authorized the CFPB to supervise a nonbank financial company where the CFPB has reasonable cause to determine, after giving the company notice and a reasonable opportunity to respond, that the company is engaging, or has engaged, in conduct posing risk to consumers.¹⁰ Such conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. The CFPB may base such reasonable cause determinations on tips, complaints collected by the CFPB, or on information from other sources, such as judicial opinions and administrative decisions. The CFPB may also learn of such risks through whistleblower tips, state partners, federal partners, or news reports.

⁸ See e.g., <https://www.consumerfinance.gov/compliance/amicus/briefs/holden-v-holiday-inn-club-vacations-inc-and-mayer-v-holiday-inn-club-vacations-inc/>; <https://www.consumerfinance.gov/compliance/amicus/briefs/milgram-v-jpmorgan-chase/>; <https://www.consumerfinance.gov/compliance/amicus/briefs/sessa-v-trans-union-llc/>.

⁹ <https://www.consumerfinance.gov/about-us/blog/the-law-requires-companies-to-delete-disputed-unverified-information-from-consumer-reports>.

¹⁰ 12 U.S.C. 5514(a)(1)(C).

Question #9: Do you think that borrowers with subprime credit scores should be able to get loans, even if the lender knows there is a chance that the borrower might not be able to pay back the loan? To put it another way, if a lender has a default rate of 10%, that means that 10 out of 100 borrowers will not be able to pay back the loan. Obviously, the lender doesn't know ahead of time which borrowers those are, or they wouldn't make the loans. Should the lender not make the 100 loans because of the 10 that won't be paid back? What do you think an acceptable default rate is?

Response:

The CFPB is charged with implementing and enforcing federal consumer financial law for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive. In such a market, consumers have access to credit products for which they have the ability to repay.

Question #10: Installment loans are plain vanilla, personal loans with equal monthly payments and an end date. They’ve been around for over a hundred years. In fact, the Ranking Member has talked about how her father bought a fridge with an installment loan. Many of my constituents were able to use installment loans to fix a car, send a kid to camp, pay for a funeral, and meet other unexpected expenses. Why are you opposed to individuals receiving the credit they need in a safe and responsible manner?

Response:

The CFPB is charged with implementing and enforcing federal consumer financial law for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent and competitive. In such a market, consumers have access to credit products for which they have the ability to repay.

Question # 11: In response to criticism of the Bureau’s press releases, circulars, and advisory opinions, you have said that the industry wants guidance about how the Bureau interprets rules. For example, our nation’s banks are held to a high standard of checks and balances that must pass internal and external audit checks. Why is the CFPB not held to similar standards? You’ve had ample time to set up such mechanisms; help us understand why is having a system and guidance that the industry can depend on not a priority?

Response:

Stakeholders frequently request more regulatory guidance from the CFPB, and the CFPB is committed to providing timely and well-defined guidance to help regulated entities make informed decisions about their business practices and better serve their customers.

Question #12: The Military Lending Act (MLA) prohibits loans to the military that have an “all-in” APR above 36%. Yet, studies continue to show that military borrowers continue to get payday loans. Why hasn’t your office studied why our servicemembers’ credit needs continue to go unmet?

Response:

The CFPB enforces the Military Lending Act (MLA) and examines supervised financial institutions for risks to active duty servicemembers and their families from conduct that violates the MLA. The MLA is the primary federal law that protects servicemembers when taking a short-term payday loan. Additionally, when CFPB examiners identify Servicemember Civil Relief Act (SCRA) violations or an absence of SCRA compliance policies and procedures, the matter is referred to the DOJ and state regulators.

The CFPB has conducted studies on servicemember credit in the SCRA Report,¹¹ as well as recent reports on servicemember’s access to credit when using credit cards.¹² In 2020, the CFPB published a

¹¹ <https://www.consumerfinance.gov/data-research/research-reports/evidence-of-servicemembers-usage-of-credit-protections-under-scr/>

¹² https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf

report on credit and usage of credit by young servicemembers.¹³

The CFPB works closely with the Department of Defense's Office of Financial Readiness to ensure servicemembers understand the risks of using payday lenders.¹⁴ The CFPB also conducts extended outreach to military and veteran service organizations, consumer advocacy groups, and other organizations to ensure that members of the military and veteran community know their rights and are protected from financial harm.

Question #13: Congress overturned the CFPB's rule prohibiting mandatory pre-dispute arbitration agreements. Arbitration has been shown to be more expedient in resolving disputes, as well as offering more relief to injured parties, than litigation. Why are you opposed to consumers receiving more and faster relief?

Response:

The CFPB is not opposed to consumers receiving more and faster relief.

Question #14: Do you believe that consumers should have financial freedom, that as long as loan terms are clearly disclosed, consumers should be able to make their own choices?

Response:

One of the benefits of a fair, transparent, and competitive market is that consumers have the ability to make comparisons and informed choices. However, it is important that consumers are also protected from unfair, deceptive, or abusive acts and practices, and from discrimination. The CFPB is seeking to spur competition to ensure a broader range of options for consumers, while also monitoring and addressing emerging risks to consumers in the rapidly changing marketplace. In the digital economy, there are new issues about how certain information is presented, including the use of so-called dark patterns.

Question #15: Are financial institutions required to follow diktats from press releases issued by the CFPB? Under what authority is the CFPB governing by press release and why is it not clearly stating and declaring rules and going through appropriate regulatory and administrative procedures?

Response:

The CFPB adheres to all rulemaking requirements set forth in statute, including the Administrative Procedure Act. Communications such as press releases, blogs and speeches are meant to ensure that there is public awareness of CFPB policy and priorities. Public feedback is pivotal to effective rulemaking, and the CFPB uses a wide range of methods to solicit feedback to inform our work.

¹³ <https://www.consumerfinance.gov/data-research/research-reports/financially-fit-comparing-credit-records-young-servicemembers-civilians/>

¹⁴ In May 2021, the Department of Defense's Office of Financial Readiness issued a report, "Report on the Military Lending Act and the Effects of High Interest Rates on Readiness," available at https://finred.usalearning.gov/assets/downloads/FINRED-MLA_ReportEffectsHighInterestRatesOnReadiness-May2021.pdf.

Question #16: You talk a lot about junk fees, but isn't it true that fees are often necessary to a well-functioning market? If you mandate that certain fees be reduced, won't prices just go up somewhere else? Could you comment on your thoughts regarding fees allowed by state law (such as deferment fees or NSF fees), as well as items that are being designated as junk fees but are actually legitimate service fees (such as repo fees)?

Response:

Whether a fee is permitted depends upon a number of factors, including federal and state law and may be fact-dependent. The CFPB has issued guidance regarding certain fees that may not be permitted under existing law.

Question #17: You're concerned that consumers might not understand the credit products that they're using, but how much testing have you actually done on consumer understanding of loan products? While it might be difficult to understand all the terms of a complicated financial product, traditional installment loans are plain vanilla products that are easy to understand.

Response:

Part of the core function of the CFPB is researching the consumer experience with financial products and monitoring financial markets for new risks to consumers. Specifically, the CFPB prepares reports on a variety of subjects including financial well-being, consumer complaints, debt collection and lending practices, mortgage origination and servicing, payday lending, among others.

The CFPB has developed and continuously maintains financial education programs and products that support the ability of consumers to spot risks and warning signs. For instance, Ask CFPB is an online educational tool that provides answers to common questions about consumer financial products and services. Since its launch, the Ask CFPB portal has provided answers to over 48 million unique visitors. The CFPB also regularly conducts user testing when making changes to improve consumer facing resources on the website.

Our work has indicated that not all traditional installment loan products have terms that are easy to understand by consumers. For example, in August 2023, the CFPB sued a high-cost installment lender, as well as several of its subsidiaries for illegal loan-churning practices that harvested hundreds of millions in loan costs and fees. Many of the borrowers were either older Americans living on fixed incomes or were single-parent wage earners.¹⁵ And in May 2023, the CFPB ordered an installment lender to pay \$20 million in redress and penalties for failing to refund interest charged to 25,000 customers who cancelled purchases within a purported "full refund period," and for deceiving borrowers about needing to purchase add-on products to receive a loan.¹⁶

In May 2023 CFPB also released a research report on medical payment products – including specialty medical credit cards and installment loans – that found that promotion and use of these products is

¹⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-installment-lending-conglomerate-for-illegally-churning-loans-to-harvest-hundreds-of-millions-in-loan-costs-and-fees/>

¹⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-installment-lender-onemain-to-pay-20-million-for-deceptive-sales-practices/>

growing.¹⁷ The research shows that these payment products typically have less favorable terms than other general credit products and can encumber patients with significant amounts of deferred interest.

Question #18: The CFPB recently finalized a rule on small business lending. The implementation of that rule was stayed for certain banks by a federal court in Texas. Would you extend that stay for all financial institutions to keep them on a level playing field?

Response:

On October 26, 2023, the U.S. District Court for the Southern District of Texas issued a preliminary injunction staying all deadlines for compliance with the rule for all covered financial institutions, pending the Supreme Court's ruling in CFPB v. Community Financial Services Ass'n of Am., Ltd., No. 22-448.

Question #19: If the Supreme Court rules that the CFPB's funding structure is unconstitutional, do you think that ruling is binding across the U.S. or only in the 5th Circuit?

Response:

I cannot speculate on how the Supreme Court will rule. But the CFPB follows the law and will abide by the Court's ruling.

Question #20: In response to a GAO report that came out in 2018, the CFPB announced this past Sept. that it provided the GAO with information and documents relating to how it identifies consumer financial risks. Could the CFPB provide that information to my office?

Response:

The CFPB has instituted an updated systemic process for understanding, prioritizing, and responding to identified risks. The CFPB's submission to GAO described this process for the divisions to conduct risk-identification activities and provide information on a regular basis to the Director's Office.

Question #21: It has come to my attention that the CFPB is hosting private meetings with representatives from consumer advocacy groups about enforcement litigation the Bureau is pursuing. Are you aware of this? Why is the Bureau holding meetings with any nongovernment individuals about ongoing litigation and what purpose does this serve? Did you invite the plaintiffs or any other stakeholders? Is this common practice at the Bureau? When I hear from small business owners about CFPB regulatory overreach and that there should be more public oversight of the agency, these are the types of backroom activities at the Bureau I've been talking about.

Response:

I am not familiar with the event you are describing. The CFPB engages extensively with a variety of

¹⁷ https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf

stakeholders including financial institutions, industry groups, consumer advocates, experts, and the public. These engagements include private meetings with individual firms and industry trade associations, roundtables and townhalls, as well as financial industry conference events. As Director, I meet regularly with the major banking industry trade groups and have prioritized direct engagement with smaller institutions through state-based banker and credit union associations.

Rep. William Timmons

Jurisdiction

1. The Dodd-Frank Act gave the Bureau a considerable amount of supervision and enforcement authority over entities that engage in consumer finance. In your view, what is the Bureau's authority over entities who touch large amounts of consumer data but may

not interface with consumers directly; or whose business policies, procedures, and practices affect pricing and markets for consumer financial products and services?

Is it your view that “service provider” captures the role of these entities under the scope of the Dodd-Frank Act?

Response:

As part of the Proposed Rule on Personal Financial Data Rights, the CFPB has included a proposed provision that would confirm that various entities that provide financial data processing products or services to consumers are covered persons under the Consumer Financial Protection Act of 2010 (CFPA) and notes their impact on consumers. Additional entities that provide material services to those covered persons could be service providers under the legal standards set out in the CFPA. The CFPB is currently considering comments received on the proposed rule.

2. During remarks at DC Fintech Week in Washington, Acting Comptroller Michael Hsu noted that the OCC can examine companies that work directly with banks, “as an extension of the banking service,” but that further authorities might be needed to oversee other entities. In your role as a Director on the FDIC board, do you think that the prudential regulators need further authorities to better regulate entities that are integral to the financial system but are not banks, for safety and soundness and/or consumer protection?

Response:

I appreciate this question. The Bank Service Company Act provides certain authorities to the prudential regulators to assess service providers, subject to certain limitations. I share the concern outlined in reports by the Financial Stability Oversight Council that the National Credit Union Administration does not have similar authority to the banking agencies.

Data Breach

3. In response to a question about the February 2023 CFPB data breach you indicated that the CFPB is having trouble locating contact information for some of the consumers affected by the breach. How many of the 256,000 consumers and businesses affected by the breach have been notified? Could you please detail how the CFPB is working with financial institutions to identify affected consumers?

Response:

The CFPB has completed the process of notifying consumers. Though the data at issue did not include the type of sensitive information that can be used to access a consumer's account or commit identity theft, the CFPB determined in some cases that notifying consumers was appropriate in an abundance of caution and as a matter of transparency. As outlined in my testimony, the CFPB did not have contact information for any of these consumers, and thus had to work with the institutions to locate these consumers in order to send notifications. That process was completed in July 2023. Approximately 256,000 consumers were notified.

Rep. Bryan Steil

I have previously asked you about the impact of state rate caps on credit access. You have also acknowledged that many states are considering legislation that may restrict certain types of credit.

Research on this topic suggests that these approaches could result in challenges for subprime consumers.

- In your engagement with states, do you provide any advice regarding state laws that may intentionally or unintentionally limit credit access, and what the impact on subprime consumers may be?

Response:

In our nation's system of federalism, both federal and state governments play important roles in safeguarding the public's interest. Consumer protection laws are a critical example of how that system works. The CFPB carefully monitors developments in state law and regulation relating to consumer financial protection, and has in certain instances sought to provide clarity, particularly as it relates to the potential overlap, or conflict, between federal and state law.¹⁸ Additionally, the CFPB has received requests for preemption determinations under the Truth in Lending Act.¹⁹ The CFPB has also issued interpretations regarding FCRA and preemption of state law.²⁰

¹⁸ <https://www.consumerfinance.gov/about-us/blog/state-regulatory-developments-on-income-based-advances/>.

¹⁹ <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/archive-closed/notice-of-intent-to-make-preemption-determination-under-truth-in-lending-act/>

²⁰ <https://www.consumerfinance.gov/rules-policy/final-rules/the-fair-credit-reporting-acts-limited-preemption-of-state-laws/>

- Do you collect any data that can demonstrate whether consumers are helped or harmed by interest rate caps?

Response:

While there is no generally applicable federal law that limits credit interest rates, there are federal laws that establish interest rate caps for active-duty service members and covered dependents. The Military Lending Act caps the amount of interest that active duty servicemembers and covered dependents can be charged for consumer credit, in most cases, at 36 percent, while the Servicemembers Civil Relief Act limits the interest rate to 6 percent for active duty servicemembers for credit that was incurred prior to active duty, called pre-service debt. The CFPB's recent report²¹ on the utilization of these protections by reserve component servicemember provides insight into how these interest rate caps impact members of the National Guard and Reserves.

²¹ <https://www.consumerfinance.gov/data-research/research-reports/evidence-of-servicemembers-usage-of-credit-protections-under-scrfa/>

Rep. Zach Nunn

1. Director Chopra, former Director Cordray, would frequently assert that the CFPB is a “data-driven agency,” although he would not use robust cost-benefit analyses in concert with rulemaking.

- a. What is your position on robust cost-benefit assessments to inform rulemaking and policies?

Response:

The CFPB's rulemaking process adheres to the Administrative Procedure Act and the Regulatory Flexibility Act. The process used considers estimated costs and benefits of a rulemaking, including implementation. Each proposed rule the CFPB issues contains a detailed cost-benefit analysis.

2. I still hear from bankers across the country that the Bureau's supervision and enforcement teams are "pushing the envelope" by exceeding their mandates, making onerous information requests, and creating their own policy determinations. In the business world or in the military, we often stress the importance that leaders and CEOs set the appropriate "tone from the top."

- a. How are you setting the "tone from the top" at the CFPB? And how do you get your message through to the field offices and representatives executing the exams and enforcement activity?

Response:

The CFPB works hard to build an organizational culture that fosters a positive and effective work environment to enable us to carry out our critical consumer protection mission. For example, the CFPB's supervision program includes an Office of Supervision Policy that seeks to ensure the supervision decisions are consistent with applicable laws and the CFPB mission. The office is responsible for ensuring that supervision decisions are consistent across markets, charters, and regions.

- b. Since there are various regional offices throughout the country, how do you create consistency to ensure all institutions are subject to the same interpretations of the rules and compliance standards and, in turn, consumers have the same equal consumer protections?

Response:

CFPB supervision is a comprehensive, ongoing process of pre-examination scoping and review of information, data analysis, on-site examinations, and regular communication with supervised entities and prudential regulators, as well as follow-up monitoring. The CFPB's Supervision team members throughout the country work in concert to provide consistent supervisory coverage that will help level the playing field for all industry participants to create a fairer marketplace for consumers and the responsible businesses that serve them. The CFPB is committed to ensuring its work is carried out in a uniform manner.

3. AI is increasingly being used to increase the affordability and accessibility of credit and improve the benefits to consumers.

- a. What are the Bureau's priorities as it relates to AI and are there currently any work streams on AI, particularly as it relates to improving consumer experiences and outcomes?

Response:

The CFPB is closely monitoring the use of AI in consumer financial products and services. The CFPB has taken a number of actions to provide clarity to industry as they consider whether and how to adopt artificial intelligence. For example:

- *The CFPB issued a Consumer Financial Protection Circular confirming that companies relying on complex algorithms must provide specific and accurate explanations for denying applications, in compliance with ECOA and Regulation B.²²*
- *The CFPB issued an Interpretive Rule laying out when digital marketing providers for financial firms must comply with federal consumer financial protection law.²³*
- *The CFPB issued a circular stating that creditors may not rely on the checklist of reasons provided in the sample forms to satisfy their adverse action notice obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon.²⁴*
- *The CFPB conducted research on the introduction of chatbots by financial institutions into their customer service operations. Among our findings are that: (1) Chatbots may be useful for resolving basic inquiries, but their effectiveness wanes as problems become more complex; and (2) Financial institutions risk violating legal obligations, eroding customer trust, and causing consumer harm when deploying chatbot technology.²⁵*

4. The CFPB's 1033 proposal would allow the Bureau to recognize a standard-setting body as an issuer of qualified industry standards related to consumer-authorized data access. A standard-setting body's industry standards would need to be incorporated by data providers when designing their systems for 1033 as incorporation of such standards would provide an "indicia of compliance" under the proposal.
 - a. Is the Bureau already considering/working with a standard-setting body?
 - b. Does the Bureau intend to designate such a standard-setting body at the same time as or before the final rule is published?
 - c. How does the Bureau intend to adjust the compliance dates if a standard-setting body is not designated when the final rule is published?

Response (a-c):

In the Proposed Rule on Personal Financial Data Rights, the CFPB has proposed to consider fair, open, and inclusive industry standards as indicia of compliance with various requirements.

²² <https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/>.

²³ <https://www.consumerfinance.gov/rules-policy/final-rules/limited-applicability-of-consumer-financial-protection-acts-time-or-space-exception-to-digital-marketers/>.

²⁴ <https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpb-sample-forms-provided-in-regulation-b/>.

²⁵ <https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/>.

The proposal sets out several qualities that a standard-setting body would have to possess in order for the CFPB to confirm that it is, in fact, a qualified industry standards body. These are issues on which the CFPB has sought comment in the proposed rule and that are currently under review, and no final determinations have been made.

5. Before next summer, the Supreme Court will render a decision on the constitutionality of the CFPB's funding source. According to the New York Times, "[i]f the Supreme Court agrees that the bureau's funding is improper, it could, at minimum, force the agency to rely on congressional appropriations. Or the court could follow the Fifth Circuit's suggestion and obliterate everything the agency has done to date." Director Chopra, there are existential questions about your agency's constitutionality that will impact both prior

and future actions. Until those questions are resolved, it seems inappropriate for your agency to move forward with its rulemaking agenda.

- a. While you've clearly continued to put out proposed rules and issue guidance, does the CFPB plan to finalize any new rules before the Supreme Court rules on the constitutionality of its funding?

Response:

The Consumer Financial Protection Act remains the law of the land, and the CFPB will continue to carry out the important work on behalf of American consumers.

6. Director Chopra, would you agree that in regard to the FCRA, the CFPB's authority is limited to regulations that are "necessary or appropriate" to carry out the objectives of the FCRA with respect to persons deemed subject to the FCRA? Looking at the SBREFA outline you released on the FCRA rule, there are proposals that create new obligations and change the language of the FCRA by establishing new requirements that ignore the language and purpose, extending the scope of the FCRA, and for the life of me, I just don't understand where that statutory authority comes from. For example, the Outline uses a new term – "data broker" – that, if used as broadly as proposed, would significantly expand what constitutes a "consumer report" and "consumer reporting agency" but fails to rely on, much less reference, applicable authority under the FCRA. Furthermore, both Congress and the FTC have long recognized that "Credit Header" information does not constitute a consumer report, which is why I am confused why the outline states that the CFPB is considering a proposal to "to clarify the extent to which credit header data constitutes a consumer report."
- a. Can you explain specifically where language exists in the statute, giving the CFPB the authority to make these changes to the FCRA?

Response:

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB has not yet proposed any changes. If CFPB proceeds to issuing a Notice of Proposed Rulemaking, the proposal will cite applicable authority for any proposals and will provide opportunity for comment. The CFPB will carefully consider all relevant feedback and data.

7. Director Chopra, in fighting back criticism of the CFPB and its tactics, you often point out all the work the bureau does to prevent and help the victims of fraud and other financial scams. The CFPB constantly updates and highlights the fact that the bureau's enforcement actions have resulted in \$19 billion in consumer relief. It is concerning to see potential actions by the CFPB weaken the tools financial institutions use to prevent fraud. The SBREFA outline on a potential FCRA rule the bureau recently released states that the CFPB is considering a proposal, "to clarify the extent to which credit header data constitutes a consumer report," which the CFPB notes "would likely reduce, perhaps significantly, consumer reporting agencies' ability to sell or otherwise disclose credit header data from their consumer reporting databases without a permissible purpose." Besides the fact that this type of regulation would, to me, be clearly contrary to well-settled regulatory and judicial precedents, it has the potential to harm efforts to prevent fraud and prevent identity theft. The treatment of credit header data described in the Outline would prohibit financial institutions from using it for the essential anti-fraud

purposes for which it is used today. For example, financial institutions are required to comply with the Bank Secrecy Act's "Know Your Customer" requirements to protect consumers against identity theft and fraudulent activity such as opening an account in their name. It may be more difficult and time-consuming for a consumer acting lawfully to open a bank account, send a payment, or receive a loan if it becomes more complicated or costly for a financial institution to confirm the consumer's identity.

- a. Has the bureau considered the negative ramifications to consumers if “credit header data” is considered a consumer report?

Response:

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is aware that some financial institutions use data from third parties, including credit header data from consumer reporting agencies, for these purposes. The CFPB is also aware that some consumer reporting agencies sell credit header data for purposes not authorized under the FCRA. The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. The CFPB is carefully considering this and all other issues and determining how best to proceed.

8. Director Chopra: Last month, the CFPB proposed a rule that would implement a legally binding consumer financial data access and portability right in the United States. In announcing the proposal, you noted that the rule would also require third-party providers of financial services to protect consumers’ data. While that unquestionably is a worthy objective, I’m concerned that the proposed rule’s limitations on secondary uses of data could have wide-ranging, unforeseen consequences. For example: my understanding is that the proposed rule would prohibit even de-identified data from being used for things like fraud prevention, product enhancements, or academic research.
- a. Shouldn’t the Bureau’s approach to secondary de-identified data usage be consistent with multiple other privacy frameworks, like GDPR and the CCPA, which allow de-identified data to be used for these purposes that convey significant benefits to consumers and the economy?

Response:

The Proposed Rule on Personal Financial Data Rights describes various benefits and risks of allowing the continued use and retention of deidentified data, and the CFPB is evaluating the appropriate standard for retention and use of deidentified data. The CFPB requested comment on whether there should be an exception to the general limitation standard for deidentified data, and if so, how deidentification should be defined to limit risks to consumers. The CFPB is carefully reviewing all feedback received in response to the proposal.

9. President Biden recently joked that he financially struggled early in his career and intentionally bounced checks to make ends meet. Unfortunately, for millions of Americans who suffer from financial instability and are living paycheck to paycheck, bounced checks are no joking matter. We have seen a lot of [press reports](#) recently about how more and more consumers are finding themselves unable to meet an emergency \$400 debt if something arises. The fintech sector, in partnership with banks, has stepped in to provide credit access where large banks and credit unions have not. Many of these providers are also pioneering strong consumer protection provisions such as limits on fees, including NSF and late fees, and even helping applicants to “shop around” for better loan options.

- a. What can you, as a regulator, do to help encourage more options and innovation for consumers and ensure that predatory actors are kept at bay?

Response:

In October, the CFPB published the Proposed Rule on Personal Financial Data Rights to implement section 1033 of the Consumer Financial Protection Act. The CFPB believes this rule, which would create new standards that facilitate sharing consumer financial data, would create an environment in which new entrants can thrive while simultaneously allowing consumers greater control and choice.

10. Director Chopra, while I am supportive of the principles of the 1033 open banking proposed rule, I want to ensure everything will actually work in the market. We will now have competing regulatory requirements for banks to both make data available and complete third-party risk management assessments for all the fintechs who need to access data on behalf of customers, along with a proposal that seems to undermine the role of intermediaries to make this all work.

- a. Are you worried about inefficiency if every bank is vetting every fintech?

Response:

In implementing Section 1033 of the Consumer Financial Protection Act, the CFPB understands that it is important to carefully consider how to balance the necessary vetting of third parties that depository financial institutions undertake pursuant to existing legal requirements or industry standards with any additional burden of such vetting that might result from the CFPB's rule. The CFPB proposed that a data provider would not violate the general obligation to make covered data available by reasonably denying a consumer or third-party access based on risk management concerns.

The Proposed Rule on Personal Financial Data Rights sought to alleviate part of the burden of vetting third parties by stating that a data provider has a reasonable basis for denying access to a third party if the third party does not present evidence that its data security practices are adequate to safeguard consumer data. The CFPB sought comment on how the proposed rule could further facilitate compliance and reduce due diligence costs for both data providers and third parties while adequately ensuring the security of consumer data. The CFPB also requested comment on additional ways to harmonize the risk management obligations of data providers with that statutory data access right for consumers and authorized third parties. The CFPB is carefully reviewing all comments received in response to the proposal.

11. In regard to the 1033 rulemaking, is the CFPB coordinating with the SEC, DoL and other agencies regarding expanding eligible data sets to go beyond just banking data? Other agencies will likely have to do a "cut and paste" rulemaking to cover additional financial products and services.

Response:

Section 1033 applies to data providers that are "covered persons" under the Consumer

Financial Protection Act (CFPA), and the Proposed Rule on Personal Financial Data Rights generally would limit coverage to a data provider that controls or possesses covered data concerning certain covered consumer financial products or services. Coordination and consultation across the government benefits the public and the industries that we regulate, and the CFPA requires that the CFPB consult with other agencies when prescribing any rules under 1033. In the process of developing this proposal, the CFPB has met with staff from the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Trade Commission, the Department of the Treasury's Bureau of the Fiscal Service, the United States Department of Justice and the Financial Crimes Enforcement Network.

Rep. Nikema Williams

1. Director Chopra, how much of consumers' medical debt is the result of a one-time or short-term medical expense arising from an acute medical need?

Response:

Among people who report problems paying medical bills, two-thirds say the bills that led to their debt are the result of a one-time or short-term medical expense arising from an acute medical need.²⁶

2. And how is medical debt different from other kinds of consumer debt, like a mortgage or auto loan?

Response:

Medical debt differs from other kinds of consumer debt in a number of significant ways. Unlike many other consumer debts, people rarely plan to take on medical debt. Two-thirds of people who report problems paying medical bills say that their debts are the result of a one-time or short-term medical expense arising from an acute medical need. Medical debt is also unique in that people have less ability to shop around for medical services. Choice of medical services is limited due to price opacity, restrictive insurance networks, constraints on provider availability, and in some cases, emergency need. Nonetheless, medical debt collection accounts are the most frequent collection account to show up on credit reports.

3. Director Chopra, can you speak about the benefits of removing medical debt from credit reports for marginalized consumers?

Response:

Some communities have higher rates of medical debt than the national average. In particular, young adults, people with low incomes, and Black and Hispanic people are disproportionately likely to have medical debt. Veterans and older adults are also significantly impacted by medical debt. Medical debt rates also vary geographically, with more people having medical debt in Southern states. There are many factors contributing to these higher rates of medical debt, including lower incomes and higher uninsured rates, but there is also research and data showing that some populations face higher markups for cost of care, are less likely to receive information about free and reduced care programs, and are more likely to be impacted by certain credit scoring models which overstate the predictiveness of medical debt.

Medical debt can adversely impact people's financial, physical, and mental health in several ways. Some adverse impacts, such as avoidance of medical care, are unique to medical debt. Others, such as decreased access to credit, are shared across multiple consumer debt types but may be especially problematic in the case of medical debt—which people rarely choose to incur. Medical debts can also be used as leverage by collectors to coerce consumers to pay sometimes

²⁶ Cons. Fin. Prot. Bureau, *Medical Debt Burden in the U.S.*, Mar. 2022 at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-estimates-88-billion-in-medical-bills-on-credit-reports/>

spurious or false unpaid medical bills. Therefore, removing medical debt from credit reports could have notable benefits for marginalized communities.

4. Director Chopra, *has* the CFPB done an analysis of this proposed rule and how it could affect the cost and availability of credit, particularly with respect to non-prime borrowers?

Response:

The CFPB has gathered data and conducted analyses as a part of the credit card late fees rulemaking process and is carefully analyzing and considering all relevant data, including information about the potential impact on the cost and availability of credit, including for different consumer segments. The CFPB also carefully reviews and considers all comments received in response to the proposed rule, including comments on this topic.

5. In addition, has the CFPB studied how the rule would impact credit card issuers? For instance, how would large issuers fair compared to smaller issuers?

Response:

The CFPB has gathered data and conducted analyses as a part of the credit card late fees rulemaking process and is carefully analyzing and considering all relevant data, including information about the potential impact on issuers of different sizes. The CFPB also carefully reviews and considers all comments received in response to the proposed rule, including comments on this topic.

6. In addition, has the CFPB studied how the rule would impact credit card issuers? For instance, how would large issuers fair compared to smaller issuers?

Response:

The CFPB has gathered data and conducted analyses as a part of the credit card late fees rulemaking process and is carefully analyzing and considering all relevant data, including information about the potential impact on issuers of different sizes. The CFPB also carefully reviews and considers all comments received in response to the proposed rule, including comments on this topic.

Rep. Ralph Norman

For Director Chopra:

1. Please explain the legal authority the CFPB plans to use to issue the following proposals:
 - a. Modifying a regulatory exemption originally promulgated by a group of Federal banking agencies and the National Credit Union Administration that allows creditors to consider a consumer's medical debt information when underwriting credit and would prohibit consumer reporting agencies from including medical collection tradelines in consumer reports provided to creditors.
 - b. Changing an exemption that allows creditors to consider a consumer's medical debt when underwriting credit and would prohibit consumer reporting agencies from including medical collection tradelines on consumer reports.

Response (1a-b):

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds with issuing a Notice of Proposed Rulemaking, the proposal will cite applicable authority for any proposals and will provide opportunity for comment. The CFPB will carefully consider all relevant feedback and information.

2. In the hearing last week, you promised a list of participants in the SBREFA panel for the upcoming FCRA rule. Were any medical providers or doctors included?

Response:

The Small Business Advisory Panel for Consumer Reporting Rulemaking report includes a list of all small entity representatives as well as the North American Industry Classification System code categories of small businesses that the Panel identified as likely to represent most small entities that may be subject to the proposals under consideration.

3. During our exchange, you made the point that you have had numerous conversations with stakeholders in the medical field about medical debt. However, it is my understanding that none of these stakeholders were included in the SBREFA panel on the FCRA rule. Why do you think it's appropriate to leave out a relevant stakeholder from this transparent process?

Response:

In compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, the CFPB, selects and appoints individuals to represent categories of small entities likely to be subject to the requirements of a rule under development. The CFPB has also been engaging with relevant stakeholders, and all interested parties, including industry, consumers, and other external stakeholders will have an opportunity to comment on any proposed rule.

4. In the SBREFA proposal for an FCRA Rulemaking related to removing all medical debt credit reporting, have any peer-reviewed studies been done by the CFPB to determine

whether there is a reduction in patient payments to Provider from this policy change? If not, do you plan to conduct any additional peer-reviewed research related to impacts on medical providers or otherwise before proposing a rule?

According to a more recent estimate, Americans today pay over \$490 billion a year in co-pays and deductibles (<https://kalorainformation.com/blog/u-s-out-of-pocket-healthcare-spending-swells-to-491-billion-up-10/>). Even if the policy change resulted in 5% less payments being made to the Provider community, that's a reduction of roughly \$25 billion a year to the Provider community.

Response:

The Fair Credit Reporting Act medical debt rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB has described the significant evidence that medical collection tradelines on credit reports are less predictive of future repayment than traditional credit obligations, and that medical debt reporting is generally plagued with inaccuracies. The CFPB will continue to gather information throughout the rulemaking process and will carefully consider all information.

5. According to the 2022 annual Medicare Report (page 203 allows for the data to be aggregated, <https://www.cms.gov/files/document/2022-medicare-trustees-report.pdf>), Americans today are expected to pay roughly \$17 billion a year in Medicare co-pays and deductibles in order to make the overall strategy of supporting Medicare Beneficiaries and the Providers who take care of them, work for everyone. Have any peer-reviewed studies been performed to estimate what the impact to the Medicare budget would be?

If the policy resulted in a 5% reduction in payments being made, that's close to a \$1 billion change to the Provider community, or it could result in a request to Congress to increase Medicare funding to mitigate that reduction.

Response:

The Fair Credit Reporting Act medical debt rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB has described the significant evidence that medical collection tradelines on credit reports are less predictive of future repayment than reporting on traditional credit obligations and that medical debt reporting is plagued with inaccuracies. The CFPB will continue to gather information throughout the rulemaking process and will carefully consider all information.

6. You stated that you were willing to look into the blocking of text messages that are in compliance with Regulation F. Please explain what follow up steps you have taken since your testimony to address this issue.

Response:

Under the Fair Debt Collection Practices Act, a third-party debt collector is permitted to transmit text messages. The message must include instructions for a consumer to opt out. Messages generally can only be sent during the timeframe 8:00am – 9:00pm (in the time zone for the receiver), which is the same for telephone calls.

Rep. Mike Flood

Large Participant Rulemaking

- The digital wallet definition in the Large Participant Rulemaking is different than how wallets are defined in the Section 1033 rule.
 - How do these two rules interact with each other? Would a Large Participant be evaluated under their 1033 compliance?

Response:

The Proposed Rule on Personal Financial Data Rights and the Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications serve different purposes. The Proposed Rule on Personal Financial Data Rights seeks to implement a specific, required rule under existing law regarding consumer access to their financial data. The Proposed Larger Participant Rule seeks to establish supervision for major market players for compliance with federal consumer financial protection law, helping to ensure that they adhere to the same rules as large banks, credit unions, and other financial institutions already supervised by the CFPB. Each of these rules seeks to provide clarity by offering definitions to key terms. The CFPB is currently analyzing comments on these and other aspects of the proposals. Your input and concerns with respect to definitions and how they can be made more clear is welcome.

- The marketplace exemption does include a line about financial data – what does it mean for consumer payments?

Response:

The Proposed Larger Participants rule contains an exclusion from the definition of a “consumer payment transaction” clarifying that, when a consumer selects goods or services in a store or website operated in the merchant’s name and the consumer pays using account or payment credentials stored by the merchant who conducts the payment transaction, such a transfer of funds generally is not a consumer payment transaction covered by the proposed rule. As a result of the proposed exclusion, a merchant or marketplace that engaged in financial data processing purely for the purpose of accepting consumer payments for its own sales would generally not be covered under the rule. The proposed rule notes that the scope of the term “consumer payment transaction” is narrower than the CFPB’s authority under the Consumer Financial Protection Act over providers of payments or other financial data processing products or services to consumers.

- What is the difference between a wallet and a permissioned-digital app? Is the CFPB taking the position that a mobile phone itself is an “access device” under Regulation E given the proposal under “Wallet functionality”?

Response:

The Proposed Rule regarding Larger Participants of a Market for General-Use Digital Consumer Payment Applications does not propose to define or interpret terms under Regulation E.

Credit Header

At the November 29 hearing, during the discussion of regulating credit header information as a credit report, you indicated that any rule would preserve the use of the information for fraud and identity verification. However, fraud prevention is not a permissible purpose under the FCRA. Instead, credit heading information can be used for fraud or identity verification only if it is disclosed in accordance with the Gramm-Leach-Bliley Act.

- How would the CFPB preserve the ability of financial institutions and other creditors to use credit header information to prevent fraud or to verify identities for compliance with know your customer (KYC) and anti-money laundering (AML) requirements?
- What research has the CFPB conducted into the impact of a rule making credit header information a credit report for financial institutions?
 - How much would additional fraud, synthetic identities and identity theft cost financial institutions and consumers?
 - How would financial institutions respond to such a requirement to mitigate increased risk?
- Would these restrictions help expand access to financial products for all consumers?

Response:

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is aware that some financial institutions use data from third parties, including credit header data from consumer reporting agencies, for these purposes. The CFPB is also aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA. The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. The CFPB is carefully considering this and all other issues and determining how best to proceed.

Definitions Change

In the SBREFA Outline, the CFPB indicates that it is considering changing the definition of who is “consumer reporting agency” and what is a “consumer report,” two terms that are defined in the statute of the FCRA.

- The Dodd-Frank Act gives the CFPB limited and appropriate regulatory authority to advance the purpose of the consumer financial protection statutes. What authority does the CFPB have to revise the statutory definitions that the U.S. Congress wrote into the law?

Response:

The Fair Credit Reporting Act rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds to issuing a Notice of Proposed Rulemaking, the proposal will cite applicable authority for any proposals and will provide opportunity for comment. The CFPB will carefully consider all relevant feedback and information.

Rep. Sean Casten

- (1) Debt settlement companies claim to offer consumers a quick way out of debt by encouraging consumers to stop making their payments so they can attempt to settle the debt for less than what is owed. Currently the debt settlement industry has roughly \$65 billion dollars under management and has begun offering loans to their customers. Given the rise in debt loans by consumers across the country and the past abuses and consumers harms that debt settlement companies have been cited for in CFPB enforcement actions, does the Bureau have a plan to monitor these companies?

Response:

Yes.

- (2) The lending operations of debt settlement companies have grown exponentially in recent years with several private equity firms getting involved to financially back these loans made to people in financial distress. Do you or your colleagues at the Bureau have any concerns with companies marketing themselves as debt reduction services but ultimately places consumers in more debt? What should a consumer be looking for prior to enrolling with a debt settlement company?

Response:

Debt settlement companies, also sometimes called “debt relief” or “debt adjusting” companies, often claim they can negotiate with creditors to reduce the amount owed. Consumers should carefully consider all options, including working with a nonprofit credit counselor and negotiating directly with the creditor or debt collector themselves. Before a consumer agrees to work with a debt settlement company, there are risks that should be considered:

- *Debt settlement companies often charge expensive fees;*
- *Debt settlement companies typically encourage consumers to stop paying credit card bills. If a consumer stops paying bills, they will usually incur late fees, penalty interest and other charges, and creditors will likely step up their collection efforts;*
- *Some creditors may refuse to work with the company a consumer retains;*
- *In many cases, the debt settlement company will be unable to settle all debts;*
- *If a consumer does business with a debt settlement company, the company may tell the consumer to put money in a dedicated bank account, which will be managed by a third party. The consumer might then be charged fees for using this account;*
- *Working with a debt settlement company may lead to a creditor filing a debt collection lawsuit against the consumer;*
- *Unless the debt settlement company settles all or most debts, the built-up penalties and fees on the unsettled debts may wipe out any savings the debt settlement company achieves on the debts it settles; and*
- *Using debt settlement services can have a negative impact on credit scores and the ability to get credit in the future.*

In August 2023, the CFPB published resources for consumers to consult when considering using the services of a debt settlement service.²⁷

²⁷ <https://www.consumerfinance.gov/ask-cfpb/what-is-a-debt-relief-program-and-how-do-i-know-if-i-should-use-one-en-1457/>

Rep. Brad Sherman

1. Director Chopra, I am very pleased that the CFPB has the Office for Older Americans, dedicated to helping Americans 62 and older make sound financial decisions and encourage the work they do on a number of very important initiatives, including age-friendly banking. However, I am concerned about the dramatic increase in reported fraud, and its disproportionate impact on older Americans and would like to encourage all government agencies to do everything they can to address this important issue. According to the FBI, victims over 60 reported \$3.1 billion in fraud losses 2022 – an 84% increase over 2021's numbers. How does the CFPB collaborate with other federal, state, and local agencies, as well as the private sector and non-profit organizations, to combat elder fraud and scams effectively?

Response:

I share your concern about the increase in reported fraud and the impact on older Americans. The CFPB's Office for Older Americans works to help protect older consumers from financial harm and at key moments in their financial lives. The CFPB works with federal partners, state and local governments, the private sector, aging services providers, and nonprofits to coordinate efforts and maximize its reach to older Americans, their families and caregivers, and aging services providers. Focus areas include elder financial exploitation and fraud prevention and response; older adult access to financial services; older adult housing insecurity; long-term service and support consumer financial protections; and caregiver rights. A key focus of the CFPB's Office for Older Americans is helping older adults protect themselves from fraud and scams. Some examples include:

- *The **Money Smart for Older Adults** program is a fraud prevention curriculum developed by the CFPB and the Federal Deposit Insurance Corporation. The program consists of an instructor guide and slides for volunteers to share the information with older adults and a resource guide for participants to refer back to after their lesson. The CFPB also offers plain language handouts designed to share simple lessons about common types of scams and fraud.²⁸*
- *The **Managing Someone Else's Money** program includes four guides for financial caregivers operating in a formal lay fiduciary role. The guides for agents appointed under power of attorney and as trustees, conservators, and government fiduciaries help older adults and financial caregivers recognize and prevent elder financial exploitation.²⁹*
- ***Choosing a Trusted Contact** includes a guide for consumers on selecting a trusted contact for the accounts they hold at a financial institution.³⁰*
- ***Preventing Elder Financial Abuse** is a guide to assist staff of long-term care communities prevent, recognize, record, and report elder financial abuse.³¹*
- ***Elder Fraud Prevention and Response Network Initiative (Initiative).** The CFPB also has been influential in helping key stakeholders in communities across the country prevent, detect, and respond to elder financial exploitation through this Initiative. The CFPB conducted research to*

²⁸ <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/money-smart-for-older-adults/>

²⁹ <https://www.consumerfinance.gov/consumer-tools/educator-tools/managing-someone-elses-money/>

³⁰ <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/protecting-against-fraud/>

³¹ <https://publo.gpo.gov/CFBPPubs/CFBPPubs.php?PubID=13102>

understand existing networks and how they can enhance collaborative efforts to fight elder financial exploitation. The lessons learned from these network convenings can help other communities develop or build capacity in existing networks, as well as improve coordination and collaboration among law enforcement, adult protective services, financial institutions, and aging service providers.³²

Rep. Blaine Luetkemeyer

Director Chopra, as part of your campaign against “junk fees,” the CFPB has argued that “surprise” overdraft fees can include fees resulting from “authorize positive, settle negative” (APSN) transactions because consumers cannot reasonably anticipate them.

- Why does the CFPB believe consumers are not capable of avoiding overdrafts in a checking account when they are in the best position to track their own spending?
- Does the CFPB believe these fees cannot be reasonably anticipated when they have been disclosed or agreed to by consumers in account agreements?

Response:

The CFPB has observed that in many circumstances, financial institutions have created serious obstacles to consumers making informed decisions about their use of overdraft services. Overdraft practices are complex—and differ among institutions. Even if a consumer closely monitors their account balances and carefully calibrates their spending in accordance with the balances shown, they can easily incur an overdraft fee they could not reasonably anticipate because financial institutions use processes that are unintelligible for many consumers and that consumers cannot control. The CFPB has issued guidance regarding unanticipated overdraft fee assessment practices which contains additional analysis.³³

³² <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/elder-protection-networks/>

³³ Cons. Fin. Prot. Bureau, *Circular 2022-06: Unanticipated overdraft fee assessment practices*, June 2022, at <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/>

Rep. Barry Loudermilk

Question 1: Director Chopra, according to the latest household survey released by the New York Fed, a record number of consumers report that it is “much harder” to obtain credit compared to this time last year. Anyone could have predicted this, given the Federal Reserve’s substantial interest rate increases, but today I am concerned that regulatory forces have magnified tightening credit conditions, especially for those with low or no credit. Does the CFPB consider how regulatory or enforcement actions affect consumer credit access when combined with tightening macroeconomic conditions?

Response:

Yes.

Question 2: I’ve noticed a disturbing trend in enforcement targeting companies who provide short term, small dollar loans to consumers in need of quick liquid cash. I imagine you and I have both been in a situation where we’ve needed more cash than we had on hand, and quickly. It could be for a car repair, or to fix an appliance, or to pay a bill. Now imagine someone in that situation who has low or no credit. If agencies like the CFPB take aggressive enforcement action against small dollar lenders, where would you suggest that person turn to get cash quickly?

Response:

The CFPB works to promote competition and innovation that benefits consumers in the financial products and services market, including by identifying structural problems that block new competitors from entering the market. A transparent and competitive market will help develop lower-cost, small-dollar loan products. Many different financial products involve small dollar lending. There are many short-term liquidity products that play an important role, and it would be good to see many more financial institutions offering them. The CFPB recently proposed the Personal Financial Data Rights rule to implement Section 1033 of the Consumer Financial Protection Act, which is an important action to jumpstart competition, and make it easier for consumers to switch providers, while protecting consumers against the misuse of their personal data. However, the CFPB is particularly concerned where lenders take advantage of cash-strapped consumers and will take enforcement actions, as appropriate, where lenders violate the law. In the actions you reference, that's exactly what occurred.

Question 3: How many victims of this year’s CFPB data breach have been notified to date?

Response:

The CFPB has completed the process of notifying consumers. Approximately 256,000 consumers were notified.

Question 4: If any victims have been notified, how were they notified? By mail, telephone, e-mail?

Response:

Consumers were notified via mail.

Question 5: Will the CFPB accelerate its adoption of the OIGs Information Security recommendations in light of the data breach?

Response:

In October 2021, the OIG issued three recommendations to the CFPB as part of its annual audit of the CFPB's Information Security Program. The CFPB has now implemented these OIG recommendations and the OIG has closed them. The CFPB worked to build an automated process to communicate cybersecurity risk to the appropriate agency official. CFPB also integrated a regular review of active system vulnerabilities into weekly meetings with information technology system owners with an escalation path to Plans of Action & Milestones when required. The OIG recently confirmed the closure of three additional recommendations related to the CFPB's information security program, including a recommendation that the CFPB implement new data loss prevention tools to enhance security by monitoring traffic across all network access points and environments. CFPB submitted an additional two Corrective Action Plan recommendations to the OIG for closure during 2023.

Question 6: In the past, you've said that smaller banks would not be affected by the first Section 1071 compliance deadline for Tier-1 lenders. For the record, would it be correct to characterize your categorization of lenders, for the purposes of compliance, as being based on the volume of small business loans a financial institution writes rather than the size of the institution by assets?

Response:

The Small Business Lending rule provides a tiered compliance date schedule, so financial institutions that originate the most covered credit transactions for small businesses will need to comply earlier and those with lower volumes have more time to prepare to come into compliance. When determining whether it is a covered financial institution and what compliance date tier applies to it, a financial institution must count covered originations, which are certain covered credit transactions that it originated to small businesses. Similarly, a covered financial institution must collect and report data about an application if the application is from a small business and is for a covered credit transaction.

Question 7: Are you aware of any existing off-the-shelf systems, software, or other services intended to help smaller institutions with small business lending data collection compliance?

Response:

The CFPB has conducted technical outreach with third-party software providers that serve financial institutions and software and technology staff from financial institutions that are likely to have to report small business lending data to the CFPB. The CFPB has, and will continue to have, discussions with these software vendors and technical staff concerning the technical systems and procedures the CFPB will provide for financial institutions to submit their data. These discussions also serve to raise

awareness of technology providers as to their potential future role in supporting the rule as well as the lead time that may be necessary for some or all affected financial institutions to come into compliance with the requirements of this final rule.

Question 8: Are you concerned that the Section 1071 rule would hold smaller financial institutions, ones that “punch above their weight” in terms of small business lending, to compliance deadlines intended for larger institutions?

Response:

The Small Business Lending rule contains an extended compliance deadline that will apply to most smaller institutions covered by the rule. Under the rule’s tiered compliance schedule, the highest volume lenders have roughly 18 months to comply; moderate volume lenders have roughly 2 years; and lower volume lenders have nearly 3 years. The many small lenders with under 100 small business originations annually have no deadline or regulatory obligations.

Question 9: Director Chopra, when the CFPB revised the HMDA reporting requirements in Reg. C back in October of 2015, the bureau provided more than two years for compliance. You have compared the two rules, but why have you given such a comparatively short compliance timeline for Section 1071?

Response:

The Small Business Lending rule contains an extended tiered compliance schedule wherein the highest volume lenders have roughly 18 months to comply; moderate volume lenders have roughly 2 years; and lower volume lenders have nearly 3 years. The many small lenders with under 100 small business originations annually have no deadline or regulatory obligations. In addition to the extended compliance schedule provided in the rule itself, the U.S. District Court for the Southern District of Texas issued a preliminary injunction, which has the effect of providing all covered institutions with additional time to comply.

Question 10: Would you consider administratively extending the deadlines for compliance with 1071 collection requirements to allow banks more time to implement the collection regime?

Response:

On October 26, 2023, the U.S. District Court for the Southern District of Texas issued a preliminary injunction staying all deadlines for compliance with the Small Business Lending rule for all covered financial institutions, pending the Supreme Court’s ruling in CFPB v. Community Financial Services Ass’n of Am., Ltd., No. 22-448.

Rep. Nydia Velázquez

"Director Chopra, when you last appeared before our committee you were posed a question about remittances. In your answer you noted that one of your concerns is the numerous frictions that can add costs to monies sent via cross border payments. I know that one of your regulatory colleagues – Graham Steel – in a speech a few months ago noted that it might be possible to reduce some of these costs – especially for well-regulated non-bank participants – by allowing them access to FedNow or similar international rails with safeguards. Do you agree with the Under Secretary that these sort of regulatory innovations could be helpful in enhancing competition in the market as well as continuing the trend we have been seeing over the last decade, where the average cost for consumers to send remittances continues to decline?"

Response:

Today's remittance market is ripe for reinvention, and the CFPB is examining ways to increase competition and innovation for the benefit of both families and honest businesses, while also preventing harm to consumers. The CFPB is seeking to help facilitate a remittance market that offers fast, fair, competitive, and transparent transactions and where strong consumer protections exist and are known and understood by customers.

Rep. Andy Ogles

- Mr. Chopra, it has been approximately 168 days since I asked you what a woman is. Are you able to answer the question today? If you are unable to define what a woman is, why do you expect lenders to collect and report data on applications for credit for women owned small businesses?

Response:

Congress required that CFPB issue a rule to implement section 1071 of the Dodd Frank Act, and the CFPB was under a court order to ensure it is implemented in a timely fashion. Congress enacted section 1071 in order to (1) facilitate enforcement of fair lending laws and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. In furtherance of those objectives, section 1071 sets forth data points to facilitate compliance with this rule.

- Did the White House coordinate with your Agency in any way with respect to the development of the 1071 Rule? If so, please detail the nature of any interactions.

Response:

As required by law, the CFPB consults with the appropriate prudential regulators and other federal agencies prior to proposing a rule, and during the comment process, regarding consistency with prudential, market, or systemic objectives administered by such agencies. The CFPB adheres to all requirements under the Administrative Procedure Act, including where the law requires that proposed rules be published to give industry, consumers, and other external stakeholders an opportunity to comment on their potential impact.

- Mr. Chopra, you claim that the focus for the CFPB is repeat offenders. Yet you implement rules such as this one that will harm smaller institutions. Do you expect the American people will trust the CFPB with personal data about their small business lending activities?

Response:

The CFPB takes individual privacy very seriously. The CFPB has in place safeguards that establish a strong culture of privacy and security, we hold ourselves accountable for handling sensitive data appropriately, and train all of our employees to make sure they know how to ensure that information remains protected.

- Will you agree to withdraw your small business lending rule if President Biden vetoes the Congressional CRA on Section 1071?

Response:

The CFPB complies with all duly enacted laws. If a Presidential veto of a joint resolution of disapproval under the Congressional Review Act is not overridden by Congress, then the joint resolution of disapproval is not enacted and the rule in question remains in, or can go into,

effect.

- According to the CFPB and DOJ, the Equal Credit Opportunity Act allows creditors to consider immigration status, but “unnecessary or overbroad” reliance on that factor may constitute discrimination based on national origin, race or other protected status.1 a. How does the Bureau determine what is “unnecessary or overbroad”?

Response:

The agencies issued the Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act to help creditors understand their obligations under the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B. The guidance affirms that Regulation B allows a creditor to consider an applicant’s immigration status when necessary to ascertain a creditor’s rights regarding repayment or to meet other binding legal obligations. In fact, Regulation B provides as an example that a lender can, when assessing its ability to obtain repayment, consider immigration status and differentiate between a noncitizen who is a long-term resident and a non-citizen who is temporarily in this country on a student visa.³⁴ The guidance restates existing law and does not create new obligations. Lenders must comply with their “Know Your Customer” obligations under the Bank Secrecy Act.

The CFPB issued the Joint Statement as part of our efforts to provide timely and well-defined guidance to help regulated entities make informed decisions about their business practices and better serve their customers. It restates the longstanding principle that lenders may not use immigration status to discriminate on the basis of national origin, race, or any other protected characteristic. It was clear that lenders need the guidance—courts repeatedly rejected arguments by Wells Fargo and other lenders that ECOA and Regulation B’s discussion of immigration status shields lenders from liability if they violate federal civil rights laws.³⁵ That’s just not the case.

- The Biden administration continues signaling to the world that everyone and anyone can come through the border illegally and without proper documentation. More than 2.8 million illegal aliens have been apprehended at the border so far in 2023. Does your joint statement make it easier for illegal aliens to access money?

Response:

The guidance does not instruct lenders to extend credit to any particular person or prohibit creditors from considering an applicant’s immigration status to assess risk.

- Will the CFPB take full responsibility when funding of illicit activities rises, including terrorism, through loans extended to illegal aliens as a direct result of this confusing statement?

³⁴ 12 C.F.R. § 1002.6(b) and Comment 6(b)(7)-1.

³⁵ CFPB and DOJ Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act, 3, Oct. 12, 2023, <https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-borrowers-under-the-equal-credit-opportunity-act/>

Response:

The CFPB does not tell private institutions to whom they must make loans. The Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act does not instruct lenders to extend credit to any particular person.

- Do you believe the joint statement promotes safe and sound practices for banks? If so, how?

Response: *The guidance restates existing law and does not create new obligations.*

- Do you believe that a borrower's deportation would reduce the odds that they repay a loan? If so, why is your Agency trying to require financial institutions to accept additional risk of borrower default?

Response:

The guidance does not instruct lenders to extend credit to any particular person or prohibit creditors from considering an applicant's immigration status to assess their rights regarding repayment or compliance with other binding legal obligations. The guidance does not conflict with existing legal obligations under the Bank Secrecy Act. Creditors can and must comply with both ECOA and laws related to the safety and security of the financial system.

- Illegal aliens are unauthorized to work in the United States. Could ineligibility for lawful employment in this country decrease the likelihood that a borrower repays a loan? If so, will the Bureau provide clarity that it will not take enforcement actions against a lender who declines loans to illegal aliens on that basis?

Response:

As noted above, the guidance does not instruct lenders to extend credit to any particular person or prohibit creditors from considering an applicant's immigration status to assess their rights regarding repayment or compliance with other binding legal obligations. The guidance does not conflict with existing legal obligations under the Bank Secrecy Act. Creditors can and must comply with both ECOA and laws related to the safety and security of the financial system.

