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**THE CONSUMER FINANCIAL PROTECTION BUREAU IN PERSPECTIVE**

**REPORT PREPARED BY THE DEMOCRATIC STAFF OF THE  
COMMITTEE ON FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES**

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*This report has not been officially adopted by the Committee on Financial Services  
and may not necessarily reflect the views of its Members*

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## **Executive Summary**

Six years have passed since the Consumer Financial Protection Bureau (“Consumer Bureau”) opened its doors. Before that time, the financial services industry was overseen by a fragmented regulatory system in which Federal prudential regulators were tasked with the dual, and frequently incompatible, responsibilities of supervising financial institutions for safety and soundness as well as for compliance with consumer protections. This inherent regulatory conflict often resulted in financial institutions’ compliance with consumer protections taking a subordinate role to safety and soundness concerns.

Based on an examination of the factors that led to the financial crisis, this report demonstrates that Congress designed the Consumer Bureau to address past regulatory gaps by establishing the agency with a primary mission to protect consumers by responding to and combating unfair, deceptive, or abusive acts or practices by the financial services industry. Congress purposefully designed the Consumer Bureau to be independent from special interests and partisanship by establishing its funding mechanism to be largely insulated from Congressional appropriations and by creating a nimble organizational structure that is led by a single Director, who is appointed by the President and approved by the full Senate, and cannot be removed by the President without cause.

The Consumer Bureau has worked tirelessly to comply with its statutory mandate to ensure consumers are treated fairly, and that financial institutions are held accountable for predatory and other unscrupulous conduct. The Consumer Bureau has produced strong results, including:

- Returning almost \$12 billion to 29 million harmed consumers;
- Implementing rules ensuring consumers have access to a fair and competitive marketplace;
- Requiring clear disclosures and providing easy-to-understand materials to empower consumers to make the best financial decisions;
- Establishing a transparent consumer complaint database that has received 1.2 million consumer complaints, 97 percent of which have received timely responses; and
- Visiting nearly 150 military installations, handling more than 82,000 consumer complaints from servicemembers, veterans, and their families, as well as taking enforcement actions to protect military servicemembers and their families.<sup>1</sup>

Unfortunately, Republicans seem to have quickly forgotten the lessons learned from the financial crisis, and have deployed a variety of tools in an attempt to ensure that the country reverts back to a big bank-oriented regulatory environment and to “functionally terminate” the Consumer Bureau.<sup>2</sup> This report will discuss some of these attempts, which, if successful, will leave consumers vulnerable to predatory financial actors enabled by the same weak regulatory oversight that existed before the financial crisis and prior to the creation of the Consumer Bureau.

## **Findings**

Based on a review of the weak regulatory regime for consumer financial protection before the crisis, and the

<sup>1</sup> Fact sheet, Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau: By the numbers” (July 2017).

<sup>2</sup> Jeb Hensarling, “How We’ll Stop a Rogue Federal Agency,” The Wall Street Journal (Feb. 8, 2017), available at: <https://www.wsj.com/articles/how-well-stop-a-rogue-federal-agency-1486597413>; see also, Ben Protess, “Republicans’ Paths to Unraveling the Dodd-Frank Act” (Jan. 30, 2017), available at: <https://www.nytimes.com/2017/01/30/business/dealbook/republicans-unravel-dodd-frank-act.html>.

Consumer Bureau's impressive track record in standing up for consumers, even in the face of hyper-partisan attacks from Republicans, this report makes several findings:

- 1. Before the Consumer Bureau was created, financial regulators prioritized the profits of Wall Street firms at the expense of consumers' financial well-being on Main Street.** Previously, Federal prudential regulators were tasked with dual, and often conflicting, duties of supervising the safety and soundness of financial institutions while also ensuring compliance with consumer protection laws. This fragmented and conflicted regulatory framework resulted in regulatory arbitrage and lax enforcement of consumer protection laws.
- 2. Despite relentless Republican attempts to undermine and gut the Consumer Bureau, it has effectively carried out its mission of holding predatory actors in the financial sector accountable for ripping off their customers and protecting all consumers from unfair, deceptive, or abusive acts and practices.** The Consumer Bureau, through its enforcement actions against bad actors, has returned nearly \$12 billion to 29 million consumers.
- 3. Contrary to Republican arguments that it is ideologically driven, the Consumer Bureau has consistently proved that it operates in a nonpartisan, fair, and data-driven manner.** For example, the Consumer Bureau conducted an exhaustive review of the use of mandatory pre-dispute arbitration agreements in consumer financial contracts, including a consumer survey, requests for stakeholder input, roundtables, and extensive consultation with other regulators. This deliberative work culminated in a 728 page report that informed its decision that a rule banning these harmful clauses was in the public's interest and was needed to protect consumers.
- 4. The Consumer Bureau is an independent watchdog that is fully responsive to the wide-ranging challenges confronting an increasingly diverse consumer demographic, and is not beholden to special interests or partisan whims.** Consumers now know their concerns will be taken seriously when they turn to the Consumer Bureau. More than 1.2 million consumer complaints have been submitted to the Consumer Bureau, with 97 percent receiving timely responses from companies. The public nature of the database helps to promote fairer treatment of consumers by financial companies and to strengthen market discipline.
- 5. The Consumer Bureau's frequent testimony before Congress, semi-annual reports, and good faith responses to Congressional oversight demands, even the most unjustified, have demonstrated it is fully accountable for its actions.** Since it opened its doors, the Director of the Consumer Bureau and other senior officials have testified before Congress 63 times.
- 6. The conduct of Republicans towards the Consumer Bureau under the guise of "Congressional oversight" is designed to undermine the agency's primary mission: protecting consumers from predatory financial actors and ensuring markets for consumer financial products and services are fair, transparent, and competitive.** Committee Republicans have initiated dozens of "investigations" of the Consumer Bureau since January 2014, forcing it to produce more than 170,000 pages of documents for the Committee in response to over 90 letters of inquiry; unilaterally issued 20 subpoenas to the Consumer Bureau; and compelled several of the Consumer Bureau's former and current employees to sit for over 40 hours of depositions.
- 7. Although the Consumer Bureau's arbitration rule is a case study in thoughtful, effective rulemaking, it immediately became the subject of unfair partisan attacks from Republicans in Congress and the Acting Comptroller of the Currency.** The Dodd-Frank Act directed that the

Consumer Bureau study mandatory pre-dispute arbitration clauses in consumer contracts and to issue a rule if it found limiting these clauses to be in the public's interest and needed to protect consumers. As part of this review, the Consumer Bureau completed a thorough 728-page study, which noted that millions of consumers are subject to forced pre-dispute arbitration clauses in their contracts for consumer products or services. The Consumer Bureau rightly concluded that these clauses restrict consumers' ability to get relief in disputes with financial companies by limiting their ability to pursue class-actions. As a result, the Consumer Bureau has moved to ban these contracts. However, the final rule is now unfairly under attack by Republicans who have threatened Director Corday with contempt, made spurious claims about the rule's impact on safety and soundness, and taken steps to repeal the rule through the Congressional Review Act, all so they can deny ripped-off consumers their day in court.

## **I. Consumer Protections Prior to the Consumer Bureau**

The years preceding the financial crisis and the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)<sup>3</sup> were marked by a reluctance of the Federal financial services regulators to implement and enforce consumer protection laws and exercise their authority to prevent predatory practices from occurring in the financial marketplace. Prior to the Dodd-Frank Act, the responsibility for supervising financial regulated entities for consumer protection was spread among the various Federal financial regulators, including the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Federal Trade Commission (“FTC”), the Office of the Comptroller of the Currency (“OCC”), the Office of Thrift Supervision (“OTS”), the National Credit Union Administration (“NCUA”), and the Federal Deposit Insurance Corporation (“FDIC”).<sup>4</sup> This resulted in a fragmented regulatory approach in which government agencies lacked clear regulatory accountability and coordination for monitoring consumer protection laws.

The Federal Reserve was responsible for rulemakings of most Federal consumer protection laws, and each Federal financial services regulator was responsible for supervising and enforcing such rules with respect to the institutions under their jurisdiction.<sup>5</sup> However, data shows that the agencies were not proactive in using their rulemaking and enforcement authority in protecting consumers from the misdeeds of financial institutions.

Additionally, while the Federal financial services regulators were responsible for supervising their regulated entities for both safety and soundness as well as compliance with Federal consumer protection laws, the agencies often prioritized the profitability of these institutions over consumer protections, even when the institution was found to be engaging in practices detrimental to their customers' financial well-being. A review

<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (2010), available at <https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>.

<sup>4</sup> See, Mark Jickling, U.S. Congressional Research Service, R40857, “Consumer Financial Protection by Federal Agencies” (Oct. 14 2009), available at: [http://www.politico.com/pdf/PPM136\\_091020\\_cfp\\_report.pdf](http://www.politico.com/pdf/PPM136_091020_cfp_report.pdf). Note that state government agencies also are responsible for supervising state-chartered institutions under state consumer protection laws.

<sup>5</sup> See, Mark Jickling, U.S. Congressional Research Service, R40857, “Consumer Financial Protection by Federal Agencies” (Oct. 14 2009) (The Federal Reserve was responsible for writing, interpreting, and—with respect to bank holding companies and certain subsidiaries, state banks that are members of the Federal Reserve System, and United States branches of foreign banks and foreign branches of United States banks that it supervised directly—enforcing regulations to carry out the provisions of many Federal consumer financial laws. The other Federal banking regulators were tasked with enforcing the Federal Reserve's regulations for the institutions that they supervised. The OCC enforced compliance by national banks, the OTS for Federally chartered savings and loans, NCUA for Federally chartered or insured credit unions, and the FDIC for Federally insured depository institutions, including state banks and thrifts that are not part of the Federal Reserve. OTS was abolished by Title III of the Dodd-Frank Act, and their responsibility to regulate Federally chartered savings and loans, as well as their holding companies, were transferred to the OCC and the Federal Reserve, respectfully); see also, Edward V. Murphy, U.S. Congressional Research Service, R43087, “Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets” (Jan. 30, 2015), available at <https://fas.org/sgp/crs/misc/R43087.pdf>.

of enforcement actions between 2005 and 2007 outlined in various agency reports and testimonies demonstrates there were few enforcement actions taken against institutions for violations of consumer protection laws, despite the rampant predatory mortgage lending that was occurring at the time.<sup>6</sup>

For example, in the three core years of the subprime bubble—2005, 2006, and 2007—financial regulators did little to nothing to address abuses in the mortgage market.<sup>7</sup> According to the Center for Responsible Lending (“CRL”), the OCC did not exercise its consumer protection authority to address unfair and deceptive practices under the FTC Act for 25 years and its first action using its power to go after banks’ unfair and deceptive practices came only after a decade in which the target bank “had been well known in the ... industry as the poster child of abusive consumer practices” and after the OCC was “embarrassed ... into taking action” by a California prosecutor.<sup>8</sup> In 2005, the OCC required only one bank to reimburse \$14 million to consumers for violations of the Truth in Lending Act (“TILA”)<sup>9</sup> and related abuses, and issued only one cease-and-desist order to another bank, with a \$20,000 civil penalty. The OTS issued just five cease-and-desist orders for consumer violations by thrifts, and the Federal Reserve and FDIC reimbursed a total of just \$591,000 to consumers for TILA violations. The Federal Reserve referred a single case to the U.S. Department of Justice (“Justice”) for potential discriminatory underwriting lending standards.<sup>10</sup>

In 2006, agency reports show that the Federal Reserve and FDIC reimbursed approximately \$1.5 million to consumers for violations. The OCC did not issue any formal enforcement actions relating to TILA, and the OTS issued just three supervisory agreements for consumer violations. The Federal Reserve referred only five cases to Justice where banks were in violation of the Equal Credit Opportunity Act (“ECOA”) or the Fair Housing Act. And reports show that in 2007, the Federal Reserve, FDIC, OCC, and OTS reimbursed about \$2.75 million to consumers for violations of TILA, including understating the annual percentage rate or the finance charge in their consumer loan disclosures.<sup>11</sup> These nominal penalties and enforcement activities demonstrate the lax regulatory approach to consumer protection preceding the financial crisis.

And, while Federal banking regulators were asleep at the switch, there were clear warning signs that there were major problems developing in the financial sector, as seen by the expansion of the subprime

<sup>6</sup> See e.g., Federal and State Enforcement of Financial Consumer and Investor Protection Laws: Hearing Before the H. Comm. on Financial Services (March 20, 2009) (various written and oral testimony from the heads of the prudential banking regulators), available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1284>.

<sup>7</sup> See generally, Center for Responsible Lending, “Neglect and Inaction: An Analysis of Federal Banking Regulators’ Failure to Enforce Consumer Protections” (July 13, 2009), available at: <http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/neglect-and-inaction-7-10-09-final.pdf>; and p. 1 (“The failure of the bank regulators to protect consumers is a systematic problem that has stretched over at least several decades. [...] Two of the frontline federal bank regulators, the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC), have come to view banks as customers rather than entities to be regulated. Regulators at these agencies, which rely on fees from the banks they charter and regulate, have been reluctant to take actions that could cause an institution to switch to another charter and regulator, thereby taking their fees with them. In this classic race to the bottom, each agency has defended practices that hurt consumers. Worse, the regulators not only failed to act, they intervened to prevent state authorities from acting to stop such practices. The Federal Reserve, which is the primary writer of rules to protect consumers, has a similar record. It waited more than 14 years to implement rules Congress gave it to address unfair and deceptive trade practices in the mortgage lending market and has missed many opportunities to act on behalf of consumers to prevent abusive financial practices in other areas.”) (emphasis added).

<sup>8</sup> Id. At: 4.

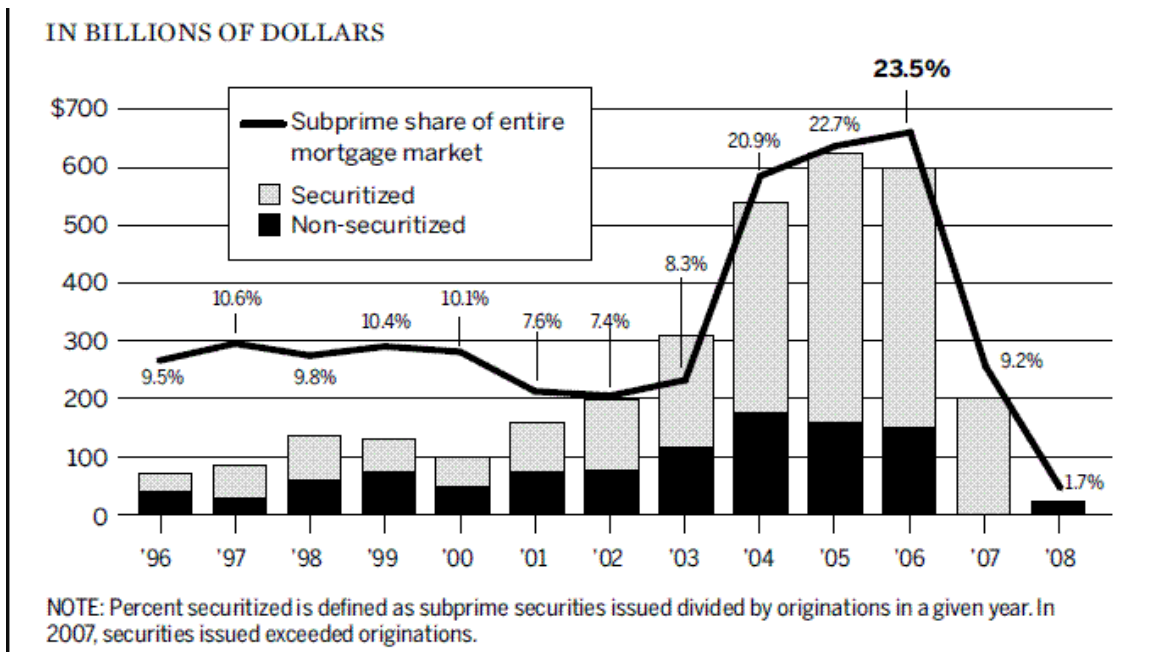
<sup>9</sup> The Truth In Lending Act is a Federal law designed to promote informed use of consumer credit, and to and to protect consumers against inaccurate and unfair credit practices. See e.g., 15 U.S.C. § 1601.

<sup>10</sup> Federal Reserve Board, “92nd Annual Report” (2005) (The Federal Reserve Board of Governors previously reported annually on compliance with consumer protection laws by entities supervised by federal agencies, including the Federal banking regulators. The Federal Reserve Board also reported on its administration of federal fair lending laws with respect to banks they oversee), available at: <https://www.federalreserve.gov/boarddocs/RptCongress/annual05/sec2/c2.htm>.

<sup>11</sup> Federal Reserve Board, “94th Annual Report” (2007), available at: <https://www.federalreserve.gov/boarddocs/rptcongress/annual07/sec2/c2.htm>.

mortgage market. In 2004, the Federal Bureau of Investigation (“FBI”) warned that the mortgage market was attracting unscrupulous actors whose fraudulent behavior could lead to tremendous consumer fraud and large losses for the banking sector. The head of the FBI’s Criminal Division said then, “[i]t has the potential to be an epidemic. We think we can prevent a problem that could have as much impact as the S&L [Savings and Loan] crisis.”<sup>12</sup> Similarly, in December 2006, CRL found that about one in eight, or 13 percent, of subprime home loans had ended in foreclosure within five years of origination.<sup>13</sup> CRL also predicted that one out of five subprime mortgages, or 19 percent, that had been originated in the previous two years would end in foreclosure.<sup>14</sup> Despite such warnings, from 2004 to 2006, subprime mortgage loans continued to skyrocket. These loans eventually represented over 20 percent of the entire mortgage loan market, more than double the average annual market share going back to 1996 (See Figure 1).

**Figure 1. Subprime Mortgage Originations**



Source: *Inside Mortgage Finance*

These mortgage lending practices were harmful for consumers. A Senate investigation examined common high-risk mortgage lending practices at Washington Mutual (“WaMu”), which was the country’s largest savings and loan association until its collapse in 2008, found that:

“[t]hose practices included qualifying high risk borrowers for larger loans than they could afford; steering borrowers from conventional mortgages to higher risk loan products; accepting loan applications without verifying the borrower’s income; using loans with low, short term ‘teaser’ rates that could lead to payment shock when higher interest rates took effect later on; promoting negatively amortizing loans in which many borrowers increased rather than paid down their debt; and authorizing loans with multiple layers of risk. In addition, WaMu... failed to enforce compliance with their own

<sup>12</sup> See, Terry Frieden, “FBI warns of mortgage fraud ‘epidemic’: seeks to head off ‘next S&L crisis’” CNN (Sept. 17, 2004), available at: <http://www.cnn.com/2004/LAW/09/17/mortgage.fraud/>.

<sup>13</sup> Center for Responsible Lending, “Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners” at p. 3 (Dec. 2006), available at: <http://www.responsiblelending.org/research-publication/losing-ground-foreclosures-subprime-market-and-their-cost-homeowners>.

<sup>14</sup> Id.



lending standards; allowed excessive loan error and exception rates; exercised weak oversight over the third party mortgage brokers who supplied half or more of their loans; and tolerated the issuance of loans with fraudulent or erroneous borrower information. They also designed compensation incentives that rewarded loan personnel for issuing a large volume of higher risk loans, valuing speed and volume over loan quality.”<sup>15</sup>

And yet, regulators responsible for enforcing consumer financial protection laws did not act efficiently or effectively. In 2006, the FDIC Inspector General found that:

“The FDIC faces significant challenges associated with identifying, assessing, and addressing the risks posed to FDIC-supervised institutions and consumers by predatory lending...FDIC guidance issued to examiners, FDIC-supervised financial institutions, and consumers addresses predatory lending. However, the guidance does not formally articulate a supervisory approach to address predatory lending and was not issued for the explicit purpose of identifying, assessing, and addressing the risks that such lending practices pose to institutions and consumers. Further, certain characteristics potentially indicative of predatory lending were not covered. The lack of an articulated supervisory approach and gaps in coverage could result in increased risk that predatory lending practices occur, are not detected, and harm institutions and consumers....

“We reported that [FDIC’s Division of Supervision and Consumer Protection (DSC)] had not adequately ensured that the financial institutions in our sample had taken appropriate corrective actions for repeat, significant violations that had been cited during examinations. In many cases... DSC waited until the next examination to follow up on repeat, significant compliance violations that had been identified in multiple examinations before taking supervisory action. As a result of repeat, significant violations, consumers and businesses of the affected institutions may not obtain the benefits and protection afforded them by consumer protection laws and regulations.”<sup>16</sup>

The Federal Reserve also largely ignored calls from consumer advocates and Congressional Democrats to exercise its rulemaking powers under the Home Ownership Equity and Protection Act (“HOEPA”) to prescribe restrictions on subprime mortgage loans. HOEPA was enacted in 1994, primarily in response to reports of predatory lending practices on home equity loans in the early 1990s, and gave the Federal Reserve the authority to prevent unfair and deceptive lending practices over all lenders, regardless of whether they operated at the Federal or state level. The Federal Reserve, however, took the narrow view that its HOEPA authority was limited to only enforcing regulations over the institutions that it supervised.

The failures of the Federal financial services regulators to combat predatory lending practices, which largely triggered the 2008 financial crisis, were confirmed by the extensive investigation conducted by the Financial Crisis Inquiry Commission (“FCIC”), which concluded that:

“As irresponsible lending, including predatory and fraudulent practices, became more prevalent, the Federal Reserve and other regulators and authorities heard warnings from many quarters. Yet the Federal Reserve neglected its mission ‘to ensure the safety and soundness of the nation’s banking and financial system and to protect the credit rights of consumers.’ It failed to build the retaining wall before

<sup>15</sup> See, S. Rep. No. 112-675 at p. 3 (April 13, 2011) (U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations (PSI), Majority and Minority Staff Report, “Wall Street and the Financial Crisis: Anatomy of a Financial Crisis,” available at <https://www.gpo.gov/fdsys/pkg/CHRG-112shrg66052/pdf/CHRG-112shrg66052.pdf>); see generally, PSI hearings, available at <https://www.hsgac.senate.gov/subcommittees/investigations/hearings?c=111>.

<sup>16</sup> See, Federal Deposit Insurance Corporation, Office of the Inspector “Semiannual Report to the Congress” at pgs. 23-24 (April 1, 2006-September 30, 2006), available at: <https://www.fdicig.gov/semi-reports/saroct06/semi06october.html>.

it was too late. And the Office of the Comptroller of the Currency and the Office of Thrift Supervision, caught up in turf wars, preempted state regulators from reining in abuses.”<sup>17</sup>

Similarly, in a paper on the financial crisis and lax consumer protection oversight, Professor Adam Levitin wrote:

“Many of the criticisms of the current regulatory system are close[ly] tied to the regime’s structural flaws. There are four main structural flaws with the current regulatory structure: that consumer protection is a so-called “orphan” mission; that consumer protection conflicts with, and is subordinated to, safety-and-soundness concerns; that no agency has developed an expertise in consumer protection in financial services, and; that regulatory arbitrage of the current system fuels a regulatory race-to-the-bottom.”<sup>18</sup>

## **II. The Dodd-Frank Act and the Establishment of the Consumer Bureau**

The concept of a single Federal agency tasked with consumer protections had its origins almost a decade ago in a proposal championed by future Senator Elizabeth Warren (D-MA) in 2007 in an article she wrote for the journal *Democracy*.<sup>19</sup> Senator Warren started with a comparison:

“It is impossible to buy a toaster that has a one-in-five chance of bursting into flames and burning down your house. But it is possible to refinance an existing home with a mortgage that has the same one-in-five chance of putting the family out on the street—and the mortgage won’t even carry a disclosure of that fact to the homeowner. Similarly, it’s impossible to change the price on a toaster once it has been purchased. But long after the papers have been signed, it is possible to triple the price of the credit used to finance the purchase of that appliance, even if the customer meets all the credit terms, in full and on time. Why are consumers safe when they purchase tangible consumer products with cash, but when they sign up for routine financial products like mortgages and credit cards they are left at the mercy of their creditors?”

Senator Warren went on to describe the weak regulatory system for consumer financial protection described earlier in this report, and proposed that a consumer financial protection agency be established to remedy these problems. She wrote such an agency, “could eliminate some of the most egregious tricks and traps in the credit industry. And for every family who avoids a trap or doesn’t get caught by a trick, that’s regulation that works.”

As the financial crisis abated and the financial system began to stabilize in 2009, the work to examine and ultimately reform the broken financial regulatory regime began in Congress and the Executive Branch. The House Financial Services Committee (“Committee”) held a series of hearings in the 111<sup>th</sup> Congress examining the causes of the financial crisis and proposals for reform, including several on consumer protections:<sup>20</sup>

<sup>17</sup> See, Financial Crisis Inquiry Commission, “The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial Economic Crisis in the United States” at p. xxiii (Jan. 2011), available at: [http://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/fcic\\_final\\_report\\_full.pdf](http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

<sup>18</sup> Adam J. Levitin, The Pew Charitable Trusts, “Financial Reform Briefing Project #3: The Consumer Financial Protection Agency” (2009), available at: <http://www.pewtrusts.org/~media/assets/2009/08/6/pewlevitancfpa.pdf>.

<sup>19</sup> See, Elizabeth Warren, “Unsafe at Any Rate: If it’s good enough for microwaves, it’s good enough for mortgages. Why we need a Financial Product Safety Commission,” *DEMOCRACY*, No.5 (Summer 2007), available at: <http://democracyjournal.org/magazine/5/unsafe-at-any-rate/>.

<sup>20</sup> See, <http://archives.financialservices.house.gov/hearings111.shtml> for a full list of hearings held by the Committee in 2009 and 2010.

- “Regulatory Restructuring: Enhancing Consumer Financial Products Regulation” held on June 24, 2009;<sup>21</sup>
- “Community and Consumer Advocates’ Perspectives on the Obama Administration’s Financial Regulatory Reform Proposals” held on July 16, 2009;<sup>22</sup>
- “Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve” held on July 16, 2009;<sup>23</sup> and
- “Perspectives on the Consumer Financial Protection Agency” held on September 30, 2009.<sup>24</sup>

These hearings exposed the problems that triggered the financial crisis and reviewed ideas to improve the regulatory system to better protect consumers. At the June 24, 2009 Committee hearing, then Chairwoman of the Housing and Community Opportunity Subcommittee Maxine Waters (D-CA) stated:

“Judging from the proliferation of all kinds of exotic products such as the no-doc loans, option ARMs, and other subprime mortgages and payday loans, our current regulatory framework inadequately protects consumers. One of the issues is jurisdiction. There are several types of consumer financial products which because they are offered by nonbanks fall into what may be classified as the shadow banking industry. These products and institutions escape Federal regulation yet often lead to Federal problems such as our current economic and foreclosure crisis.... That is why any Consumer Financial Protection Agency must have broad authority to examine both products and practices.”<sup>25</sup>

In addition to the work of the House Financial Services Committee under Chairman Barney Frank, other Congressional committees were actively investigating the causes and aftermath of the financial crisis, as well as its impact on consumers. This included work by the Senate Banking Committee, the House Oversight and Government Reform Committee, and the Senate Permanent Subcommittee on Investigations examining the shortcomings exposed by the crisis and ideas to improve the regulatory system to better protect consumers.

Reviews by other government and oversight bodies, including the Congressional Research Service (“CRS”), the Government Accountability Office (“GAO”), the Congressional Oversight Panel for the Troubled Asset Relief Program, the Office of the Special Inspector General for the Troubled Asset Relief Program, and the Financial Crisis Inquiry Commission also demonstrated what went wrong and helped work to ensure policymakers learned and do not repeat the mistakes of the past. For example, in a 2009 report, the GAO highlighted previous reports warning about weak consumer protections in the financial marketplace during the run up to the crisis and recommended that Congress consider a regulatory approach that is “[a]ppropriately comprehensive,” stating that, “[a] regulatory system should ensure that financial institutions and activities are regulated in a way that ensures regulatory goals are fully met. As such, activities that pose risks to consumer protection... should be comprehensively regulated....” GAO also noted, “[c]onsumer protection should be viewed from the perspective of the consumer rather than through the various and sometimes divergent perspectives of the multitude of Federal regulators that currently have responsibilities in this area.”

Additionally, President Obama’s U.S. Department of the Treasury (“Treasury”) issued a comprehensive financial regulatory reform proposal in June 2009 that called for making consumer protection a priority and establishing a Consumer Financial Protection Agency.<sup>26</sup> The Treasury proposed, along with a long list of other

<sup>21</sup> Available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1162>.

<sup>22</sup> Available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1151>.

<sup>23</sup> Available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1152>.

<sup>24</sup> Available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1129>.

<sup>25</sup> Available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1162>.

<sup>26</sup> Department of the Treasury, “Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation” (June 17, 2009), available at: <https://www.treasury.gov/press-center/press-releases/Pages/20096171052487309.aspx>.

regulatory reforms, that Congress establish, “A new Consumer Financial Protection Agency to protect consumers across the financial sector from unfair, deceptive and abusive practices.”<sup>27</sup> Treasury’s report stated:

“Consumer protection is a critical foundation for our financial system. It gives the public confidence that financial markets are fair and enables policy makers and regulators to maintain stability in regulation. Stable regulation, in turn, promotes growth, efficiency, and innovation over the long term. Consumer protection cannot live up to this role, however, unless the financial system develops and sustains a culture that places a high value on helping responsible consumers thrive and treating all consumers fairly. The spread of unsustainable subprime mortgages and abusive credit card contracts highlighted a serious shortcoming of our present regulatory infrastructure. It too easily allows consumer protection values to be overwhelmed by other imperatives – whether short-term gain, innovation for its own sake, or keeping up with the competition. To instill a genuine culture of consumer protection and not merely of legal compliance in our financial institutions, we need first to instill that culture in the federal regulatory structure. For the public to have confidence that consumer protection is important to regulators, there must be clear accountability in government for this task.”

After extensive debate and multiple markup sessions to refine the legislation, the Committee approved H.R. 3126, the “Consumer Financial Protection Agency Act,” in October 2009. During the markup of H.R. 3126, Members proposed and debated 47 amendments to the bill.<sup>28</sup> As such, the legislation was thoroughly debated and steadily refined. However, the Committee’s approval of this bill marked the beginning, not the ending, of the legislative process. After a series of other financial regulatory reform bills were approved by the Committee, Chairman Barney Frank bundled the separate bills together into H.R. 4173, the “Wall Street Reform and Consumer Protection Act.”<sup>29</sup> After several days of debate by the House and the consideration of more amendments, the House approved H.R. 4173 on December 11, 2009. The Senate also engaged in extensive debate in its committees. The Senate approved its version of the legislation on May 20, 2010.<sup>30</sup> The House and the Senate subsequently convened a Conference Committee to reconcile the differences between the two versions of the bill, which met in public for two weeks, before ultimately agreeing to the conference report and final version of the legislation, which the House approved with bipartisan support on June 30, 2010,<sup>31</sup> and the Senate approved on July 15, 2010. President Obama signed the Dodd-Frank Act into law on July 21, 2010.<sup>32</sup>

<sup>27</sup> Id. (Specifically, one of Treasury’s five key principles for regulatory reform highlighted was to “Protect consumers and investors from financial abuse.” To address this issue, the Treasury report proposed that [t]o rebuild trust in our markets, we need strong and consistent regulation and supervision of consumer financial services and investment markets. We should base this oversight not on speculation or abstract models, but on actual data about how people make financial decisions. We must promote transparency, simplicity, fairness, accountability, and access. We propose: [a] new Consumer Financial Protection Agency to protect consumers across the financial sector from unfair, deceptive, and abusive practices; Stronger regulations to improve the transparency, fairness, and appropriateness of consumer and investor products and services.; and [a] level playing field and higher standards for providers of consumer financial products and services, whether or not they are part of a bank.”).

<sup>28</sup> “Discussion Draft of the Over-the-Counter Derivatives Markets Act of 2009; September 25, 2009 Discussion Draft of the Consumer Financial Protection Agency Act of 2009 (to be reported as H.R. 3126); H.R. 3763, to amend the Fair Credit Reporting Act to provide for an exclusion from Red Flag Guidelines for certain businesses; and H.R. 3639, Expedited CARD Reform for Consumers Act of 2009: Markup Before the House Committee on Financial Services”, 111th Congress (2009), available at: <http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=801>.

<sup>29</sup> H.R. 4173, 111th Congress (2010), available at: <https://www.congress.gov/bill/111th-congress/house-bill/4173/>

<sup>30</sup> S. 3217, 111th Congress (2010) (Most of the Senate’s legislative work focused on S.3217, the “Restoring American Financial Stability Act”), available at: <https://www.congress.gov/bill/111th-congress/senate-bill/3217>.

<sup>31</sup> “Wall Street Reform and Consumer Protection Act of 2009: Roll Vote 413.” Congressional Record, p. H5302 (June 30, 2010), available at: <http://clerk.house.gov/evs/2010/roll413.xml>.

<sup>32</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (2010), available at: <https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>.

Title X of the Dodd-Frank Act established the Consumer Bureau as the first ever independent Federal agency provided with rulemaking, supervisory, and enforcement authorities over the offering and provision of consumer financial products and services. The Consumer Bureau, specifically, was created for “the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”<sup>33</sup> As such, the Consumer Bureau was given authority to monitor many non-depository institutions engaged in the business of offering or providing consumer products or services, institutions which were not previously adequately supervised and examined by a Federal financial services agency.

### **III. The Highly Successful Consumer Bureau**

#### ***A. The Consumer Bureau’s First Year***

Despite Republicans’ repeated attempts to undermine the Consumer Bureau<sup>34</sup> and the challenges of standing up a new Federal agency that was initially short-staffed,<sup>35</sup> the Consumer Bureau successfully complied with most of its statutory requirements embodied in its vital mission to protect consumers in the wake of the Great Recession.<sup>36</sup> In just its first year, the Consumer Bureau managed to:

- Adopt mortgage origination examination procedures for originators for both banks and nonbanks in the industry;
- Adopt a final rule that provides consumer protections on international electronic money transfers;
- Implemented its “Know Before You Owe” initiative, which helps people understand the consequences of debt;
- Post answers to 500 consumer questions;
- Propose rules for simplifying mortgage disclosures;
- Launch a central database to track companies that rip off military personnel;
- Release a student debt repayment assistance tool; and

<sup>33</sup>12 U.S.C. § 5511 (2010); Dodd-Frank Act § 1021(a) (2010) (Under section 1021 of the Dodd-Frank Act, the Consumer Bureau is directed to use its powers to ensure that: “(i) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (ii) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (iii) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (iv) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (v) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”).

<sup>34</sup> Pat Garafalo, “Senate Republicans Who Voted To Create CFPB Now Refuse To Confirm Its Director Without Changes,” THINKPROGRESS (May 6, 2011), <https://thinkprogress.org/senate-republicans-who-voted-to-create-cfpb-now-refuse-to-confirm-its-director-without-changes-195d1955471b>. (“Republican attempts to undermine the Consumer Bureau started up almost immediately after the Bureau opened its doors. In May 2011, House Republicans passed three bills aimed at limiting the Consumer Bureau’s powers. Senate Republicans then sent a letter to President Obama stating they would not confirm a Director for the Consumer Bureau unless several changes were made to its structure”).

<sup>35</sup> See, Consumer Financial Protection Bureau, “Developing Our Human Capital” at p. 12 (July 2011), available at: [http://files.consumerfinance.gov/f/2011/07/Report\\_20110721\\_DevelopingOurHumanCapital.pdf](http://files.consumerfinance.gov/f/2011/07/Report_20110721_DevelopingOurHumanCapital.pdf); see also, 2011 OCC Ann. Rep. FY 2011 at p. 2 (2012), available at <https://www.occ.gov/annual-report/download-the-full-report/2011-annual-report.pdf>. (The Consumer Bureau did not have the authority to hire employees until February 2011, and only had approximately 500 people total on staff at the end of August 2011. For means of comparison, note that the OCC had approximately 3,717 employees on staff during the same time period.).

<sup>36</sup> See, Mass. Public Interest Research Group, “Consumer Financial Protection Bureau: Successes and Priority Projects” (2012), available at: [http://masspirg.org/sites/pirg/files/CFPB\\_Successes\\_and\\_Priorities\\_Fact\\_Sheet.pdf](http://masspirg.org/sites/pirg/files/CFPB_Successes_and_Priorities_Fact_Sheet.pdf).

- Set up a consumer complaint telephone number and website, as well as a whistleblower hotline, which allows employees, contractors, vendors, and companies to confidentially report suspected violations of consumer finance law.<sup>37</sup>

### ***B. The Consumer Bureau's Efforts to Listen to and Help Harmed Consumers***

Prior to the Dodd-Frank Act, consumers had limited avenues for seeking recourse or issuing complaints against financial institutions. Although the Federal Reserve, FDIC, NCUA, OCC, and OTS had telephone and online contacts for consumers, it was not clear how consumers' complaints were handled by these different agencies. There was also no single centralized database to compile consumer complaints or system to enable agencies to unmask problems or issues that cut across the types of institutions that they supervised.

In comparison to the disjointed and limited consumer complaint systems of these agencies, in accordance with the Dodd-Frank Act, the Consumer Bureau established robust mechanisms to handle and monitor consumer problems with financial service providers. In July 2011, the Consumer Bureau created its Consumer Response operations and established a public Consumer Complaint database ("Database") to facilitate the centralized collection and monitoring of, and response to, consumer complaints about consumer financial products or services.<sup>38</sup> The types of complaints the Consumer Bureau typically receives through its Database relate to credit cards, mortgage loans, bank accounts and services, student loans and loan servicing, consumer loans, credit reports, money transfers, debt collection, prepaid cards, credit repair, debt settlement, pawn and title loans, and virtual currency. The Database has been a vital tool, ensuring consumers who experience difficulties with financial service providers have their voices heard and get redress. The Consumer Bureau also publishes information about these complaints to "empower consumers, inform consumer advocates and companies, and improve the functioning of the marketplace."<sup>39</sup>

Complaints in the Database are only posted once the Consumer Bureau has verified that a commercial relationship exists between a consumer and the company offering the product or service, and confidential personal information is not disclosed as part of the public database. The Database also includes information about the actions taken by a company in response to a complaint—including whether the company's response was timely and how the company responded.<sup>40</sup> Screened complaints are forwarded through a secure web portal to the appropriate company for their review and response. Consumers can check on the status of their complaint, provide additional information, and review the responses that they receive. An impressive 97 percent of complaints are generally responded to by companies within 15 days. As of June 1, 2017, the Consumer Bureau has handled over 1,218,600 complaints.<sup>41</sup> The majority of complaints received through the Database are

<sup>37</sup> 2012 Consumer Financial Protection Bureau Semi Ann. Rep. 1, available at: [http://files.consumerfinance.gov/f/2012/01/Congressional\\_Report\\_Jan2012.pdf](http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf).

<sup>38</sup> 2016 Consumer Financial Protection Bureau Sem. Ann. Rep. 9, p. 17-18, available at <https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-spring-2016/>; 2016 CFPB Sem. Ann. Rep. 10 p.17-18, available at: <https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-fall-2016>.

<sup>39</sup> Consumer Financial Protection Bureau Monthly Complaint Report, Volume 24, p. 1 (June 2017), available at: [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706\\_cfpb-Monthly-Complaint-Report-50-State.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706_cfpb-Monthly-Complaint-Report-50-State.pdf).

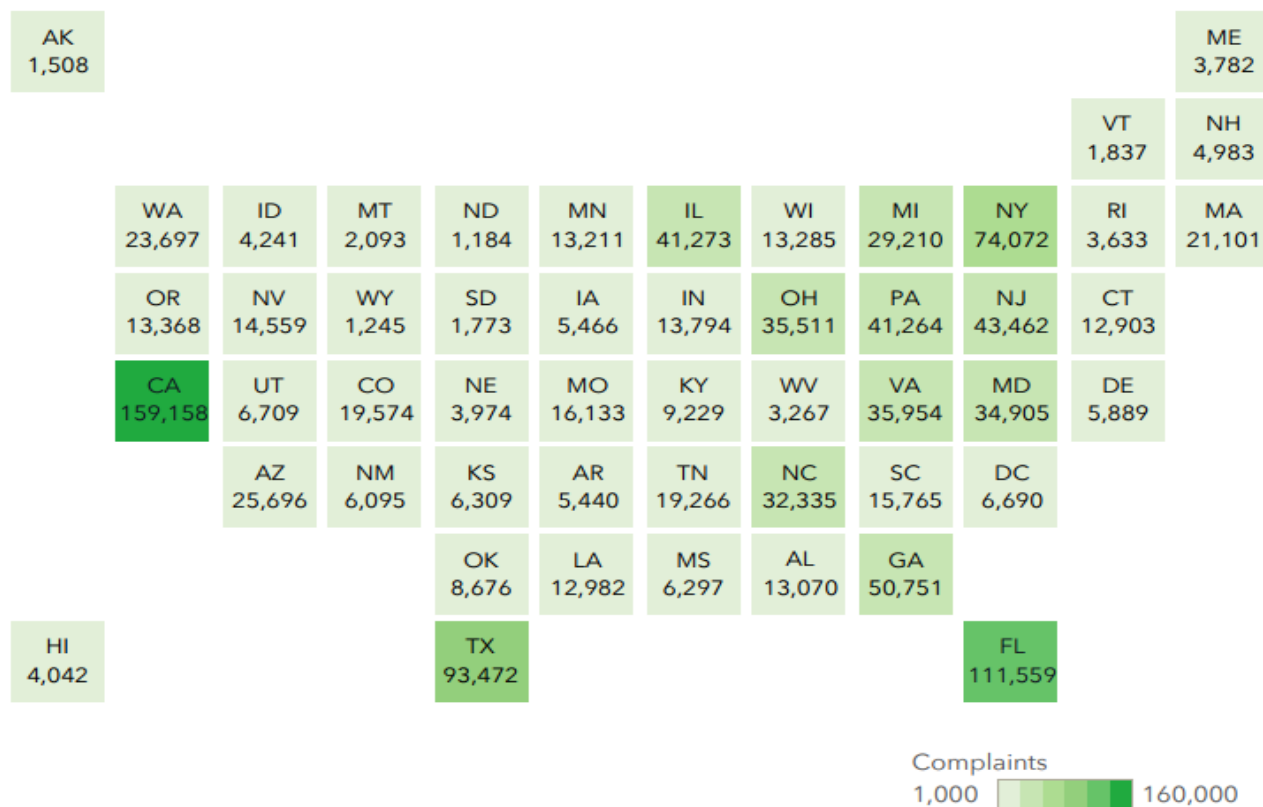
<sup>40</sup> Per a senior Consumer Bureau official, "[T]he C.F.P.B. also allows companies to give their side of the story [...] As such, the database provides a glimpse into how companies respond to consumer complaints." Gretchen Morgenson, "The Watchdog Protecting Consumers May Be Too Effective," (Feb. 10, 2017), available at: <https://www.nytimes.com/2017/02/10/business/consumer-financial-protection-bureau-gretchen-morgenson.html?mcubz=1>.

<sup>41</sup> Press Release, Consumer Financial Protection Bureau, "CFPB Releases State-Level Snapshot of Consumer Complaints" (June 27, 2017), available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-state-level-snapshot-consumer-complaints/>.

related to debt collection, followed by credit reporting/services and mortgage products (See Figures 2 and 3 for a state-by-state breakdown).<sup>42</sup>

The Consumer Bureau also accepts complaints from consumers attending its roundtables, town halls, and field hearings.<sup>43</sup> In addition to field hearings, the Consumer Bureau’s Office of Community Affairs has hosted roundtables with leaders from consumer, civil rights, community, housing, faith-based, student, and other organizations. These forums enable the Consumer Bureau to learn about firsthand perspectives on key consumer finance issues affecting various communities.<sup>44</sup>

**Figure 2. State-by-State Chart of Consumer Complaints**



Source: Consumer Bureau

<sup>42</sup> See, 2016 Consumer Financial Protection Bureau Sem. Ann. Rep. 10 (The greatest complaints received by the Consumer Bureau, according to its Tenth Semi-Annual Report are related to debt collection, credit reporting, mortgage products, bank accounts or services, credit cards, student loans, consumer loans, payday loans, prepaid cards, and money transfer services).

<sup>43</sup> 2016 Consumer Financial Protection Bureau Sem. Ann. Rep. 10, p. 16. (Between October 1, 2016, and March 31, 2017, the Consumer Bureau sponsored field hearings in Albuquerque, NM, Kansas City, MO, and Sacramento, CA, all of which drew hundreds of participants).

<sup>44</sup> Id.

**Figure 3. State-by-State Analysis of Consumer Complaints**

**TABLE 1: TOTAL COMPLAINTS BY LOCALITY AND PRODUCT**

	Bank account or services	Consumer loan	Credit card	Credit reporting	Debt collection	Money transfer	Mortgage	Other financial services	Payday loan	Prepaid	Student loans	Total
Alabama	1,145	884	969	2,470	4,236	71	2,128	75	354	98	522	13,070
Alaska	136	62	190	227	504	13	253	9	34	8	65	1,508
American Samoa	11	2	5	6	15	1	7	0	0	0	3	51
Arizona	2,438	1,330	2,631	3,852	7,502	154	6,232	85	262	150	850	25,696
Arkansas	507	305	504	1,073	1,638	40	944	31	76	33	250	5,440
California	15,411	6,396	15,742	24,826	40,038	1,136	46,412	636	1,845	1,032	4,739	159,158
Colorado	1,801	851	2,185	3,201	5,414	124	4,667	80	241	122	758	19,574
Connecticut	1,533	575	1,707	1,857	2,884	88	3,168	67	185	95	641	12,903
Delaware	694	331	722	861	1,627	27	1,268	34	105	27	159	5,889
District of Columbia	922	254	790	944	1,588	68	1,393	55	128	55	412	6,690
Federated States of Micronesia	6	2	14	10	16	1	15	1	2	0	1	68
Florida	10,189	4,354	10,251	22,574	28,457	631	29,346	388	1,236	458	2,918	111,559
Georgia	4,638	2,713	3,951	9,853	12,833	286	13,446	170	417	331	1,793	50,751
Guam	15	14	14	30	48	3	29	1	3	1	8	166
Hawaii	306	155	473	662	1,052	22	1,159	16	43	15	116	4,042
Idaho	290	181	444	714	1,493	28	804	8	70	12	172	4,241
Illinois	4,633	1,668	4,287	7,298	10,866	266	9,274	141	628	305	1,643	41,273
Indiana	1,233	736	1,271	2,158	4,348	93	2,484	77	356	89	861	13,794
Iowa	405	247	634	941	1,827	44	816	43	135	47	292	5,466
Kansas	610	315	699	917	2,198	43	1,008	26	116	46	274	6,309
Kentucky	744	472	785	1,577	3,185	65	1,589	43	216	58	438	9,229
Louisiana	1,003	726	901	2,495	4,434	86	2,316	63	350	89	443	12,982
Maine	354	172	578	425	959	16	931	25	60	36	205	3,782
Marshall Islands	5	8	8	4	14	0	11	1	0	0	2	53
Maryland	3,576	1,638	3,409	5,132	8,316	235	10,010	168	627	196	1,300	34,905
Massachusetts	2,887	780	2,953	2,675	4,317	202	5,416	112	305	151	1,177	21,101
Michigan	2,682	1,216	2,627	4,281	7,790	187	7,804	133	550	204	1,438	29,210
Minnesota	1,408	470	1,586	1,763	3,361	119	3,263	71	258	88	715	13,211
Mississippi	539	448	437	1,142	2,114	39	1,047	27	174	49	247	6,297
Missouri	1,352	932	1,407	2,459	5,033	105	3,405	80	312	117	841	16,133
Montana	134	85	242	308	791	11	351	10	39	12	96	2,093
Nebraska	392	176	457	465	1,412	24	661	21	94	29	220	3,974

Source: Consumer Bureau

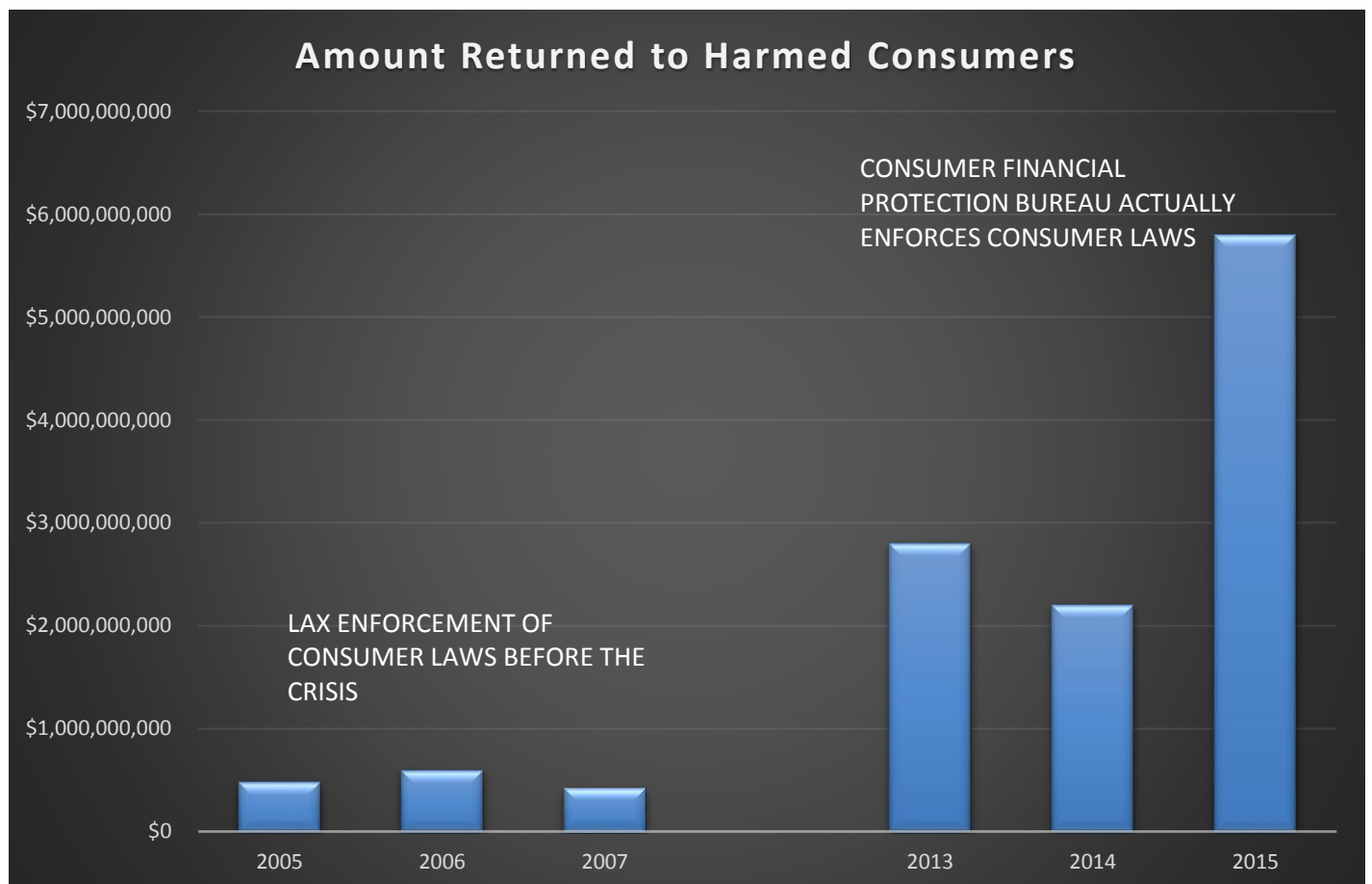


	Bank account or services	Consumer loan	Credit card	Credit reporting	Debt collection	Money transfer	Mortgage	Other financial services	Payday loan	Prepaid	Student loans	Total
Nevada	1,389	726	1,296	2,585	4,159	93	3,413	54	260	101	348	14,559
New Hampshire	430	189	520	580	1,178	23	1,644	22	68	31	257	4,983
New Jersey	4,923	1,823	4,957	6,350	9,705	288	12,257	244	680	258	1,650	43,462
New Mexico	544	330	534	1,161	1,925	57	1,105	30	127	29	205	6,095
New York	9,414	2,610	10,445	12,586	16,083	626	17,207	419	483	476	3,235	74,072
North Carolina	3,085	1,829	3,237	5,630	8,322	194	7,803	158	489	183	1,145	32,335
North Dakota	89	55	118	240	442	9	148	8	16	8	45	1,184
Northern Mariana Islands	7	1	3	7	10	1	7	0	0	0	5	41
Ohio	3,420	1,869	3,982	4,904	10,611	207	7,282	151	707	261	1,874	35,511
Oklahoma	615	583	729	1,415	3,102	66	1,401	35	270	56	332	8,676
Oregon	1,367	499	1,459	1,776	3,844	70	3,274	70	185	96	611	13,368
Palau	1	1	2	3	1	0	6	0	0	0	0	14
Pennsylvania	4,870	1,849	4,514	6,306	10,851	272	8,897	224	663	257	2,307	41,264
Puerto Rico	364	158	386	733	546	15	503	19	6	9	70	2,855
Rhode Island	477	166	449	433	970	28	802	24	100	23	142	3,633
South Carolina	1,212	1,047	1,217	2,947	4,910	101	3,155	59	286	94	647	15,765
South Dakota	151	113	231	232	638	17	239	10	37	9	85	1,773
Tennessee	1,691	1,164	1,624	2,964	6,624	105	3,500	105	468	122	786	19,266
Texas	7,371	4,909	7,534	22,203	31,674	571	13,443	335	1,610	517	2,715	93,472
Utah	484	322	683	1,002	2,218	38	1,494	23	128	35	235	6,709
Vermont	220	92	275	249	387	11	428	9	23	17	117	1,837
Virgin Islands	37	10	39	78	55	5	53	2	4	1	6	293
Virginia	3,358	1,791	3,846	6,332	9,462	272	8,299	191	544	250	1,351	35,954
Washington	2,105	846	2,326	3,491	6,564	161	6,288	97	277	166	1,220	23,697
West Virginia	308	147	341	659	926	32	505	37	31	27	208	3,267
Wisconsin	1,246	606	1,709	1,597	4,006	93	2,833	57	292	126	615	13,285
Wyoming	73	67	124	202	435	7	218	10	34	3	57	1,245
U.S. Armed Forces – Americas	10	1	6	1	24	1	9	2	1	2	2	61
U.S. Armed Forces – Europe	47	26	39	73	105	6	98	4	0	2	34	435
U.S. Armed Forces – Pacific	21	21	43	50	93	3	57	0	2	0	15	305
Unspecified	3,727	860	3,191	1,837	6,630	574	4,128	244	487	144	485	23,122
<b>Total</b>	<b>115,055</b>	<b>53,208</b>	<b>118,732</b>	<b>195,826</b>	<b>316,810</b>	<b>8,174</b>	<b>272,153</b>	<b>5,340</b>	<b>17,499</b>	<b>7,256</b>	<b>44,403</b>	<b>1,163,156</b>

Source: Consumer Bureau

The Consumer Bureau’s active enforcement and supervisory efforts are in stark contrast to those taken by the Federal financial services agencies prior to the enactment of the Dodd-Frank Act (See Figure 4).<sup>45</sup> During the period of October 1, 2015 through March 31, 2016, the Consumer Bureau’s supervisory actions resulted in financial institutions paying more than \$44 million in redress to over 177,000 consumers. During the period of April 1, 2016, through September 30, 2016, the Consumer Bureau’s supervisory actions resulted in financial institutions providing more than \$14 million in redress to over 339,000 consumers; during this time period, the Consumer Bureau also brought enforcement actions against financial institutions for approximately \$40 million in total relief for consumers due to various violations of consumer financial protection laws. In the process, the Consumer Bureau has also made the mortgage lending market safer for both consumers and lenders and, at the same time, pushed for rules that rein in abuses by student loan servicers, auto finance companies, payday lenders, big banks, and debt collectors.<sup>46</sup> In the six years since its establishment in July 2011, the Consumer Bureau has recovered nearly \$12 billion for 29 million consumers.<sup>47</sup>

**Figure 4. Comparison of Consumer Protection Enforcement**



Data from: Consumer Bureau, Federal Reserve, and FTC

<sup>45</sup> Id.

<sup>46</sup> Consumer Financial Protection Bureau, “Enforcement actions” (last visited July 18, 2017), available at: <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.

<sup>47</sup> Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau: By the numbers” (June 2016), available in Appendix J.

### *C. The Consumer Bureau's Efforts in Protecting the Financial Interests of Servicemembers*

The Consumer Bureau's Office of Servicemember Affairs, which is a designated sub-office under the Dodd-Frank Act, has visited nearly 150 military installations to help ensure military personnel and their families understand their consumer rights under the law.<sup>48</sup> In its most recent annual report, this office noted that, since opening its doors in July of 2011, it has handled 82,000 complaints from members of the military,<sup>49</sup> and has taken a number of enforcement actions against financial institutions for violations of Federal consumer protection laws, including:

- Securing tens of millions of dollars in debt relief for 17,000 servicemembers tricked into taking out high-cost loans for computers and other electronics purchased at a chain of mall kiosks near military bases;
- Directing a bank and a partner company to terminate their deceptive marketing of auto and installment loans and return \$6.5 million in hidden fees to military borrowers;
- Requiring a major auto lender to return over \$3 million in payments obtained through illegal debt-collection practices, including threats to report servicemembers to their commanding officers; and
- Ordering the nation's largest credit union to pay over \$28 million in refunds and penalties for the use of illegal debt collection tactics.

Other notable actions by the Consumer Bureau's Office of Servicemembers include:<sup>50</sup>

- Securing approximately \$130 million in relief for servicemembers, veterans, and their families harmed by illegal practices;
- Obtaining over \$60 million in relief for over 78,000 servicemembers harmed by Servicemember Civil Relief Act ("SCRA") violations identified through the Office of Servicemembers monitoring of complaints;
- Handling over 82,000 complaints<sup>51</sup> from servicemembers, veterans, and their families since July 2011; and
- Providing over 75,000 financial education products to military leaders, service providers, servicemembers, veterans, and their families.

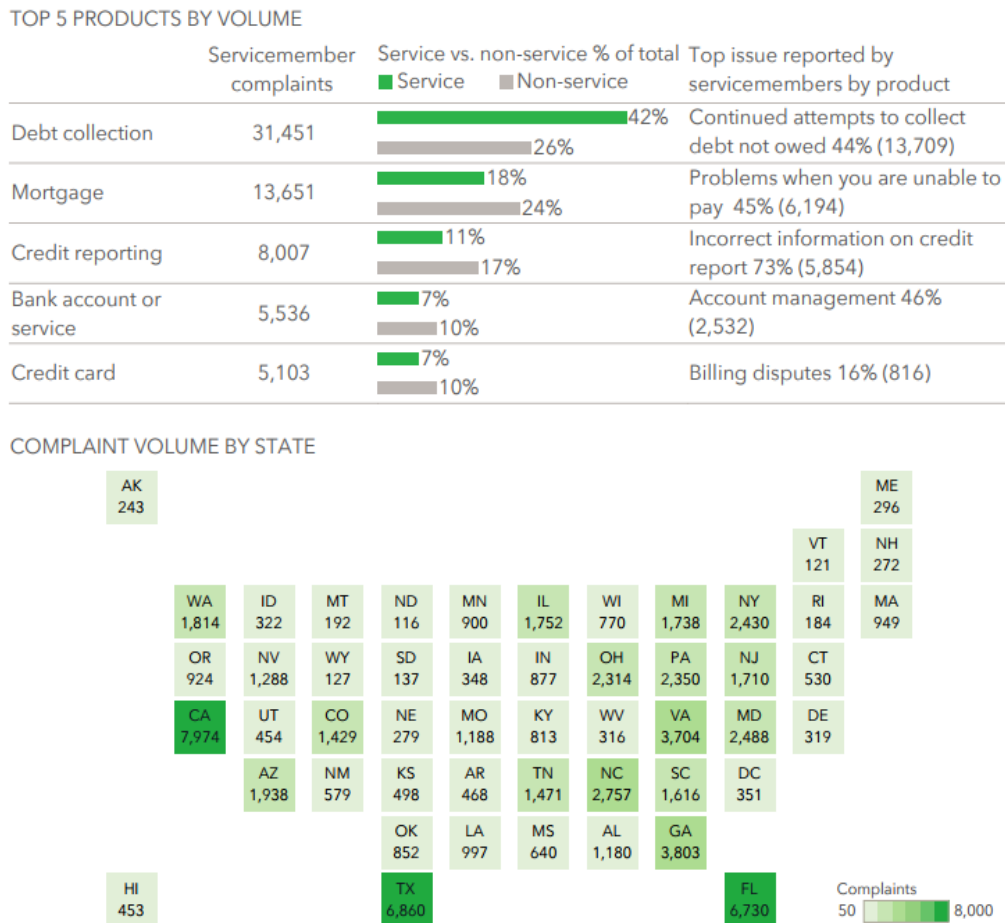
<sup>48</sup> Consumer Financial Protection Bureau, "The Office of Servicemember Affairs: Charting our course through the military lifecycle" at p. 71 (May 2017), available at: [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201705\\_cfpb\\_OSA\\_Military-Lifecycle-Report.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201705_cfpb_OSA_Military-Lifecycle-Report.pdf).

<sup>49</sup> See, Fact Sheet, "The CFPB's Office of Servicemember Affairs ensures that military personnel and their families have a voice," (July 1, 2017), available in Appendix K.

<sup>50</sup> Id.

<sup>51</sup> Id. The Consumer Bureau reports that the agency has handled over 82,000 complaints from servicemembers, veterans, and their families as of July 1, 2017.

**Figure 5. Complaints Submitted by Servicemembers, Veterans, and their Families**



Source: Consumer Bureau<sup>52</sup>

**D. The Importance of UDAAP Authority: Combating Unfair, Deceptive or Abusive Acts and Practices**

One of the Consumer Bureau’s most important enforcement tools is its authority to address predatory conduct by financial service providers. The Dodd-Frank Act gives the Consumer Bureau the power to pursue unfair, deceptive, or abusive acts or practices (“UDAAP”) in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.<sup>53</sup> The Consumer Bureau also has sole authority to prosecute financial service providers for abusive behavior when it determines that an act or practice:

- “ MATERIALLY interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service”;
- “Takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service”;
- “Hinders the ability of the consumer to protect their own interests in selecting or using a consumer financial product or service;” or

<sup>52</sup> Consumer Financial Protection Bureau Monthly Complaint Report, Volume 24, p. 6 (June 2017), available at: [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706\\_cfbp-Monthly-Complaint-Report-50-State.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706_cfbp-Monthly-Complaint-Report-50-State.pdf).

<sup>53</sup> 12 U.S.C. § 5531

- “[Encourages] the reasonable reliance by the consumer of a financial service provider to act in the interests of the consumer.”<sup>54</sup>

The Consumer Bureau has relied on its UDAAP authority in prosecuting a number of financial institutions and obtaining recourse for harmed consumers, such as in the case of Wells Fargo Bank and its fraudulent sales practices that led to bank employees opening up over 1.5 million false customer accounts using its existing customers’ personal information without their knowledge or consent.<sup>55</sup>

Republicans have pointed to the Consumer Bureau’s UDAAP authority as an example of the exceptional regulatory powers afforded to the agency, falsely arguing that there is no or little oversight of, or certainty in, how the Consumer Bureau will declare, a practice or act as abusive. In doing so, however, the Republicans fail to acknowledge that in prescribing rules under UDAAP, the Consumer Bureau must consult with the “other Federal banking regulators, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered,” as well as follow the considerations outlined in the statute under section 1031(d) of the Dodd-Frank Act.<sup>56</sup> The Consumer Bureau’s reasonable use of its UDAAP authority has found that:

- Some mortgage loan servicers have engaged in unfair and deceptive practices by impeding borrowers’ access to loss mitigation options and misrepresenting the right to appeal loan modification denials;
- Credit reporting bureaus were deceiving consumers about the usefulness of the simulated credit scores it sold to customers, and lured customers into costly recurring payments for credit products;
- A company that provides financing for plaintiff attorneys that operate on a contingency-fee basis was scamming 9/11 heroes out of money intended to cover medical costs, lost income, and other critical needs;
- A credit union was making false threats about debt collection to its members, which included active-duty military, retired servicemembers, and their families;
- An online loan servicer was engaging in unfair, deceptive and abusive practices by collecting on debts that were allegedly void under state law without informing the consumers that the debts might be void; and
- A payday lender was engaging in unfair and deceptive practices by robo-signing inaccurate affidavits and pleadings in debt collection lawsuits.<sup>57</sup>

Additionally, the Consumer Bureau has provided guidance to stakeholders about its UDAAP authority through bulletins that address activities like debt collection practices, credit card marketing, and student lending.<sup>58</sup> According to the Consumer Bureau, there have been 129 enforcement actions, or 65 percent of all actions, that have utilized UDAAP as of July 21, 2017. Over 26.3 million consumers have been entitled to relief as a result of these enforcement actions, which has resulted in over \$10.8 billion in consumer relief, either

<sup>54</sup> Id.

<sup>55</sup> See, *In the Matter of: Wells Fargo Bank, N.A.*, 2016-CFPB-0015 at p. 5 (Sept. 8, 2016), available at: [http://files.consumerfinance.gov/f/documents/092016\\_cfpb\\_WFBconsentorder.pdf](http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf) (the Consumer Bureau’s review period extended from Jan. 1, 2011 through Sept. 4, 2016, however, there is evidence that indicates that Wells Fargo’s fraudulent sales practices began as early as of 2002 and led to its staff opening over 3 million unauthorized customer accounts, e.g. Dawn Giel, “Wells Fargo fake account scandal may be bigger than thought,” CNBC (May 12, 2017), available at: <http://www.cnbc.com/2017/05/12/wells-fargo-fake-account-scandal-may-be-bigger-than-thought.html>).

<sup>56</sup> Dodd-Frank Act, § 1031, codified at 12 U.S.C. § 5531.

<sup>57</sup> See, Consumer Financial Protection Bureau, “Enforcement actions” (last visited July 18, 2017), <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>; see also, Skadden, Arps, Slate, Meagher & Flom, “Consumer Bureau Defines ‘Unfair,’ ‘Deceptive,’ and ‘Abusive’ Practices Through Enforcement Activity” (Jan. 2015), available at: <https://www.skadden.com/insights/publications/2015/01/cfpb-defines-unfair-deceptive-and-abusive-practice>.

<sup>58</sup> See, Consumer Financial Protection Bureau Bull. No. 2013-07, “Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts” (July 10, 2013), available at: [http://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf)

through monetary redress, debt cancellation, or principal reduction.<sup>59</sup> As seen in the effective use of its UDAAP power discussed above, stripping the Consumer Bureau of this authority will significantly weaken its ability to better protect consumers going forward.<sup>60</sup>

### ***E. Other Important Work of the Consumer Bureau***

In addition to the Database, enforcement, and supervisory actions, the Consumer Bureau has also implemented and proposed new rules for mortgage markets, prepaid cards, payday, auto title, and similar lending products. It has also released comprehensive studies about consumer reporting, credit scoring, and mandatory arbitration in consumer contracts.

Although the Consumer Bureau is only authorized to supervise institutions with consolidated assets of \$10 billion or more, it is responsible for writing rules for all the enumerated Federal consumer protection laws that were transferred to the agency under the Dodd-Frank Act.<sup>61</sup> Despite Republican rhetoric, which stems from lobbying groups working on behalf of the largest financial institutions, the Consumer Bureau aims to tailor its rules to provide flexibility for small financial institutions. For example, the Consumer Bureau provides community banks, credit unions, and other smaller sized institutions in rural and non-metropolitan markets with a number of exemptions from its mortgage loan rules, including flexibility related to “Qualified Mortgages.” In addition, smaller institutions serving rural or underserved areas are exempt from requirements that they maintain escrow accounts for higher-cost loans.<sup>62</sup> Unlike the other Federal financial services agencies, the Consumer Bureau is required under the Dodd-Frank Act to perform a five-year retrospective review of its significant rules in order to evaluate their effectiveness and to enable the agency to address any ambiguities and conflicts as well as identify any further necessary changes. This requirement ensures that the Consumer Bureau’s rules are appropriately tailored, and provide clear rules of the road. The Consumer Bureau has fully committed itself to protecting consumers from predatory financial products and services, notwithstanding efforts by the Republicans to roll back the agency’s progress.

### ***F. Robust Oversight and Accountability of the Consumer Bureau***

Republican arguments that the Consumer Bureau has excessive regulatory powers and is free from any Congressional oversight<sup>63</sup> simply ignore the legislative history, plain reading of the statute, and the realities of

<sup>59</sup> See gen., Consumer Financial Protection Bureau, “Enforcement actions” (last visited July 18, 2017), <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.

<sup>60</sup> See, Consumer Financial Protection Bureau, “Enforcement actions” (last visited July 18, 2017), <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>.

<sup>61</sup> See, Mark Jickling, U.S. Congressional Research Service, R40857, “Consumer Financial Protection by Federal Agencies” (Oct. 14 2009), available at: [http://www.politico.com/pdf/PPM136\\_091020\\_cfp\\_report.pdf](http://www.politico.com/pdf/PPM136_091020_cfp_report.pdf).

<sup>62</sup> See, “The State of Rural Banking: Challenges and Consequences, Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking” (Oct. 28, 2015) (testimony of Sarah Edleman, Dir. of Housing Policy, Center for American Progress), available at: [https://www.banking.senate.gov/public/\\_cache/files/4c89fc23-4e73-47ab-bbdf-69f79763510f/33A699FF535D59925B69836A6E068FD0.edelmantestimony102815f1cp.pdf](https://www.banking.senate.gov/public/_cache/files/4c89fc23-4e73-47ab-bbdf-69f79763510f/33A699FF535D59925B69836A6E068FD0.edelmantestimony102815f1cp.pdf); see also, “Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions: Hearing before the H. Financial Institutions and Consumer Credit Subcomm. of the H. Comm. on Financial Services (Mar. 21, 2017) (testimony of Sarah Edleman, Dir. of Housing Policy, Center for American Progress), available at: [https://www.banking.senate.gov/public/\\_cache/files/4c89fc23-4e73-47ab-bbdf-69f79763510f/33A699FF535D59925B69836A6E068FD0.edelmantestimony102815f1cp.pdf](https://www.banking.senate.gov/public/_cache/files/4c89fc23-4e73-47ab-bbdf-69f79763510f/33A699FF535D59925B69836A6E068FD0.edelmantestimony102815f1cp.pdf).

<sup>63</sup> See e.g., “Rep. Jeb Hensarling Calls Consumer Financial Protection Bureau A 'Rogue Agency',” NPR MORNING EDITION (Feb. 24, 2017) (“Hensarling: it is unaccountable to the president. It is unaccountable to Congress. It is unaccountable to the courts.”), available at: <http://www.npr.org/2017/02/24/516983751/rep-jeb-hensarling-calls-consumer-financial-protection-bureau-a-rogue-agency>; see also, Sylvan Lane, “GOP Bill Would Eliminate Consumer Financial Protection Bureau,” THE HILL (Feb. 14, 2017), <http://thehill.com/policy/finance/319517-gop-bill-would-eliminate-consumer-financial-protection-bureau>. (“Republicans have

the reach of Congressional oversight under the U.S. Constitution. First, in part due to concerns about how the new agency would exercise its authority, Congress created unique regulatory checks on the agency's rulemaking authority. The Consumer Bureau is subject to special consultation procedures for the exercise of its rulemaking authority, such as required consultations with other Federal banking regulators, consumers, and private stakeholders. In addition, the Financial Stability Oversight Council ("FSOC") serves a "commission" function for the single Director-led agency in that FSOC has authority to review and repeal final rules of the Consumer Bureau under certain circumstances.<sup>64</sup> No other Federal banking agency is subject to such extensive checks.

Second, unlike the other Federal banking regulators whose budgets are entirely self-determined, the Consumer Bureau's budget is subject to a hard cap based on a percentage of Federal Reserve assessments.<sup>65</sup>

Third, the Consumer Bureau Director is required to submit semi-annual reports to the relevant authorizing Congressional Committees and to testify in front of the Committee and the Senate Banking Committee on the agency's efforts in supervising regulated entities' compliance with Federal consumer protection laws. Since 2011, the Consumer Bureau Director and its senior officials have been called to testify before Congress 63 times, with the Consumer Bureau Director most recently testifying before the Committee about two semi-annual reports on Wednesday, April 5, 2017.<sup>66</sup>

#### **IV. Republicans Attempts to "Functionally Terminate" the Consumer Bureau**

In spite of the Consumer Bureau's good work to make sure that banks, lenders, and other financial companies treat consumers fairly, Congressional Republicans and the Trump Administration have continued to push to undermine, and even abolish, the Consumer Bureau. Committee Chairman Hensarling (R-TX) has stated that the highly successful Consumer Bureau "must be functionally terminated," and has supported a multi-pronged attack to tear it down through legislative actions, budgetary maneuvers, lawsuits, and investigations, even calling for its Director to be fired.<sup>67</sup> These efforts seek to return the regulatory landscape back to the years preceding the financial crisis and the enactment of the Dodd-Frank Act, in spite of the successes of the Consumer Bureau. Some of these unjustified Republican attacks are described below.

##### ***A. Republicans' Historic Blockade of Consumer Bureau Director Cordray's Appointment***

The Consumer Bureau was designed to be headed by a single Director nominated by the President, subject to the advice and consent of the Senate, similar to other independent Federal financial regulators like the OCC and the FHFA. Although President Obama announced his selection of Richard Cordray to head the agency

consistently opposed the CFPB since the agency opened in 2011. They say the bureau — controlled by an independent director with regulatory and punitive power — is unaccountable and too powerful.”)

<sup>64</sup> See 12 U.S.C. § 5513.

<sup>65</sup> See Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1017(b), available at: [http://www.dodd-frank-act.us/Dodd\\_Frank\\_Act\\_Text\\_Section\\_1017.html](http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_1017.html). Also note that because of uncertainty about whether this dollar amount would be sufficient to pay for the top notch staff, deemed critically important for the agency to fulfill its ambitious statutory mission, Congress created a mechanism authorizing the Director to appeal for additional \$200 million in Congressional appropriations for the first few fiscal years while it was standing up.

<sup>66</sup> Ironically, while the Committee Republicans are quick to falsely claim that the Consumer Bureau operates without adequate Congressional oversight, they opted not to schedule a hearing with the Director to review the semi-annual report in the fall of 2016. <sup>67</sup>

Jeb Hensarling, "How We'll Stop a Rogue Federal Agency," The Wall Street Journal (Feb. 8, 2017), available at: <https://www.wsj.com/articles/how-well-stop-a-rogue-federal-agency-1486597413>; see also Ben Protess, "Republicans' Path to Unraveling the Dodd-Frank Act," The New York Times (Jan. 30, 2017), available at: <https://www.nytimes.com/2017/01/30/business/dealbook/republicans-unravel-dodd-frank-act.html>.

on July 21, 2011, Senate Republicans did all they could to block his confirmation.<sup>68</sup> This delay in getting a confirmed Director to run the Consumer Bureau arguably slowed down the agency as it was standing up.

### ***B. Endless Republican Investigations to Distract and Undermine the Consumer Bureau***

Committee Republicans have also initiated dozens of “investigations” of the Consumer Bureau since January 2014, forcing it to produce more than 170,000 pages of documents for the Committee in response to over 90 letters of inquiry. To aid in these relentless attacks, the Committee adopted new rules during the 114<sup>th</sup> Congress replacing a long-standing, bipartisan, and transparent subpoena process with one that enables Committee Chairman Hensarling to unilaterally issue subpoenas without having to publicly debate and vote on each subpoena before the full Committee. Since this rule change, Committee Chairman Hensarling has unilaterally issued 20 subpoenas to the Consumer Bureau, each time electing to forgo public consideration and bypass a Committee vote on the subpoena. The unilateral subpoenas have forced several of the Consumer Bureau’s former and current employees to sit for over 40 hours of depositions.

Currently, the Committee, at the direction of the Chairman, is in the process of deposing more than a dozen witnesses investigating the work of the Consumer Bureau. Instead of following up with Wells Fargo on its fake account scandal or holding President Trump and his Administration accountable for their actions, the Committee continues to waste valuable resources on a baseless investigation that is designed to undermine the integrity of the Consumer Bureau, regardless of the fact that consumers will ultimately suffer if the Consumer Bureau’s powers are curtailed.

### ***C. H.R. 10, The “Wrong Choice Act”***

On June 8, 2017, the full House passed H.R. 10, the “Financial CHOICE Act,” which Committee Democrats refer to as the “Wrong Choice Act.” No Democrats voted in favor of the legislation and one Republican voted against it.<sup>69</sup> Sponsored by Committee Chairman Hensarling, H.R. 10 repeals some of the most important Dodd-Frank Act provisions, and would gut the Consumer Bureau. If enacted, the bill will functionally terminate the Consumer Bureau and take the United States back to the failed and fragmented pre-crisis regulatory system of consumer financial protection, which was discussed in earlier sections of this report. H.R. 10 would, among other things:

- Completely gut the Consumer Bureau, eliminating nearly all of its supervisory and enforcement authority over the largest financial institutions, including tools recently used to provide redress to consumers harmed by Wells Fargo’s fraudulent opening of millions of accounts;
- Destroy the Consumer Bureau’s independent funding mechanism, and replace it with a partisan Congressional appropriations process;
- Conceal the Consumer Bureau’s transparent nationwide consumer complaint database, even though 97 percent of the 1.1 million complaints submitted to companies have received timely responses; and
- Empower the President to fire the head of the Consumer Bureau at will, which undermines the Consumer Bureau’s capacity to serve as a strong, independent consumer “cop on the beat.”

<sup>68</sup> According to the Senate Historian, the Senate Republican blockade of Mr. Cordray’s nomination was the first time in history that a minority party pledged to block a nominee simply because it opposed an agency’s very existence. See, Press Release, Senator Sherrod Brown (D-OH), “Brown Joins Groups Of 54 Senators In Letter Urging Confirmation Of Richard Cordray Renomination To CFPB,” (Feb. 14, 2013), available at: <https://www.brown.senate.gov/newsroom/press/release/brown-joins-groups-of-54-senators-in-letter-urging-confirmation-of-richard-cordray-renomination-to-cfpb>; see also, Mike Konczal, “The GOP doesn’t oppose Richard Cordray. It opposes his whole agency,” WASHINGTON POST, (May 25, 2013), available at: <https://www.washingtonpost.com/news/wonk/wp/2013/05/25/the-gop-doesnt-oppose-richard-cordray-it-opposes-his-whole-agency/>.

<sup>69</sup> “Financial Choice Act of 2017: Roll Vote 413.” Congressional Record (Jun. 8, 2017) available at: <http://clerk.house.gov/evs/2017/roll299.xml>.



- Remove the Consumer Bureau’s authority to regulate small-dollar credit, such as payday loans, which would bring to a halt its efforts to ensure consumer protections of financial products that have been used to rip off many consumers, especially minorities and low-to-moderate income borrowers, as both groups are disproportionately impacted by high-cost small-dollar lending.<sup>70</sup>

#### ***D. H.R. 2133, The “CLEARR Act”***

On April 25 2017, Financial Institutions and Consumer Credit (“FI”) Subcommittee Chairman Luetkemeyer (R-MO) introduced H.R. 2133, the “Community Lending Enhancement and Regulatory Relief Act” (or the “CLEARR” Act). Committee Republicans have tried to frame this bill as an attempt to provide targeted relief for community financial institutions from certain rules and regulations. However, several of its key provisions repeal regulations for megabanks, not smaller sized financial institutions, at the expense of consumers under the guise of Main Street regulatory relief. Notably, the bill would:

- Remove the Consumer Bureau’s ability to go after institutions, like Wells Fargo, that engage in “abusive” practices by modifying its UDAAP authority;
- Require the Consumer Bureau to follow the same cumbersome requirements as the FTC when the Consumer Bureau conducts any rulemaking related to unfair and deceptive acts and practices, which essentially restricts the Consumer Bureau’s power to promulgate broad substantive rules, and is unique as no other prudential banking regulator is subject to similar requirements;<sup>71</sup> and
- Repeal section 1071 of the Dodd-Frank Act, which requires the collection of small business and minority-owned business loan data under the Equal Credit Opportunity Act. This major rollback is in spite of the fact that small business lending experts have encouraged the Consumer Bureau to implement this requirement to help gain a better understanding of the credit needs of small businesses.<sup>72</sup> The Consumer Bureau has also been methodical in its approach on this requirement, recently issuing a Request for Information to better understand how to properly calibrate the implementation of this requirement.<sup>73</sup>

#### ***E. Appropriations Bills and Budget Reconciliation***

The House Appropriations Committee recently approved the fiscal year (“FY”) 2018 Financial Services and General Government (“FSGG”) Appropriations bill,<sup>74</sup> which contains many elements of the Wrong Choice Act, including those that completely gut the independent and strong Consumer Bureau.

<sup>70</sup> See, Consumer Financial Protection Bureau, “CFPB Finds Four Out Of Five Payday Loans Are Rolled Over Or Renewed,” (Mar. 25, 2014), available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/>; Consumer Financial Protection Bureau, “CFPB Finds Half of Online Payday Borrowers Rack Up an Average of \$185 in Bank Penalties,” (Apr. 20, 2016) available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-half-of-online-payday-borrowers-rack-up-an-average-of-185-in-bank-penalties/>; see also The Pew Charitable Trusts, “Payday Lending in America: Who Borrows, Where They Borrow, and Why” (July 2012), available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pca\\_assets/2012/pewpaydaylendingreportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pca_assets/2012/pewpaydaylendingreportpdf.pdf).

<sup>71</sup> Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301-2312, 2309 (1975).

<sup>72</sup> Karen Mills & Brayden McCarthy, “The State of Small Business Lending: Innovation and Technology and the Implications for Regulation,” pgs. 88-89 (Harvard Business School, Working Paper 17-042, 2016), available at: [http://www.hbs.edu/faculty/Publication%20Files/17-042\\_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf](http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf)

<sup>73</sup> Request for Information Regarding the Small Business Lending Market, 82 Fed. Reg. 22318-22322 (May 15, 2017), available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-explores-ways-assess-availability-credit-small-business/>.

<sup>74</sup> Press Release, U.S. House of Representatives Committee on Appropriations, “Appropriations Committee Releases Fiscal Year 2018 Financial Services Bill” (Jun. 28, 2017), available at: <https://appropriations.house.gov/news/documentsingle.aspx?DocumentID=394953>.

Congressional Republicans are also openly contemplating abusing the budget process to sneak through partisan and unpopular rollbacks of the Consumer Bureau.<sup>75</sup> The House Budget Committee released its “Blueprint” for the FY 2018 Budget on July 18, 2017, which includes a roadmap for using the expedited House and Senate procedures of budget reconciliation to eliminate the independent funding of the Consumer Bureau, among other items.<sup>76</sup>

#### ***F. Treasury Report from the Trump Administration***

Following an Executive Order from President Trump – who has vowed “to do a big number on Dodd-Frank” – Treasury issued a report on June 12, 2017<sup>77</sup> containing substantially similar deregulatory reforms as those frequently seen on Wall Street’s wish list.<sup>78</sup> This report also mirrors similar provisions in the Wrong Choice Act that seek to undermine the highly successful Consumer Bureau. Specifically, the report proposes to:

- Empower President Trump to fire the Consumer Bureau’s Director at will, chilling any tough enforcement actions against the President’s friends on Wall Street;
- Eliminate the Consumer Bureau’s independent funding and subject it to a partisan Congressional appropriations exercise that could drastically slash its budget;
- Make the Consumer Bureau’s currently publicly available nationwide consumer complaint database non-public, even though 97 percent of complaints submitted to companies have received timely responses;
- Constrain the Consumer Bureau’s enforcement tools, making it much harder to go after unfair, deceptive or abusive acts or practices committed by Wall Street banks like Wells Fargo;
- Roll back numerous protections put in place by the Consumer Bureau in the mortgage market;
- Slap a moratorium on mortgage servicing rules that could better protect consumers from the kind of foreclosure abuses performed by banks like OneWest; and
- Impose delays and repeals of various data collection that would help shed a light on discriminatory lending practices.

#### ***G. Challenges to the Consumer Bureau’s Structure: PHH Corporation v. Consumer Financial Protection Bureau***

House Republicans seized on a three-judge panel ruling in the case of *PHH Corporation (“Corp.”) v. Consumer Financial Protection Bureau* – despite the fact that the full D.C. Court of Appeals (“Court of Appeals”) took the rare step to vacate the ruling and re-hear the case – in an attempt to further weaken the Consumer Bureau. Even though the matter is being actively litigated, Republicans called a public hearing, inviting the attorney for PHH Corp. to testify. According to Brianne J. Gorod, Chief Counsel of the Constitutional Accountability Center, who also testified at this hearing, “[d]espite (or perhaps because of) its many successes, the CFPB has been the subject of numerous attacks, including claims by its opponents that it is unconstitutional.” Ms. Gorod went on to explain that despite these attacks, including from PHH Corp., the

<sup>75</sup> Elizabeth Dexheimer, “Plan B for Trump’s ‘Big Number’ on Dodd-Frank Bypasses Democrats,” Bloomberg Politics (Feb. 2, 2017), available at: <https://www.bloomberg.com/news/articles/2017-02-02/plan-b-for-trump-s-big-number-on-dodd-frank-bypasses-democrats>.

<sup>76</sup> H.R. Budget Committee, H.R. Con. Res. No. [Discussion Draft], 115th Cong. (2017) (House Concurrent Resolution), available at: [https://budget.house.gov/wp-content/uploads/2017/07/FY2018\\_Budget\\_Resolution\\_xml.pdf](https://budget.house.gov/wp-content/uploads/2017/07/FY2018_Budget_Resolution_xml.pdf).

<sup>77</sup> U.S. Dept. of the Treasury, “A Financial System That Creates Economic Opportunities Banks and Credit Unions” (Jun. 2017), available at: <https://www.treasury.gov/press-center/news/Pages/Summary-of-Recommendations-for-Regulatory-Reform.aspx>.

<sup>78</sup> Press Release, Americans for Financial Reform, “AFR Report: Treasury Does Bidding of Big Banks in Dodd-Frank Report,” (Jun. 21, 2017), available at: <http://ourfinancialsecurity.org/2017/06/afr-report-treasury-bidding-big-banks-dodd-frank-report/>.

structure and design of the Consumer Bureau is constitutional and consistent with Supreme Court precedent.<sup>79</sup> Congresswoman Waters and 40 current and former Democratic Members of Congress filed an amicus brief with the Court of Appeals on March 31, 2017, in support of the Consumer Bureau’s independent structure and its constitutionality.<sup>80</sup>

#### ***H. Case Study: Congressional Republican Attacks on the Consumer Bureau’s Forced Arbitration Rule***

An illustrative, recent example of the importance of having an independent Federal agency dedicated to ensuring that consumer financial markets are fair, transparent, and competitive can be seen in the Consumer Bureau’s decision to issue a final rule on forced pre-dispute arbitration agreements, and the significant pushback received from Republicans in Congress and Acting OCC Comptroller Keith A. Noreika to dismantle this protection restoring a consumer’s right to seek redress through the courts.

Generally, absent an explicit agreement, either a consumer or a service provider has the right to seek resolution if a dispute arises about contractual or statutory duties in a court of law.<sup>81</sup> However, consumer contracts for products or services like credit cards, payday loans, and bank accounts increasingly contain arbitration provisions that, even before a dispute occurs, prohibit a consumer from suing a financial company for a wrongdoing through the court system. Instead, the clauses require a consumer to use a final and binding arbitration with a privately-appointed individual to obtain redress. These clauses also restrict consumers’ ability to join together with other harmed consumers in a class-action lawsuit.

Section 1028(a) of the Dodd-Frank Act directed the Consumer Bureau to study the use of mandatory pre-dispute arbitration clauses in the consumer financial marketplace and, consistent with its findings, to issue a rule under section 1028(b) of the Dodd-Frank Act restricting or banning their use in contracts, if it “is in the public interest and for the protection of consumers.” To satisfy this statutory mandate, the Consumer Bureau conducted an extensive and transparent review that included, among other things:

- A request for information about the prevalence of arbitration agreements, arbitration claims, and other impacts on consumers and companies, such as the impacts on the incidence of consumer claims, prices, and development of legal precedent;
- Several in-person discussions between stakeholders and staff;
- Roundtables; and
- A survey to determine consumers’ awareness of, perceptions about, and expectations of forced arbitration clauses, which involved multiple requests for input on its proposed survey design.

<sup>79</sup> See, Brianne J. Gorod, Chief Counsel of Constitutional Accountability Center, Testimony before the H.R. Subcommittee on Oversight and Investigations, regarding “The Constitutionality and Accountability of the Consumer Financial Protection Bureau,” (Mar. 21, 2017), available at: <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba09-wstate-bgorod-20170321.pdf>.

<sup>80</sup> See, Press Release, H.R. Financial Services Committee Democrats, “Waters and 40 Democratic Members Unite in Their Fight to Protect the Consumer Bureau,” (March 31, 2017), available at: <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400355>; see also, Press Release, H.R. Financial Services Committee Democrats, “Waters, Leading Democrats Support CFPB’s Efforts to Appeal PHH Court Case,” (November 29, 2016), available at: <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400172> (Congresswoman Waters and 20 other current or former Congressional Members also signed onto an amicus brief filed with the D.C. Circuit Court of Appeals in support of the Consumer Bureau’s petition to have the court revisit an earlier decision by a three-judge panel that struck down the Bureau’s structure).

<sup>81</sup> Some Federal and state laws provide only for public, and not private enforcement, of violations of Federal consumer financial services laws.

The Consumer Bureau also publicly released its preliminary results, along with a discussion about the scope of the remaining work, before it ultimately issued the final study in March 2015. The extensive March 2015 study was 728 pages long.<sup>82</sup>

The study noted that millions of consumers are subject to forced pre-dispute arbitration clauses in their contracts for consumer products or services, which the Consumer Bureau concluded restrict consumers' ability to get relief in disputes with financial companies by limiting their ability to pursue class-actions.<sup>83</sup> For example, the study found, "[i]n the credit card market, larger bank issuers are more likely to include arbitration clauses than smaller bank issuers and credit unions. As a result, while less than 16 percent of issuers include such clauses in their consumer credit card contracts, just over 50 percent of outstanding credit card loans are subject to them. In 2009 and 2010, several issuers entered into private settlements of an antitrust lawsuit in which they agreed to remove the arbitration clauses from their credit card consumer contracts for a defined period. If those issuers still included such clauses, some 94 percent of credit card loans outstanding would now be subject to arbitration."<sup>84</sup>

Notably, the Consumer Bureau found that large banks - not smaller banks and credit unions - tend to use forced arbitration clauses. For example, "[i]n the checking account market, larger banks tend to include arbitration clauses in their consumer checking contracts, while mid-sized and smaller banks and credit unions tend not to. We estimate that in the checking account market, which is less concentrated than the credit card market, around 8 percent of banks, covering 44 percent of insured deposits, include arbitration clauses in their checking account contracts."<sup>85</sup>

Furthermore, the Consumer Bureau found that consumers whose agreements contain arbitration clauses wrongly believe that they can go to court and participate in class-actions.<sup>86</sup> The Consumer Bureau also found no statistically significant evidence showing that firms that had previously eliminated these arbitration clauses increased their prices or reduced access to credit relative to those that made no changes in their use of arbitration clauses.<sup>87</sup> Based on these findings, the Consumer Bureau issued a proposed arbitration rule in May 2016.

The Consumer Bureau submitted the final rule for publication in the Federal Register on June 27, 2017, and publicly released it on July 10, 2017. The final rule, which was published in the Federal Register on July 19, 2017,<sup>88</sup> prohibits financial companies from including clauses in consumer contracts for certain consumer financial products or services that force their customers to use corporate-friendly arbitration proceedings when they want to settle disputes. The final rule also requires financial companies that are involved in an arbitration proceedings stemming from their use of pre-dispute arbitration agreements to submit certain arbitration and court records to the Consumer Bureau.

Consumer, civil rights, labor, community, and nonprofit organizations, that together represent the interests of millions of consumers, strongly applauded the new rule.<sup>89</sup> In doing so, these organizations pointed

<sup>82</sup> Consumer Financial Protection Bureau, Arbitration Study (March 2015), available at: [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>83</sup> See, Id.

<sup>84</sup> Id. at p. 9

<sup>85</sup> Id. at pp. 9-10.

<sup>86</sup> Id. at p. 11

<sup>87</sup> Id.

<sup>88</sup> 12 C.F.R. § 1040, available at: <https://www.federalregister.gov/d/2017-14225>.

<sup>89</sup> See, Letter signed by 310 consumer advocacy groups to Monica Jackson, Consumer Financial Protection Bureau (Jul. 12, 2017), regarding support for the "Final Rule on Arbitration Agreements," available at: <http://ourfinancialsecurity.org/wp-content/uploads/2017/07/Arbitration-rule-letter.pdf>.

out that the ban will ensure families and consumers on Main Street are no longer precluded from seeking fair remedies through the court system if they are harmed by the unscrupulous and illicit practices by Wall Street megabanks. Notably, the inclusion of these clauses in Wells Fargo’s consumer agreements prevented the big bank’s harmed customers from obtaining redress in courts for the harm caused by the bank’s unauthorized opening of millions of customers’ accounts.<sup>90</sup>

Unlike the praise from consumers about the final rule, Congressional Republicans voiced strong opposition to it. Committee Chairman Hensarling, for example, pronounced that the “bureaucratic rule will harm American consumers but thrill class action trial attorneys.”<sup>91</sup> Similarly, FI Subcommittee Chairman Luetkemeyer said that the final rule was “yet another anti-consumer regulation issued by the CFPB that will prompt more lawsuits all across the country.”<sup>92</sup> By contrast, in 2016, 65 House Democrats sent a letter to the Consumer Bureau expressing strong support for the proposed rule. In this letter, the Democrats argued that “the proposed rule is a critical step to protect the public interest by ensuring that consumers receive redress for systemic unlawful conduct.” (See *Appendix B*).

Committee Chairman Hensarling even resorted to threatening Director Cordray with contempt proceedings in order to block the rule. In a letter dated July 5, 2017, Committee Chairman Hensarling warned that any effort by Director Cordray “or another Bureau employee to promulgate any rule affecting arbitration agreements,” before he was satisfied that the agency had complied with his sweeping request for thousands of documents, could result in contempt proceedings, noting that he had “directed Committee Staff to prepare a Staff Report for public release detailing” the Consumer Bureau Director’s “contumacy” (See *Appendix D*).<sup>93</sup>

In a response letter dated July 10, 2017, and being made public for the first time as part of this report, Director Cordray discredited the Chairman’s series of inaccurate characterizations in the July 5th letter. First, the Director disputed the Chairman’s manufactured claims about the potential adverse impact of the rule. Second, the Director corrected the Chairman’s false allegations that the Consumer Bureau had failed to comply with his countless demands for voluminous amounts of agency materials by providing documents demonstrating repeated attempts by Consumer Bureau employees to engage in good faith dialogue with Republican Committee staff to provide relevant materials responsive to their inquiries (See *Appendix E*).

Meanwhile, Congressional Republicans’ efforts to overturn the final rule have intensified. Committee Chairman Hensarling and three Republican Senators - Senate Banking Committee Chairman Mike Crapo (R-ID), Senator Tom Cotton (R-AK), and Senator Patrick Toomey (R-PA) – have publicly declared their intent to repeal the rule by using the Congressional Review Act (“CRA”).<sup>94</sup>

The CRA allows Congress to use a joint resolution of disapproval to repeal new Federal regulations issued by government agencies within a specified time period and overturn these rules with simple majority vote, which avoids the typical 60-vote threshold required in the Senate.<sup>95</sup> Before the Trump Administration, this obscure oversight tool had only been used once before to block a regulation.

<sup>90</sup> See, Jeff Sovern, “How This New Rule Prevents Your Bank From Ripping You Off,” FORTUNE (Jul. 13, 2017), available at: <http://fortune.com/2017/07/13/consumer-financial-protection-bureau-class-action-wells-fargo/>.

<sup>91</sup> See, Press Release, Committee on Financial Services Committee, “CFPB Rule Will Harm Consumers But Thrill Trial Lawyers,” (Jul. 10, 2017), available at: <https://financialservices.house.gov/news/documentprint.aspx?DocumentID=402113>.

<sup>92</sup> See, Press Release, U.S. Rep. Blaine Luetkemeyer (R-MO), “Luetkemeyer Statement on Consumer Financial Protection Bureau Arbitration Rule,” (July 11, 2017), available at: <https://luetkemeyer.house.gov/news/documentsingle.aspx?DocumentID=398927>.

<sup>93</sup> Id.

<sup>94</sup> See, Press Release, Heritage Action for America, “Congress Must Roll Back CFPB’s Costly Arbitration Rule,” (Jul. 13, 2017), available at: <http://heritageaction.com/press-releases/congress-must-roll-back-cfpbs-costly-arbitration-rule/>.

<sup>95</sup> See, U.S. Congressional Research Service, “The Congressional Review Act” at p. 1 (November 17, 2016), available at <http://www.crs.gov/reports/pdf/IF10023> (The CRA requires agencies to report the issuance of regulations to Congress and creates

House Joint Resolution 111, a resolution of disapproval to nullify the rule, was introduced by Congressman Keith Rothfus (R-PA) on July 20, 2017.<sup>96</sup> In a press release announcing the introduction of the resolution, House Republicans disingenuously framed the rule as “anti-consumer,” despite the overwhelming support of the rule by consumer advocates.<sup>97</sup>

Congressional Republicans signaled a willingness to use any and all means to stop the final rule from going into effect. For instance, despite a long-standing House Rule against including authorizing language to establish public policy in appropriations bills, House Republicans used the appropriations process to try get the final rule rescinded.<sup>98</sup> On July 13, 2017, the House Appropriations Committee approved, by a party-line vote of 31 to 21, the FY 2018 FSGG Appropriations bill. Section 930 of this bill would repeal the Consumer Bureau’s power to restrict arbitration clauses.<sup>99</sup>

Furthermore, OCC’s Acting Comptroller Keith Noreika, who was named Acting Comptroller under questionable backdoor procedures by the Trump Administration,<sup>100</sup> suddenly weighed in to express never before shared concerns about the impact of the rule on safety and soundness. In doing so, he may have signaled the OCC’s intent to stop the final rule by petitioning FSOC to repeal the final rule. But, his last-minute expression of concerns about the final rule appears to have ignored the question of why the OCC failed to convey similar concerns earlier in the rulemaking process. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Consumer Bureau 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.”<sup>101</sup>

Section 1023 of the Dodd-Frank Act also establishes an unprecedented veto process in which a member agency of the FSOC can petition in writing to overturn a Consumer Bureau regulation within 10 days after it is published in the Federal Register, if the petitioner “has in good faith” attempted to work with Consumer Bureau, “to resolve concerns regarding the effect of the rule on the safety and soundness of the United States

special procedures for Congress to overturn these rules within 60-days-of-continuous-session period beginning on the day the rule is received by Congress through the use of a joint resolution of disapproval. If a CRA joint resolution of disapproval is approved by both the full House and full Senate and signed by the President, or if Congress overrides a presidential veto, the rule cannot go into effect or continue in effect. Under the CRA, rules must be submitted to both the full House and full Senate and the GAO).

<sup>96</sup> Press Release, H.R. Financial Services Committee Republicans, “House Republicans Introduce Resolution to Stop CFPB’s Anti-Consumer Law” (July 20, 2017), available at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=402199>.

<sup>97</sup> 310 organizations, 256 law professors, and The Military Coalition, which represents 5.5 million servicemembers, all support the CFPB rule. See, Letter from Americans for Financial Reform and 280 allies to Consumer Financial Protection Bureau (August 22, 2016), available at <http://ourfinancialsecurity.org/2016/08/letter-regulators-afr-280-groups-strongly-support-cfpb-action-forced-arbitration/>; Letter from 256 law professors to Consumer Financial Protection Bureau (July 10, 2017), available at <http://www.fairarbitrationnow.org/wp-content/uploads/CFPB-academics-arbitration-letter-2017-7-10.pdf>; Letter from The Military Coalition to Director Cordray and Assistant Director Petraeus (August 18, 2016), available at <http://www.fairarbitrationnow.org/letter-military-coalition/>.

<sup>98</sup> See, Rules of the H.R., 114th Congress, Rule XXI (2) at p. 34, (prohibits both unauthorized appropriations and legislation in appropriations bills), available at <http://clerk.house.gov/legislative/house-rules.pdf>; adopted by the 115th Congress pursuant to H.R. Res. 5, 115th Cong. (Jan. 2, 2017), available at: <http://docs.house.gov/bills/thisweek/20170102/BILLS-115hres5-PIH-FINAL.pdf>.

<sup>99</sup> Press Release, U.S. House of Representative Committee on Appropriations, “Appropriations Committee Approves Fiscal Year 2018 Financial Services Bill” (July 13, 2017), available at <https://appropriations.house.gov/news/documentsingle.aspx?DocumentID=395001>.

<sup>100</sup> See, Bess Levin, “The White House Just Used a Brazen Backdoor Move to Bypass the Senate,” VANITY FAIR, (May 10, 2017), available at: <http://www.vanityfair.com/news/2017/05/keith-noreika-donald-trump>.

<sup>101</sup> 12 U.S.C. § 5512(b)(2)(B).

banking system or the stability of the financial system of the United States.”<sup>102</sup> Overturning a rule that meets these requirements requires the affirmative vote of two-thirds of the FSOC members.<sup>103</sup>

In a letter dated July 10, 2017, Acting Comptroller Noreika abruptly voiced concerns to Director Cordray that the rule may “force institutions to confront ‘potentially ruinous liability’ and to settle unmeritorious claims to mitigate the significant costs and risks associated with class-action lawsuits. The increased cost associated with litigation and the loss of arbitration as a viable alternative dispute resolution mechanism could adversely affect reserves, capital, liquidity, and reputations of banks and thrifts, particularly community and midsize institutions” (See *Appendix F*). The letter appears to be a misguided “Hail Mary” tactic to overturn the final rule.

Director Cordray, understandably, expressed surprise about Acting Comptroller Noreika’s sudden about-face position, and pointed to the OCC’s failure to raise concerns about the rule’s impact on the safety and soundness of the Federal banking system during the multi-year rulemaking process, which had involved consultation with the OCC. In a July 12, 2017, response letter, Director Cordray underscored that the rule will “create an effective means by which consumers can seek to vindicate their legal rights under Federal and state consumer protection laws and under their contracts.” (See *Appendix G*). He also pointed out some of the agency’s key research findings-- the majority of depository institutions operate without arbitration agreements; the projected costs of the rule would be borne by an industry with trillions of dollars in assets, with banks alone earning over \$171 billion in profits last year; and the apparent failure of OCC to downgrade the CAMELS rating for any institution subject to earlier eliminations of mandatory arbitration agreements (See *Appendix G*).

Nevertheless, in a July 17, 2017, follow-up letter to Director Cordray, Acting Comptroller Noreika reiterated disingenuous concerns about the potential adverse impact of the rule on the safety and soundness of the banking system. He also requested that the Consumer Bureau delay the publication of the rule in the Federal Register (See *Appendix H*).

On July 18, 2017, Director Cordray sent a second letter to Acting Comptroller Noreika explaining that there was no “plausible basis” for his claim that the arbitration rule could affect the safety and soundness of the banking system, pointing out, again, the economic analysis measuring the impact of the rule on the entire financial system was minimal (See *Appendix I*). The letter also stated that, while Acting Comptroller Noreika “may disagree with the policy judgments for the rule, [the Consumer Bureau] question[ed] why it would be appropriate to distort the FSOC process to review a claim that is so plainly frivolous...”

The persistence of Acting Comptroller Noreika in attempting to block the Consumer Bureau is not shocking when considering the fact that as a partner at the law firm Covington & Burling, he previously defended Wells Fargo and argued that their forced arbitration clauses should be enforced regarding excessive overdraft fees charged to their customers. Acting Comptroller Noreika is now trying to nationalize his prior tactics and prevent all consumers from having their day in court.<sup>104</sup>

<sup>102</sup> 12 U.S.C. § 5513.

<sup>103</sup> 12 U.S.C. § 5321(b)(1), (2) and (3) (The voting members of FSOC consist of the Treasury Secretary, the Federal Reserve Chairman, the OCC Comptroller, the Consumer Bureau Director, the SEC Chairman, the FDIC Chairperson, the CFTC Chairperson, the FHFA Director, the NCUA Chairman, and an independent member appointed by the President, approved by the Senate, having insurance expertise. The non-voting members of FSOC consist of the OFR Director, the FIO Director, a State insurance commissioner, a State banking commissioner, and a State securities commissioner. Acting officials of a member agency shall serve as a member of the FSOC in the place of that agency or department head).

<sup>104</sup> See, Lorraine Woellert, “Noreika defended Wells in arbitration suit, drawing consumer groups’ protests,” POLITICO PRO (July 20, 2017).

While the Consumer Bureau’s extensive research on the scope of and impact of eliminating forced pre-dispute arbitration clauses and robust arbitration rulemaking process clearly debunks any claims that the rule endangers the safety and soundness of the Federal banking system, the Acting Comptroller’s last-minute complaints and ridicule of the final rule echoed past prudential regulators’ pattern of putting the financial interests of their regulated entities before consumers’ interests. Director Cordray’s decision to proceed with issuing the rule, despite intensive Congressional and regulatory pressure, was appropriately justified based on the statutory directive to issue a rule if needed to protect consumers and in the public interest.

The Consumer Bureau’s actions demonstrate the importance of having a truly independent Federal agency with the primary mission of protecting consumers from harmful practices. And, the aggressive actions of Congressional Republican and the Acting Comptroller to try to stop the rule, with both resorting to “alternative facts” to block it, also highlight the danger of allowing special interests and political pressure to succeed in undermining the Consumer Bureau and, with it, the implementation and enforcement of strong consumer protections.

## V. Conclusion

The 2008 financial crisis exposed the shortcomings of the “hands-off” approach to regulation best embodied by former Federal Reserve Chairman Alan Greenspan, who led the agency that had been largely responsible for, but derelict in writing rules for, most of the Federal consumer financial laws prior to the Dodd-Frank Act. This regulatory disposition was never more evident than during the following exchange at a House hearing in October 2008 between former House Oversight and Government Reform Chairman Waxman and Chairman Greenspan:

**“WAXMAN:** ‘You had the authority to prevent irresponsible lending practices that led to the subprime mortgage crisis. You were advised to do so by many others. Do you feel that your ideology pushed you to make decisions that you wish you had not made?’

**GREENSPAN:** ‘Yes, I’ve found a flaw. I don’t know how significant or permanent it is. But I’ve been very distressed by that fact.’”<sup>105</sup>

Despite constant and repeated attacks of the Consumer Bureau’s work from Republicans and the financial services industry, consumers across the country have been much better protected and the American economy has recovered and grown. Thus, the Dodd-Frank Act, and the Consumer Bureau, have strengthened financial oversight while promoting economic growth. Because of the Dodd-Frank Act, and other Democratic policies, the American economy has made significant gains since the depths of the financial crisis, seen in the 88 consecutive months of private-sector job growth in this country and the creation of more than 16 million private sector jobs. The labor market continues to make progress towards full employment, with the unemployment rate now at 4.4 percent, wages finally rising, GDP growth up, the housing market stabilizing, and the stock market reaching record highs.<sup>106</sup>

The financial system has thrived since the passage of the Dodd-Frank Act. According to a recent survey by the National Federation of Independent Business, 96 percent of small business owners reported their

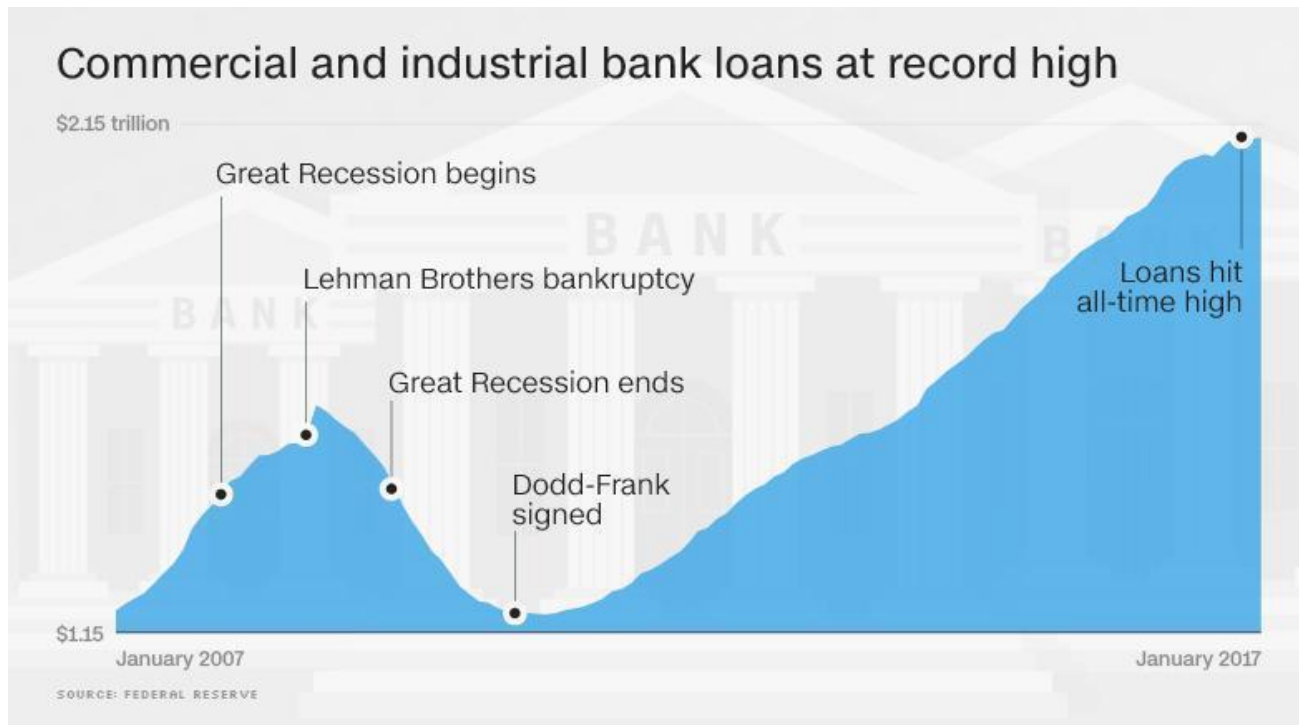
<sup>105</sup> See, Edmund L. Andrews, “Greenspan Concedes Error on Regulation,” THE NEW YORK TIMES (Oct. 23, 2008), available at: <http://www.nytimes.com/2008/10/24/business/economy/24panel.html>.

<sup>106</sup> See, U.S. Dept. of Labor Bureau of Labor Statistics, “Economic News Release: Employment Situation Summary,” (Jul. 7, 2017), available at: <https://www.bls.gov/news.release/empsit.nr0.htm>; see also, <https://obamawhitehouse.archives.gov/blog/2016/12/15/2017-economic-report-president>,



borrowing needs were met.<sup>107</sup> The banking industry posted an all-time record in profits of over \$171 billion in 2016, with community banks outperforming their larger competitors,<sup>108</sup> credit union membership expanding<sup>109</sup> and business lending up 75 percent.<sup>110</sup>

**Figure 6. Business Lending Has Increased 75% to All-Time Record After Dodd-Frank**



Source: [Federal Reserve Board](#)

Instead of tearing down the Consumer Bureau based on a failed ideology, Congress should examine real facts and evidence, and look to build upon the Consumer Bureau’s successes for consumers across the country. Congress, for example, should enact legislation to empower the Consumer Bureau with authority to oversee compliance of the Servicemember Civil Relief Act to better protect military service members who defend our country. Congress should also support and encourage the swift implementation of the Consumer Bureau’s recently issued final rule to put an end to abusive forced arbitration clauses in the financial services sector. Furthermore, the Committee should eliminate the Chairman’s unilateral subpoena authority so the full

<sup>107</sup> See, William C. Dunkelberg & Holly Wade, “NFIB Small Business Economic Trends,” at pg. 1 (June 2017), available at: <http://www.nfib.com/assets/SBET-June-2017.pdf>.

<sup>108</sup> See, Federal Deposit Insurance Corporation Quarterly Reports, Vol. 10, No. 1-4 (2016), available at: <https://www.fdic.gov/bank/analytical/quarterly/>.

<sup>109</sup> Compare the number of credit union members, from 90.5 million in 2010 to more than 106.9 million members in 2016. See, National Credit Union Administration Annual Report “Resilience and the Road Ahead,” at pg. 49 (2010), available at: <https://www.ncua.gov/Legal/Documents/Reports/AR2010.pdf>; see also, National Credit Union Administration 2016 Annual Report 2016, at pg. 48 (2016), available at: <https://www.ncua.gov/Legal/Documents/Reports/annual-report-2016.pdf>.

<sup>110</sup> See, Bess Levin, “The Chair of the Federal Reserve Just Fact-Shamed Donald Trump,” VANITY FAIR (Feb. 14, 2017), available at: <http://www.vanityfair.com/news/2017/02/janet-yellen-just-fact-shamed-donald-trump>; see also, Mike Konczal, Kathryn Milani & Andrew Hwang, “Doomed to Repeat: Debunking the Conservative Story about the Financial Crisis and Dodd-Frank,” ROOSEVELT INSTITUTE (June 6, 2016), available at: <http://rooseveltinstitute.org/doomed-repeat-dodd-frank/>; see generally, Kathryn Milani, “Community Banking is Alive, Well: The Three Myths about Dodd-Frank and Community Banks,” ROOSEVELT INSTITUTE (June 8, 2017), available at: <http://rooseveltinstitute.org/community-banking-alive-well-three-myths-about-dodd-frank-and-community-banks/>.

Committee can publicly debate the merit of Committee subpoenas and prevent the harassment of hardworking public servants.

The Consumer Bureau has a strong track record of working for consumers at a time of record profit for the financial services sector and a growing American economy. The catastrophic costs and tremendous harm consumers suffered through the financial crisis and ensuing Great Recession should serve as a stark reminder to policymakers to strive to ensure that, a decade from now, consumers will still have an equally strong and successful watchdog in the Consumer Bureau to stop abusive and predatory practices as they do today.

# APPENDIX A

## APPENDIX A

### A Decade Later – Key Milestones for the Consumer Financial Protection Bureau

- **Summer 2007** – Elizabeth Warren proposes the creation of a strong, independent Federal consumer watchdog.
- **June 2009** – Treasury Department recommends Congress establish a Consumer Financial Protection Agency.
- **October 2009** – House Financial Services Committee approves the Consumer Financial Protection Agency Act.
- **December 2009** – U.S. House of Representatives approves the Wall Street Reform and Consumer Protection Act.
- **July 21, 2010** – President Obama signs the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, authorizing the establishment of the Consumer Bureau.
- **September 17, 2010** – President Obama names Elizabeth Warren to lead Treasury’s efforts in helping to stand up the Consumer Bureau.
- **January 6, 2011** – Warren names Holly Petraeus to help establish and lead the Consumer Bureau’s Office of Servicemember Affairs.
- **July 18, 2011** – President Obama nominates Richard Cordray to serve as the Consumer Bureau’s first Director.
- **July 21, 2011** – Consumer Financial Protection Bureau formally opens.
- **July 18, 2012** – Consumer Bureau announces first public enforcement action, forcing Capital One to refund \$140 million to two million harmed consumers. To date, enforcement actions have returned about \$12 billion to 29 million harmed consumers.
- **October 11 and 12, 2012** – Consumer Bureau’s Credit Union Advisory Council and Community Bank Advisory Council hold inaugural meetings.
- **January 10, 2013** – Consumer Bureau issues Final Rule for [Ability to Repay and Qualified Mortgages](#), ending the worst consumer abuses in the mortgage market.
- **July 16, 2013** – Cordray confirmed by the Senate following unprecedented obstruction by Senate Republicans.
- **July 16, 2015** – Consumer Bureau [launches Monthly Complaint Snapshots](#) to highlight consumer trends based on their [complaint database](#).
- **October 3, 2015** – Consumer Bureau’s [“Know Before You Owe” mortgage disclosure rule](#) becomes effective, simplifying complex mortgage documents for prospective homebuyers.

- **September 8, 2016** - Consumer Bureau [fines Wells Fargo \\$100 Million](#) for fake account scandal
- **July 10, 2017** – Consumer Bureau issues a final rule to stop forced arbitration in contracts for consumer financial products.

# APPENDIX B

August 3, 2016

The Honorable Richard Cordray  
 Director  
 Consumer Financial Protection Bureau  
 1700 G Street NW  
 Washington, DC 20552

Docket No.: CFPB-2016-0020

Dear Director Cordray:

We write in strong support of the Consumer Financial Protection Bureau's proposed rule to prohibit the use of class-action waivers in forced arbitration agreements for financial services and products, and to increase transparency in the arbitration process.<sup>1</sup> Consistent with the Bureau's exhaustive study on forced arbitration, which found that forced arbitration restricts consumers' access to relief in disputes with financial service providers by limiting class actions,<sup>2</sup> the proposed rule is a critical step to protect the public interest by ensuring that consumers receive redress for systemic unlawful conduct.<sup>3</sup>

There is overwhelming evidence that class-action waivers in financial products and services agreements undermine the public interest. Originally used primarily in commercial settings,<sup>4</sup> forced arbitration clauses have proliferated in everyday consumer contracts,<sup>5</sup> and are now prevalent in financial services agreements.<sup>6</sup> By restricting class

<sup>1</sup> Arbitration Agreements, 81 Fed. Reg. 32,380 (proposed May 24, 2016) (to be codified at 12 C.F.R. pt. 1040), [http://files.consumerfinance.gov/f/documents/CFPB\\_Arbitration\\_Agreements\\_Notice\\_of\\_Proposed\\_Rule\\_making.pdf](http://files.consumerfinance.gov/f/documents/CFPB_Arbitration_Agreements_Notice_of_Proposed_Rule_making.pdf).

<sup>2</sup> CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) 1 (2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>3</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 1–2 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>; Editorial, *Arbitrating Disputes, Denying Justice*, N.Y. TIMES, Nov. 7, 2015, at SR10, <http://nyti.ms/1Pv5KMg>; Jessica Silver-Greenberg & Michael Corkery, *Bank Customers Likely to Regain Access to Courts*, N.Y. TIMES, May 5, 2016, at A1, <http://nyti.ms/23qQgfY>.

<sup>4</sup> See, e.g., Soia Mentschikoff, *Commercial Arbitration*, 61 COLUM. L. REV. 846, 850, 858 (1961) (discussing arbitration in commercial settings); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 359 (Breyer, J., dissenting) quoting 65 Cong. Rec. 1931 (1924) (“It creates no new legislation, grants no new rights, except a remedy to enforce an agreement in commercial contracts and in admiralty contracts”).

<sup>5</sup> See Jessica Silver-Greenberg & Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, N.Y. TIMES, Oct. 31, 2015 at A1, <http://nyti.ms/1MyX60L>.

actions and class-wide arbitration in consumer contracts, these clauses enable corporations to avoid public scrutiny by precluding access to the courts.<sup>7</sup> This is particularly problematic for small, diffuse misconduct that harms innumerable consumers.<sup>8</sup> As the Bureau's research has shown, consumers rarely use arbitration to recover small claims, such as those associated with overdraft fees, because these cases are either too costly for consumers to pursue on an individual basis,<sup>9</sup> or the individual consumer is unaware of a corporation's misconduct.<sup>10</sup>

The proposed rule is in the public interest and will protect consumers. As you know, Congress expressly granted authority to the Bureau to research the impact of forced arbitration clauses in financial products and services, and based on this evidence, to promulgate a rule to prohibit or impose conditions on the use of forced arbitration if the Bureau finds that it would be "in the public interest and for the protection of consumers."<sup>11</sup> There is little doubt that the Bureau's proposed rule will serve these twin goals. As more than 200 of the nation's leading law professors and scholars have observed, "class actions can serve as a powerful tool to help consumers of financial services and products vindicate their rights under federal and state law."<sup>12</sup> The Bureau's study confirms this conclusion, finding that in addition to providing consumers with financial remedies for unlawful, predatory, or fraudulent conduct, class action settlements also included behavioral relief for consumers through corporate commitments to alter fraudulent practices that gave rise to the claim.<sup>13</sup> On an individual basis, these forms of relief would have been largely unavailable or greatly diminished.<sup>14</sup> The Attorneys General from 16 states likewise note that the "need for regulations to protect the public interest has never been so great," observing that forced arbitration has predictably resulted in consumer harm and "a systemic failure to hold accountable those

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<sup>6</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 2 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>.

<sup>7</sup> *Id.*

<sup>8</sup> CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) 39 (2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>9</sup> CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) 39 (2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>10</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 5 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>.

<sup>11</sup> 12 U.S.C. § 5518(b) (2016).

<sup>12</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 3 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>.

<sup>13</sup> CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) Section 8.1 (2015).

<sup>14</sup> *Id.* at Section 5.2.1.



companies who abuse the trust placed in them by consumers.”<sup>15</sup> In discrimination cases, individual consumers may not even be aware that they were harmed by a corporation’s unlawful conduct.<sup>16</sup> As the Center for Justice and Democracy has found, class actions are uniquely capable of holding corporations accountable for civil rights violations for these claims.<sup>17</sup>

We strongly believe that your comprehensive study on forced arbitration unequivocally demonstrates that the proposed rule is necessary to the public interest and consumer welfare.<sup>18</sup> Congress has already acted to ban forced arbitration clauses in residential mortgages and in financial products offered to service members and veterans.<sup>19</sup> We have entrusted the Bureau with authority to extend these protections to the rest of the financial services marketplace. Accordingly, we encourage you to proceed quickly to ensure that consumers have equal protection under the law.

Sincerely,



Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services



Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary



Honorable Henry C. “Hank” Johnson, Jr.  
Member, Committee on the Judiciary

---

<sup>15</sup> See Letter from Joseph R. Biden III, Delaware Attorney General, et al., to Richard Cordray, Director, Consumer Fin. Prot. Bureau 1, 3 (Nov. 19, 2014).

<sup>16</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 5 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>.

<sup>17</sup> CENTER FOR JUSTICE & DEMOCRACY AT NEW YORK LAW SCHOOL, *Civil Rights Class Actions: A Singularly Effective Tool to Combat Discrimination* (Jan. 4, 2014), <https://centerjd.org/content/fact-sheet-civil-rights-class-actions-singularly-effective-tool-combat-discrimination>.

<sup>18</sup> Jean R. Sternlight, Director, Saltman Center for Conflict Resolution and Saltman Professor of Law, University of Nevada, et al., Comment Letter on Proposed Rule on Arbitration Agreements 1–2 (May 23, 2016), <https://www.regulations.gov/document?D=CFPB-2016-0020-0003>; Editorial, *Arbitrating Disputes, Denying Justice*, N.Y. TIMES, Nov. 7, 2015, at SR10, <http://nyti.ms/1Pv5KMg>; Jessica Silver-Greenberg & Michael Corkery, *Bank Customers Likely to Regain Access to Courts*, N.Y. TIMES, May 5, 2016, at A1, <http://nyti.ms/23qQgfY>.

<sup>19</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Sec. 1414(e), Pub. L. 111 – 203; Military Lending Act, 10 U.S.C. 987(e)(3), (f)(4); Department of Defense Appropriations Act, 2010, Sec. 8116, Pub. L. No. 111-118.

August 3, 2016

Gregory White

Carl E. Serna

Hjalt. Thunnig  
Erin Stone

Shawn Lee  
Bral Shen

David A. Cicilline

Rubin Hingora

Keith Eller

Babur Lee

Carson P. Maloney  
Ericson

Michael J. Kelly  
Robert J. Vining

Althea  
Steph S. Lynn

Jan Schekowsky  
AL

Red Dwyer

Iris V. Galt

Ann Lee

Jerold Madler

Wm H. Mt

Jeri Swell

Debbie Wasserman Schultz

Bobby

Ed Ralft

Matthew A. Cottrell

Raul M. Grijalva

Mahn Gern

Michael Monrada

Dwight D.

Patrick Murphy

Danny D. Davis

Earl Blumen

Bill Foster

Zoe Lofgren

Michael E. Capuano

Tim Ryan

Tulsi Gabbard

Jared Polis

Lori Frankel

Alan Lowenthal

Daniel Titman

FR

Denny Heck

James L. Grayson

Wm. Lacy Clay

Paul D. Tonko

Eric Swalwell

John A. Walsh

Ben Ray Lujan

John Farameri

Karen Bass

Dwight Spivey Jr

Shelley E. Caporale

Judy Chu

Roe W. Messersmith

Suzanne Brannan

Mark Amodeo

Shyrk DalBianco

Diana DeGette

# APPENDIX C



Consumer Financial  
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

January 25, 2017

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
4340 Thomas P. O'Neill, Jr. Federal Office Building  
Washington, D.C. 20515

Dear Ranking Member Waters:

Thank you for your letter regarding the Consumer Financial Protection Bureau's recent proposal to regulate pre-dispute arbitration agreements in contracts for consumer financial products and services.<sup>1</sup>

As you know, in May 2016, the Bureau published a proposed rule that would prohibit pre-dispute arbitration clauses that deny groups of consumers the ability to get relief through the courts. The proposal would prohibit covered providers of certain consumer financial products and services from using an arbitration agreement to bar the consumer from filing or participating in a class action. Under the proposal, companies would still be able to include pre-dispute arbitration clauses in their contracts. However, for contracts subject to the proposal, the clauses would have to state explicitly that they cannot be used to stop consumers from being part of a class action in court. The proposal would also require a covered provider that has an arbitration agreement and that is involved in arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to the Bureau.

This proposal is based on a number of preliminary findings outlined in the proposed rule. These findings include the Bureau's preliminary determination that companies widely use pre-dispute arbitration agreements to prevent consumers from seeking relief for potential violations of the law on a class basis and consumers rarely file individual lawsuits or arbitration cases to obtain such relief. The Bureau's proposal is designed to protect consumers' rights to pursue justice and relief and to deter companies from violating the law. The Bureau expects that the proposal, if finalized, would allow consumers who remain subject to pre-dispute arbitration agreements to file a class action or join a class action when someone else files it. The Bureau is currently reviewing the comments on the proposed rule and will consider any comments received in accordance with its obligations for notice-and-comment rulemaking.

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<sup>1</sup> Arbitration Agreements Notice of Proposed Rulemaking, 81 FR 32829 (May 24, 2016), *available at* <https://federalregister.gov/a/2016-10961>.

Should you have any questions, please do not hesitate to contact me or have your staff contact Patrick O'Brien in the Bureau's Office of Legislative Affairs. Mr. O'Brien can be reached at [REDACTED] [REDACTED by the Committee]. I look forward to working with you on this and other consumer financial protection matters of importance to you and your constituents.

Sincerely,



Richard Cordray  
Director

# APPENDIX D



United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

July 5, 2017

The Honorable Richard Cordray  
Director  
Bureau of Consumer Financial Protection  
1700 G Street, N.W.  
Washington, D.C. 20552

Dear Director Cordray:

On April 20, 2016, the Financial Services Committee (Committee) initiated an investigation of the Bureau of Consumer Financial Protection's (Bureau's) activities relating to arbitration agreements. Over fourteen months have now elapsed yet the Bureau, despite repeated entreaties by Committee Members and staff to produce the requested records, has failed to comply in full.

On August 12, 2016, then-Oversight and Investigations Subcommittee Chairman Sean P. Duffy sent you a letter urging you to comply with these overdue requests. His letter also requested that you provide, by no later than August 26, 2016, an "assurance that the Bureau will not finalize a rule on arbitration agreements until it has fully and completely responded to the April 20th request and the committee has had a chance to review the material provided." You provided no such assurance.

On April 4, 2017, the Committee, having waited nearly a year (350 days) for the Bureau to produce all records responsive to its requests, issued you a subpoena to compel production of these outstanding records (among others) by no later than May 2, 2017. On May 11, 2017, the Committee notified the Bureau that you were in default of the Committee's subpoena, including with respect to Specifications 19 and 20, which concern the Committee's April 20, 2016 arbitration records requests.

By this letter, I notify you that you continue to be in default of the Committee's April 4, 2017 Subpoena. I have directed Committee Staff to prepare a Staff Report for public release detailing your contumacy. You are hereby advised that any effort by you or another Bureau employee to promulgate any rule affecting arbitration agreements prior to curing your default as to Specifications 19 and 20 of the Committee's April 4, 2017 Subpoena may lead to contempt proceedings.

Yours Respectfully,



Jeb Hensarling  
Chairman

cc: The Hon. Maxine Waters, Ranking Member

# APPENDIX E

July 10, 2017

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Hensarling:

I write in response to your letter dated July 5, 2017, in which you state that the House Committee on Financial Services may consider instituting contempt proceedings against me if the Consumer Financial Protection Bureau proceeds to finalize its proposed rule regarding arbitration agreements without first obtaining the Committee's agreement that the Bureau has fully satisfied two of the 27 specifications contained in the Committee's April 4, 2017 subpoena. In effect, you have threatened to institute contempt proceedings against an executive branch official for faithfully carrying out a duly enacted statute. The suggestion that your threat is somehow related to the Bureau's response to the Committee's oversight requests is belied by the facts about the Bureau's response to this oversight and the Committee's failure to explain what more the Bureau could be expected to do in order to respond in a satisfactory manner to the Committee's requests. Nevertheless, in response to your letter the Bureau will produce further documents as it can do so on an ongoing basis.

In any event, I signed the final rule on June 27, 2017, and it was submitted to and received by the Office of the Federal Register for publication on June 30, 2017, several days before we received your letter. While we will continue to work with the Committee in an effort to satisfy your requests, this oversight matter should not – and cannot – influence the issuance of the arbitration rule pursuant to the Bureau's explicit statutory authority to issue such a rule.

#### I. The Arbitration Rule

Nearly seven years ago, Congress enacted and the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1028 of that Act directed the Bureau to study the use of pre-dispute arbitration agreements in contracts for consumer financial products and services, and issue a report to Congress.<sup>1</sup> The Bureau provided that report to Congress in March 2015.<sup>2</sup> Section 1028 also authorized the Bureau to promulgate a regulation prohibiting or imposing conditions on pre-dispute arbitration agreements if the Bureau finds that doing so is "in the public interest and for the protection of consumers."<sup>3</sup> The findings of the rule must also be consistent with the Bureau's study.<sup>4</sup> In May 2016, the Bureau issued a

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<sup>1</sup> 12 U.S.C. § 5518(a).

<sup>2</sup> Bureau of Consumer Fin. Prot., "Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)," (2015), available at [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>3</sup> 12 U.S.C. § 5518(b).

<sup>4</sup> *Id.*

proposed rule pursuant to this authority.<sup>5</sup> After consideration of the comments received in response to this proposal and other feedback from stakeholders, the Bureau determined that the rule meets the statutory standards and I signed the final rule on June 27, 2017, whereupon it was transmitted to the Federal Register for publication.

The final rule imposes two sets of limitations on the use of pre-dispute arbitration agreements by certain providers of consumer financial products or services. First, the final rule prohibits providers from using a pre-dispute arbitration agreement to block consumer class actions in court and requires most providers to insert language into their arbitration agreements reflecting this limitation. This final rule is based on the Bureau's findings – which are consistent with its study – that pre-dispute arbitration agreements are being widely used to prevent consumers from seeking relief from legal violations on a class basis, and that consumers rarely file individual lawsuits or arbitration cases to obtain such relief. Second, the final rule requires providers that use pre-dispute arbitration agreements to submit certain records relating to arbitral and court proceedings to the Bureau.

The final rule is the result of extensive deliberation and consultation. Before launching our study, we issued a Request for Information to obtain stakeholder input about the scope of the study and the available data. In November 2013, we issued the preliminary results of our study and described the scope of the remaining work. As noted, the study itself was published in March 2015. For over two years since, the Bureau has worked to determine whether new rules were appropriate based on the study results, as authorized by the Dodd-Frank Act. Last May, the Bureau issued a request for public comment on a proposed rule, and last August, we held a Tribal consultation. We ultimately considered more than 110,000 responses from consumers, consumer groups, industry, Members of Congress, and other interested parties before deciding to finalize the rule. The text of the rule itself is direct, simple, and concise, covering only 12 double-spaced pages, along with some further explanatory commentary.

In short, I believe the agency has carried out the statutory directive in Section 1028 of the Dodd-Frank Act faithfully and professionally.

## II. The Committee's Oversight Request

The Committee's claim that the Bureau has defaulted on its obligations to respond to the April 4, 2017 subpoena is unfounded and, in any event, provides no basis to delay the issuance of the final rule.<sup>6</sup> To begin with, your letter notes that the subpoena contained 27 specifications and is focused on only two of them. The Bureau has made good-faith efforts to respond to all of these specifications, and in response to your letter will make rolling productions of documents responsive to these two specifications in particular, which we will transmit as soon as possible. As for the details of these two specifications, here is our understanding of where things currently stand.

The two specifications at issue sought the following documents:

19. All communications relating to pre-dispute arbitration agreements between the CFPB and any of the following entities: (i) American Association for Justice; (ii) National Consumer Law Center; (iii) National Association of Consumer Advocates; (iv) Alliance for Justice; or (v) Public Justice.

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<sup>5</sup> Arbitration Agreements, 81 FR 32830 (May 24, 2016).

<sup>6</sup> The April 4, 2017 subpoena is attached hereto as Attachment A.

20. All communications from one CFPB employee to another CFPB employee relating to pre-dispute arbitration agreements.

As the Bureau explained in its May 2, 2017 letter responding to the subpoena, these specifications are similar to requests contained in an April 20, 2016 letter from former Oversight and Investigations Subcommittee Chairman Sean Duffy.<sup>7</sup> After receiving that letter, the Bureau engaged with Committee staff in an attempt to fully accommodate the Committee’s oversight interests while also narrowing the scope of these requests to a realistic and practicable volume. With respect to the first specification, the Bureau agreed to search the email accounts of certain identified custodians who had worked on the study and/or the proposed rule for email correspondence containing the domain names of the specified external groups. As a result of that search, the Bureau produced 2,363 pages of responsive material to the Committee on June 24, 2016. In addition, as explained in my May 2, 2017 letter to you, the Bureau’s *ex parte* policy requires groups such as those identified in the request to file on the rulemaking docket any written communication (or memoranda describing oral communications) with Bureau staff involved in the arbitration rulemaking regarding the merits of the rule.<sup>8</sup> As noted in my May 2, 2017 letter, these materials provide a comprehensive view of the Bureau’s interactions with these groups regarding the arbitration rulemaking. Nonetheless, the Bureau explicitly offered “to discuss any questions or concerns the Committee has regarding this production.” Until your July 5, 2017 letter, we heard nothing further from the Committee or its staff regarding this specification. In light of your most recent letter renewing your interest in seeking additional responsive documents, however, we will undertake to provide any other documents we can identify as soon as possible, and we will continue to engage in a rolling production thereafter if it appears fruitful to do so.

With respect to the second specification, the Bureau has repeatedly explained – in staff-level discussions, in my August 2016 correspondence with Chairman Duffy regarding his request, and in response to the April 4, 2017 subpoena – that it would be impracticable for the Bureau to respond to this request without additional scoping guidance from the Committee. Indeed, in my May 2, 2017 letter, I explained that the administrative task of loading the email accounts of every current and former Bureau employee into the Bureau’s review platform would not have been possible before the return date of the April 4 subpoena, and that searching and reviewing those accounts is simply impracticable. As I also explained in my May 2, 2017 letter, a search for the term “arbitration” in just the accounts of the agreed-to custodians for Item 19 generated over 10,000 items for review. Although we heard nothing from the Committee or its staff regarding this specification in response to the May 2, 2017 letter,<sup>9</sup> Bureau staff reached out once again for guidance from Committee staff on June 1, 2017, stating that the Committee had not provided guidance in response to the information provided by the Bureau, and that such guidance was necessary for “Bureau staff to proceed with review or production for this request.”<sup>10</sup> Bureau staff stated that “[i]f the Committee will identify its specific interests with regard to pre-dispute arbitration, the Bureau will be happy to propose appropriate custodians, search

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<sup>7</sup> The May 2, 2017 Letter is attached hereto as Attachment B.

<sup>8</sup> See Bulletin re: Ex Parte presentations in rulemaking proceedings, available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-ex-parte-presentations/](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-ex-parte-presentations/).

<sup>9</sup> Your reference to a May 11, 2017 notification from the Committee that it considered the Bureau to be in default of the April 4 subpoena is presumably a reference to an email of that date from Committee staff to Bureau staff regarding “interrogatories” relating to the Bureau’s issuance of civil investigative demands and information technology systems. See May 11, 2017 email from Committee Counsel to Bureau Counsel (attached as Attachment C). The relevant portion of this email, in its entirety, states: “Be advised that these interrogatories are directly linked to investigating the complete default made by Director Cordray on the Committee’s April 4 and 9th Subpoenas.” *Id.* This sentence does not provide guidance or even respond to the substance of the Bureau’s nineteen page narrative response to the April 4 subpoena, including its narrative response to specifications 19 and 20 of that subpoena.

<sup>10</sup> See June 1, 2017 email from Bureau Counsel to Committee Counsel (attached as Attachment D) (the relevant discussion is on page 3 of the attachment to this email).

terms, and date ranges for review.”<sup>11</sup> On June 14, 2017, Bureau staff again reached out to Committee staff, noting that Bureau staff had not received a response to the June 1, 2017 email, and seeking once more guidance regarding the scope of the April 4 subpoena specifications.<sup>12</sup> Again, until your July 5, 2017 letter, we heard nothing further from the Committee or its staff regarding this specification. To reiterate, in light of your most recent letter renewing your interest in seeking additional responsive documents, we will continue to seek more guidance around the scoping of this specification and engage in a rolling production thereafter if the scoping makes it fruitful to do so.

The Bureau has attempted in good faith to respond to the Committee’s subpoenas, and we will continue to seek to work with the Committee to respond in a satisfactory manner to these two specifications. But our efforts have been hindered by the Committee’s unwillingness to engage with Bureau staff to negotiate the scope of its very broad requests or to accommodate the Bureau’s concerns about the burden imposed by those requests. Such negotiation and accommodation not only makes practical sense in that it will ensure that the Committee obtains the information it is seeking in the shortest time possible, it is also rooted in the Constitution’s separation of powers.<sup>13</sup> The Bureau will continue its ongoing efforts to accommodate the Committee’s oversight work and, as I have indicated here, we will continue to make rolling productions of documents in an ongoing effort to address your concerns and ensure the Committee has all the information it needs to fulfill its legitimate oversight obligations. But none of this has anything to do with the propriety of issuing the arbitration rule.

Should you have any questions about this response, please do not hesitate to contact me, or have your staff contact Steven Bressler of the Consumer Bureau’s Legal Division or Catherine Galicia of the Consumer Bureau’s Office of Legislative Affairs. Mr. Bressler can be reached at [Redacted by the Committee] and Mrs. Galicia can be reached at [Redacted by the Committee].

Sincerely,



Richard Cordray  
Director

cc: The Honorable Maxine Waters, Ranking Member, Committee on Financial Services

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<sup>11</sup> *Id.*

<sup>12</sup> See June 14, 2017 email from Bureau Counsel to Committee Counsel (attached as Attachment E).

<sup>13</sup> See, e.g., *United States v. AT & T Co.*, 567 F.2d 121, 130 (D.C.Cir.1977) (“[T]he resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive *modus vivendi*, which positively promotes the functioning of our system. The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.”); *Comm. on Judiciary of U.S. House of Representatives v. Miers*, 542 F.3d 909, 912 (D.C. Cir. 2008) (“The framers, rather than attempting to define and allocate all governmental power in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system.”) (quoting *AT&T*, 567 F.2d at 127).

# **Attachment A**

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

April 4, 2017

The Honorable Richard Cordray  
Director  
Bureau of Consumer Financial Protection  
1700 G Street, N.W.  
Washington, D.C. 20552

Dear Director Cordray:

The House Committee on Financial Services (“Committee”) is currently investigating a variety of matters concerning the Bureau of Consumer Financial Protection (the “CFPB”). In order to further the Committee’s continuing oversight into these matters, I have authorized and issued the enclosed subpoena duces tecum returnable May 2, 2017.

The CFPB’s unprecedented obstruction of this Committee’s investigation is well-documented.<sup>1</sup> Schedule A in the attached Subpoena contains 27 Specifications. All but nine of these are substantially derived from the Committee’s prior subpoena duces tecum of December, 18, 2015. It is necessary to re-subpoena these documents because, for 382 days, the CFPB failed to perform its legal obligations under the prior subpoena to produce all responsive documents. The remaining nine specifications are drawn in substantial part from requests that have been pending for many months—in the shortest instance over 200 days.

As the Supreme Court has repeatedly made clear, a Congressional subpoena is a legally binding obligation.<sup>2</sup> It is not “an invitation to a game of hare and hounds—a game that could delay congressional proceedings indefinitely.”<sup>3</sup> I am

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<sup>1</sup> See, e.g., Letter from the Hon. Jeb. Hensarling to the Hon. Richard Cordray (June 16, 2016); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Apr. 8, 2016); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Feb. 10, 2016); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Jan. 27, 2016); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Dec. 3, 2015); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Nov. 10, 2015); Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Nov. 5, 2015); Letter from the Hon. Jeb. Hensarling to the Hon. Richard Cordray (June 29, 2015); Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (May 22, 2015); Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (Mar. 2, 2015).

<sup>2</sup> See, e.g., *McPhaul v. United States*, 364 U.S. 372 (1960); *McGrain v. Daugherty*, 273 U.S. 135 (1927).

<sup>3</sup> Order at 9, in *S. Permanent Subcomm. on Investigations v. Ferrer*, No. 1:16-mc-00621 (RMC) (D.D.C. Sept. 30, 2016) (ECF No. 35) (quoting *United States v. Bryan*, 339 U.S. 323, 331 (1950)) (subsequent history omitted).



The Hon. Richard Cordray  
April 4, 2017  
Page 2 of 2

prepared to take all appropriate steps to ensure that the CFPB honors its legal obligations. Please be advised as follows:

*First.* The Subpoena is returnable in one month on May 2, 2017. I expect *full* compliance by the return date. No continuances will be granted absent extraordinary circumstances.

*Second.* The legally binding Production Instructions that form a part of the enclosed Subpoena will be *strictly* enforced.<sup>4</sup>

*Third.* I will immediately issue subpoenas for custodial depositions to investigate any default of the enclosed Subpoena by the CFPB. If necessary, I will ensure that the Committee avails itself of *all* tools to enforce its process and/or pursue remedies for obstruction of Congress, which is a crime.<sup>5</sup>

That said, it is our expectation that the CFPB will promptly comply with its legal obligations under the enclosed Subpoena and that further measures prove unnecessary. If you have any questions regarding this letter or the enclosed Subpoena, please have your staff contact Samuel Dewey of the Committee Staff at

Redacted by the Committee

Thank you for your attention to this important matter.

Sincerely,



JEB HENSARLING  
Chairman

cc: The Honorable Maxine Waters, Ranking Member

Enclosure

<sup>4</sup> See, e.g., Order at 4, in *S. Permanent Subcomm. On Investigations v. Ferrer*, No. 1:16-mc-00621(RMC) (D.D.C. Sept. 16, 2016) (ECF No. 29) (holding subpoena instruction legally binding and noting it was neither “a suggestion or a recommendation”) (subsequent history omitted).

<sup>5</sup> See 2 U.S.C. § 192 and 18 U.S.C. § 1505.

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

Hon. Richard Cordray, Director  
To Bureau of Consumer Financial Protection

You are hereby commanded to be and appear before the Committee on Financial Services

of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2129 Rayburn House Office Building, Washington, D.C.  
Date: May 2, 2017 Time: 5:00 p.m.

To any authorized House Financial Services Committee staff member, the House Sergeant at Arms  
or his designee, or the U.S. Marshals Service. \_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,  
at the city of Washington, this 4th day of April, 2017.

[Signature]  
Chairman or Authorized Member

Attest:  
Karen P. Haas  
Clerk

**PROOF OF SERVICE**

---

Subpoena for Hon. Richard Cordray, Director  
Bureau of Consumer Financial Protection

Address 1700 G Street, NW

Washington, D.C. 20552

before the Committee on Financial Services

*U.S. House of Representatives*  
*115th Congress*

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Served by (print name) \_\_\_\_\_

Title \_\_\_\_\_

Manner of service \_\_\_\_\_

Date \_\_\_\_\_

Signature of Server \_\_\_\_\_

Address \_\_\_\_\_

Hon. Richard Cordray  
Director  
Bureau of Consumer Financial Protection  
1700 G. Street, N.W.  
Washington, D.C. 200552

## SCHEDULE A

In accordance with the attached schedule instructions, you, Richard Cordray, are required to produce in unredacted form all records described below:

1. All records in the possession, custody, or control of the CFPB's Office of General Counsel that were generated between January 1, 2014, and October 30, 2014, containing the terms "litigation hold," "questionnaire," OR "Williams," and which also contain one or more of the following additional terms: "identity," "whistleblower," "Congress," OR "Republican."
2. All records relating to any instance whatsoever, from January 4, 2012–present, in which any CFPB employee directed another federal government employee not to transmit to any Member, Committee, or Subcommittee of Congress records requested or subpoenaed by any Member, Committee, or Subcommittee of Congress.
3. All records indicating the exact dates, amounts, and uses of any funds withdrawn from the Settlement Fund pursuant to the Consent Order in *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).
4. All records indicating the exact number of natural persons harmed by Ally's alleged discriminatory actions in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally.
5. All records indicating the total amount of compensation determined to be paid to qualified victims pursuant to the Consent Order for *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).
6. All records indicating the final remuneration plan reached in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally.
7. All records indicating any of the final processes used, or to be used, in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally in order to identify, determine, contact, or notify affected consumers who are entitled to receive monetary relief from the settlement fund.
8. All records indicating any of the final processes used, or to be used, in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement

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with Ally in order to calculate and determine the amount of monetary relief consumers are entitled to receive from the settlement fund.

9. All records indicating any of the final processes used, or to be used, in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally in order to remunerate affected consumers or cause affected consumers to be remunerated.
10. All CFPB records released in connection with the November 24, 2015, U.S. House Financial Services Committee Majority Staff Report entitled *Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending*.
11. All e-mails contained in the e-mail accounts associated with Patrice Ficklin that were sent, received, or drafted between August 15, 2015, and October 6, 2015, pertaining to any of the following news reports written by *American Banker* reporter Rachel Witkowski and published in *American Banker* in September 2015: *CFPB Overestimates Potential Discrimination, Documents Show*; *The Inside Story of the CFPB's Battle Over Auto Lending*; or *CFPB's Outside Expert on Disparate Impact Also Advises Banks*.
12. All e-mails contained in the e-mail accounts associated with Patrice Ficklin that were sent, received, or drafted, between August 15, 2015, and October 6, 2015, and which contain any of the following key words: "banker," "reporter," "Witkowski," "markup," "disparities," "PARR," "Siskin," "BLDS," "proxy," "Ally," "Honda," OR "Fifth Third."
13. All records generated by any vendor retained by the CFPB to perform any management consulting services between the beginning of Fiscal Year 2013 and December 18, 2015.
14. All contracts between the CFPB and BLDS, LLC, and all records pertaining to any such contracts.
15. All communications from BLDS, LLC to the CFPB.

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16. All records indicating any instance, of any sort whatsoever, when BLDS, LLC acted as an employee of the CFPB, including the purpose and scope of any such action.
17. All records indicating in what matters in which the CFPB was a party, BLDS, LLC, or any of its employees was employed by a party other than the CFPB.
18. All records contained within the e-mail account associated with Richard Cordray, Mary McLeod, Meredith Fuchs, Anne Tindall, and Catherine Galicia that were sent, received, or drafted between March 2, 2015, and the present, and which contain any of the following key words: "interview!," "depos!," "subpoen!," "contempt," "obstruct!," OR "unsafe at any bureaucracy."
19. All communications relating to pre-dispute arbitration agreements between the CFPB and any of the following entities: (i) American Association for Justice; (ii) National Consumer Law Center; (iii) National Association of Consumer Advocates; (iv) Alliance for Justice; or (v) Public Justice.
20. All communications from one CFPB employee to another CFPB employee relating to pre-dispute arbitration agreements.
21. All records indicating the classes of putative victims with compensable uncompensated harm relating to Global Client Solutions that are eligible to receive compensation from the CFPB's Civil Penalty Fund.
22. All records indicating the basis or rationale for the allocation made from the CFPB's Civil Penalty Fund for putative victims of Global Client Solutions.
23. All communications between the CFPB and any third-party administrator that have distributed payments to putative victims of Global Client Solutions from funds allocated from the CFPB's Civil Penalty Fund.
24. All records indicating: (a) the names of all debt relief service providers for whom the CFPB alleged Global Client Solutions processed putative unlawful advance fees; (b) the number of consumers the CFPB alleged were charged unlawful advance fees by each debt relief service provider for whom Global Client Solutions processed putative unlawful advance fees; (c) the amount of uncompensated harm for each putative victim; and (d) the amount the CFPB allocated to each putative victim.
25. All records contained in the email accounts associated with Members of the Civil Penalty Fund Governance Board, Fund Administrator, and Chief Financial Officer

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that were sent, received, or drafted between August 27, 2014, and the present, and which contain of the following key words: "Global Client Solution!," "Global Holdings," "GCS," "uncompensate!," AND "victim! /2 class!".

26. All records relating to the sales practices of Wells Fargo Bank, N.A. that are described in the CFPB's consent order against Wells Fargo Bank, N.A. filed on September 8, 2016.

27. All records relating to the CFPB's "investigation of Wells Fargo" that is described in your letter to the Committee dated September 23, 2016.

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**INSTRUCTIONS: For the purpose of this Subpoena:**

1. In complying with this Subpoena, you are required to produce all responsive records that are in your possession, custody, or control. You shall also produce records that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as records that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual denoted in this Subpoena has been, or is also known by any other name than that herein denoted, the Subpoena shall be read also to include that alternative identification.
3. The Committee considers all members of a document "family" to be responsive to the Subpoena if any single "member" of that "family" is responsive, regardless of whether the "family member" in question is "parent" or "child."
4. It shall not be a basis for refusal to produce records that any other person or entity also possesses non-identical or identical copies of the same records.
5. If a date or other descriptive detail set forth in this Subpoena referring to a record is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the Subpoena, you are required to produce all records which would be responsive as if the date or other descriptive detail were correct.
6. Records produced in response to this Subpoena shall be produced as they were kept in the normal course of business together with copies of file labels, dividers, or identifying markers with which they were associated when the Subpoena was served.
7. In complying with this Subpoena, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements. Any assertion by a subpoena recipient of any such non-constitutional legal bases for withholding records or other materials shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Chairman of the Committee has consented to recognize the assertion as valid. If you withhold records in whole or in part on the basis of a claim of a privilege or protection, you



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are required to follow the following procedure. You may only withhold that portion of a record over which you assert a claim of privilege or protection. Accordingly, you may only withhold a record in its entirety if you maintain that the entire record is privileged or protected. Otherwise you must produce the record in redacted form. In the event that a record is withheld in whole or in part on the basis of privilege or protection you must provide a privilege log containing the following information concerning each discrete claim of privilege or protection: (a) the privilege or protection asserted; (b) the type of record; (c) the date, author, and addressee (d) the relationship of the author and addressee to each other; and (e) a general description of the nature of the record that, without revealing information itself privileged or protected, will enable the Committee to assess your claim of privilege or protection. In the event a record or a portion thereof is withheld under multiple discrete claims of privilege or protection, each claim of privilege or protection must be separately logged. In an event portions of a record are withheld on discrete claims of privilege or protection, each separate claim of privilege or protection within that record must be separately logged. A privilege log must be produced contemporaneously with the withholding of any record in whole or in part on the basis of a privilege or protection. Privilege logs must be produced as a native Microsoft Excel file. All privilege logs must be accompanied by the certification of your counsel in a form compliant with 28 U.S.C. § 1746 that all assertions of privilege or protection contained therein are consistent with these Instructions and are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law. Failure to strictly comply with these provisions constitutes waiver of any asserted privilege or protection. In the Chairman's discretion, this waiver may extend to the subject matter of the underlying records.

8. If any record responsive to this Subpoena was, but no longer is, in your possession, custody, or control, you must file a certificate in a form compliant with 28 U.S.C. § 1746 signed by your counsel and the natural person that you designate as most knowledgeable regarding the circumstances under which the record ceased to be in your possession, custody, or control which: (a) identifies the record (stating its date, author, subject, and recipients); and (b) explains the circumstances under which the record ceased to be in your possession, custody, or control or was placed in the possession, custody, or control of a third party; (c) identifies the person who currently has possession, custody, or control over the record; and (d) identifies each person who authorized the disposition of the record or who had or has knowledge of that disposition.
9. If any record responsive to this Subpoena cannot be located, you must immediately file a certificate in a form compliant with 28 U.S.C. § 1746 signed by your counsel and the natural person that you designate as most knowledgeable regarding the

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circumstances describing with particularity the efforts made to locate the record and the specific reason for its disappearance, destruction or unavailability.

10. This Subpoena is continuing in nature and applies to any newly-discovered information. Any record not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery. If you discover any portion of your response is incorrect in a material respect you must immediately and contemporaneously file with the Committee a certificate in a form compliant with 28 U.S.C. § 1746, signed by your counsel, and the natural person that you designate as most knowledgeable regarding your document production, setting forth: (1) how you became aware of the defect in the response; (2) how the defect came about (or how you believe it to have come about); and (3) a detailed description of the steps you took to remedy the defect.
11. A cover letter shall be included with each production and include the following:
  - a. A list of each piece of media included in the production with its unique production volume number;
  - b. A list of custodians, identifying the Bates range for each custodian;
  - c. A list of Specifications, identifying the Bates range of documents responsive to each Specification;
  - d. The time zone in which the emails were standardized during conversion; and
  - e. All Bates Prefix and Suffix formats for records contained in the production.
12. You must identify any documents which you believe to contain confidential or proprietary information.
13. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of House Security.
14. Records must be produced to the Committee in accordance with the attached *Electronic Production Instructions* in order to be considered to be in compliance with the Subpoena. Failure to produce records in accordance with the attached *Electronic Production Instructions*, may, in an exercise of the Committee's discretion, be deemed an act of contumacy.
15. If properties or permissions are modified for any records produced electronically, receipt of such records will not be considered full compliance with the subpoena.

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16. Upon completion of the record production, you must submit a certificate, in a form compliant with 28 U.S.C. § 1746, signed by you and your counsel regarding your record production, stating that: (a) a diligent search has been completed of all records in your possession, custody, or control which reasonably could contain responsive records; (b) the search complies with good forensic practices; (c) records responsive to this subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena; and (d) all records located during the search that are responsive have been produced to the Committee or withheld in whole or in part on the basis of an assertion of a claim of privilege or protection in compliance with these Instructions.
  
17. When representing a witness or entity before the Committee in response to a subpoena, record request, or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations

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**Definitions:**

The following definitions apply both to terms within the Subpoena, Schedule A, these Instructions, and these Definitions.

1. The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), text messages, instant messages, MMS or SMS messages, contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term. By definition a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.
2. The term “records in your possession, custody or control” means (a) records that are in your possession, custody, or control, whether held by you or your employees; (b) records that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) records that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in

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an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

4. "Communication with," "communications from," and "communications between" means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc'd or bcc'd, both parties are cc'd or bcc'd, or some combination thereof.
5. The term "person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any employee, and any other units thereof.
6. The term "employee" means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent, without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.
7. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this Subpoena any information which might otherwise be construed to be outside its scope. The terms "all," "any," and "each" shall each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
8. The terms "pertaining to," "referring," "relating," or "concerning" with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
9. The term "indicating" with respect to any given subject means anything showing, evidencing, pointing out or pointing to, directing attention to, making known, stating, or expressing that subject of any sort, form, or level of formality or informality, whatsoever, without limitation.
10. When referring to a person, "to identify" means to give, to the extent known: (1) the person's full name; (2) present or last known address; and (3) when referring to a natural person, additionally: (a) the present or last known place of employment;

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(b) the natural person's complete title at their employment; and (c) the individual's business address. When referring to documents, "to identify" means to give, to the extent known the: (1) type of document; (2) general subject matter; (3) date of the document; and (4) author, addressee, and recipient.

11. The term "CFPB" refers to the Bureau of Consumer Financial Protection, an agency of the United States government, and any employees.
12. The term "Global Client Solutions" refers to Global Client Solutions, LLC, and Global Holdings LLC and any employees thereof.
13. The term "Ally" refers to Ally Financial, Inc., Ally Bank, and any employees thereof.
14. The term "BLDS, LLC" refers to the expert analysis, testimony, and consulting firm BLDS, LLC, and any employees thereof.
15. The term "Wells Fargo Bank, N.A." refers to Wells Fargo Bank, N.A., a subsidiary of Wells Fargo & Company, and its successors and assigns.
16. The term "Wells Fargo & Company" refers to the American international banking and financial services company Wells Fargo & Company and its subsidiaries and affiliates.
17. The term "Civil Penalty Fund" bears the meaning set forth in 12 U.S.C. § 5497(d).
18. The term "vendor" refers to any person that undertakes a contract to provide materials or labor to perform a service or work for the CFPB.
19. The term "management consulting services" refers to management or support services provided by vendors under the Product Service Code R408 defined by the General Services Administration.
20. The terms "identify," "determine," "calculate," "contact," "notify," and "remunerate" bear the same meaning as that used in the Consent Order in *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).
21. The term "final remuneration plan" refers to the set of records that allow the CFPB to determine which retail installment contracts with consumers are eligible to receive monetary relief per the terms of the Consent Order in *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).
22. The term "Settlement Fund" bears the meaning set forth in the Consent Order in *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).

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23. The term “processes” means any processes, procedures, methodologies, materials, practices, techniques, systems, or other like activity, of any sort, form, or level of formality or informality, whatsoever, without limitation.
24. The term “directed” means ordered, commanded, told, charged, guided, counseled, instructed, opined, recommended, or otherwise advised, in any sort, form, or level of formality or informality, whatsoever, without limitation.
25. The term “pre-dispute arbitration agreements” bears the meaning set forth in a proposed rule published in 81 Fed. Reg. 32,830 and refers to agreements that provide for the arbitration of any future disputes between consumers and providers of certain consumer financial products and services.
26. The term “compensable uncompensated harm” bears the meaning set forth in a final rule published in 78 Fed. Reg. 26,545 and refers to the amount of harm that the victim suffered from the violation for which the Bureau obtained a civil penalty and for which the victim has not received and is not reasonably likely to receive other compensation.
27. The term “debt relief service provider” bears the meaning set forth in the Stipulated Final Judgement and Consent Order in *CFPB v. Global Client Solutions*, No. 2:14-cv-06643 (C.D. Cal. Aug. 27, 2014) (ECF No. 10) and refers to any person that offers or provides any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more creditors or debt collectors, including but not limited to, a reduction in the balance, interest rate, or fees owed by a person to a creditor or debt collector.
28. The term “advance fee” bears the meaning set forth in the Stipulated Final Judgement and Consent Order in *CFPB v. Global Client Solutions*, No. 2:14-cv-06643 (C.D. Cal. Aug. 27, 2014) (ECF No. 10) and refers to any fee or consideration requested or received by a debt relief service provider from a consumer for any debt relief service, whether directly or indirectly, that occurs before: (a) the debt relief service provider has renegotiated, settled, reduced, or otherwise altered the terms of a debt pursuant to a settlement agreement, debt management plan, or other valid contractual agreement executed by the consumer; and (b) the consumer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the consumer and the creditor or debt collector.
29. The term “matters” refers to any investigation, negotiation, advocacy, lobbying dispute, inquiry, submission, or action, including, but not limited to, litigation, administrative adjudication, correspondence, representation of any kind including

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for a Potential Action and Request for Response, or representation of any kind for a Notice and Opportunity to Respond and Advise.

30. The term “party” refers to any person involved or contemplating involvement in any act, affair, contract, transaction, judicial proceeding, administrative proceeding, or Congressional proceeding.

31. The character “!” indicates a BOOLEAN root expander.

32. The character /2 indicates the BOOLEAN code for the preceding word within two words of the subsequent word.



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## ELECTRONIC PRODUCTION INSTRUCTIONS

Record productions shall be prepared according to, and strictly adhere to, the following standards:

1. Records produced shall be organized, identified, and indexed electronically.
2. Only alphanumeric characters and the underscore (“\_”) character are permitted in file and folder names. Special characters are not permitted.
3. Two sets of records shall be delivered, one set to the Majority Staff and one set to the Minority Staff. To the extent the Minority Staff does not have an electronic record review platform, records shall be produced to the Minority Staff in searchable PDF format and shall be produced consistent with the instructions specified in this schedule to the maximum extent practicable.
4. Production media and produced records shall not be encrypted, contain any password protections, or have any limitations that restrict access and use.
5. Records shall be produced to the Committee on one or more CDs, memory sticks, thumb drives, or USB hard drives. Production media shall be labeled with the following information: Case Number, Production Date, Producing Party, Bates Range.
6. Records produced to the Committee shall include an index describing the contents of the production. To the extent that more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder shall contain an index describing its contents.
7. All records shall be Bates-stamped sequentially and produced sequentially.
8. When you produce records, you shall identify the paragraph or number in the Committee’s subpoena to which the records respond and add a metadata tag listing that paragraph or number in accordance with **Appendix A**.
9.
  - a. All submissions must be organized by custodian unless otherwise instructed.
  - b. Productions shall include:
    1. A Concordance Data (.DAT) Load File in accordance with metadata fields as defined in **Appendix A**.
    2. A Standard Format Opticon Image Cross-Reference File (.OPT) to link produced images to the records contained in the .DAT file.

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3. A file (can be Microsoft Word, Microsoft Excel, or Adobe PDF) defining the fields and character lengths of the load file.
- c. The production format shall include images, text, and native electronic files. Electronic files must be produced in their native format, i.e., the format in which they are ordinarily used and maintained during the normal course of business. For example, a Microsoft Excel file must be produced as a Microsoft Excel file rather than an image of a spreadsheet. **NOTE:** An Adobe PDF file representing a printed copy of another file format (such as Word Document or Webpage) is NOT considered a native file unless the record was initially created as a PDF.

1. Image Guidelines:

1. Single or multi page TIFF files.
2. All TIFF images must have a unique file name, i.e., Bates Number
3. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.

2. Text Guidelines:

1. All text shall be produced as separate text files, not inline within the .DAT file.
2. Relative paths shall be used to link the associated text file (FIELD: TEXTPATH) to the record contained in the load file.
3. Associated text files shall be named as the BEGBATES field of each record.

3. Native File Guidelines:

1. Copies of original email and native file records/attachments must be included for all electronic productions.
2. Native file records must be named per the BEGBATES field.
3. Relative paths shall be used to link the associated native file (FIELD: NATIVEFILELINK) to the record contained in the load file.
4. Associated native files shall be named as the BEGBATES field of each record.

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- d. All record family groups, *i.e.*, email attachments, embedded files, etc., should be produced together and children files should follow parent files sequentially in the Bates numbering.
- e. Only 1 load file and one Opticon image reference file shall be produced per production volume.
- f. All extracted text shall be produced as separate text files.
- g. Record numbers in the load file should match record Bates numbers and TIFF file names.
- h. All electronic record produced to the Committee should include the fields of metadata listed in **Appendix A**.

**Appendix A**

Production Load File Formatting and Delimiters:

- The first line shall be a header row containing field names.
- Load file delimiters shall be in accordance with the following:
  - Field Separator: ¶ (20)   Text Qualifier: þ (254)
  - Newline: \n (10)   Multi-Value Separator: ; (59)
  - Nested Value Separator: \ (92)
- All Date / Time Data shall be split into two separate fields (see below).
  - Date Format: mm/dd/yyyy—*i.e.*, 05/18/2015
  - Time Format: hh:mm:ss A—*i.e.*, 08:39:12 AM

Required Metadata Fields

<b>Field Name</b>	<b>Sample Data</b>	<b>Description</b>
FIRSTBATES	EDC0000001	First Bates number of native file record/email
LASTBATES	EDC0000001	Last Bates number of native file record/email **The LASTBATES field should be populated for single page records/emails.
ATTACHRANGE	EDC0000001– EDC0000015	Bates number of the first page of the parent record to the Bates number of the last page of the last attachment “child” record
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range

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CUSTODIAN	Smith, John	Email: mailbox where the email resided Attachment: Individual from whom the record originated
FROM	John Smith	Email: Sender Native: Author(s) of record **semi-colon should be used to separate multiple entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple entries
CC	Frank Thompson [mailto:frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of record (if available)
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT/TIME_ZONE	07:05 PM GMT	Email: Time the email was sent/ Time zone in which the emails were standardized during conversion. Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
TIME_ZONE	GMT	The time zone in which the emails were standardized during conversion. Email: Time zone Native: (empty)
NATIVEFILELINK	D:\001\ EDC0000001.msg	Hyperlink to the email or native file record **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file record as identified/extracted from the header

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 Director  
 Bureau of Consumer Financial Protection  
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 Washington, D.C. 200552

FILE_EXTEN	MSG	The file type extension representing the Email or native file record; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the record
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the record was created
TIME_CREATED	10:25 AM	Email: (empty) Native: Time the record was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the record was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the record was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the record was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the record was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the record was last printed
NATIVEFILESIZE	5,952	Size of native file record/email in KB **Use only whole numbers
PGCOUNT	1	Number of pages in native file record/email
PATH	J:\Shared\Smith J\October Agenda.doc	Email: (empty) Native: Path where native file record was stored including original file name
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name Native: (empty)
INTMSGID	<000805c2c71b\$7 5977050\$cb 8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec 4693d9a069 8aff95c	MD5 Hash value of the record

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	2fcab58712467ea b4004583eb 8fb7f89	
TEXTPATH	\TEXT\AAA0001 .txt	Path to the record's text file that contains extracted text to be used for processing. Every record has a relative path to its text file in this field. <b>Note:</b> These paths may also be fully qualified; and thus do not have to be relative.
NATIVEFILEPATH	\NATIVES\MES SAGE1.msg; \NATIVES\ATT ACHMENT1. doc	Path to the record's native file. Every record has a relative path to its native file in this field. <b>Note:</b> These paths may also be fully qualified; and thus do not have to be relative.
HANDWRITTEN	YES	Field should be marked "YES" if the record has any handwritten notes or other text that is not contained in the text file
REDACTED	YES	Field should be marked "YES" if the record contains any redactions, "NO" otherwise

Metadata Fields Required Upon Specific Request

TAGS	FirstPass\Respon sive; FirstPass\ForQC	If requested—a list of tags assigned to the record. Multiple tags are separated by the multi-value separator, for example: "A; B; C", and nested tags are denoted using the nested value separator, for example: "X\Y\Z". Tags for attachments will appear under the custom field "ATTACHMENT_TAGS".
FOLDERS	JohnDoeDocs\First Pass	If requested—a list of folders of which the record is a part. Multiple folders are separated by the multi-value separator, for example: "A; B; C", and nested folders are denoted using the nested value separator, for example: "X\Y\Z". Folders for attachments will appear under the custom field "ATTACHMENT_FOLDERS".

# **Attachment B**



May 2, 2017

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Hensarling:

I write in response to the House Financial Services Committee’s subpoena for Consumer Financial Protection Bureau records, dated April 4, 2017. As emphasized in previous correspondence, the Bureau remains committed to facilitating the Committee’s oversight interests with respect to the Bureau’s work.

During the Committee’s April 5, 2017 hearing on the Bureau’s 2016 Semi-Annual Reports, at which I testified, you stated that issuance of this subpoena was necessary because document requests “pending from subpoenas in the last Congress [] were never complied with.” This statement mischaracterizes the facts. As described in detail below, the Bureau has worked diligently to comply with all of the Committee’s oversight requests, including its only prior document subpoena to the Bureau, issued on December 18, 2015. In response to the Committee’s December 18 subpoena, the Bureau produced more than 18,000 pages of responsive material as well as substantial narrative responses. These responses explained why the production of additional documents is impracticable, and sometimes even impossible, without further guidance from Committee staff—including several cases where additional responsive documents simply do not exist.

Moreover, Bureau staff and Committee staff were engaged in productive negotiations through the end of the last Congress regarding certain subpoena items which the Committee believed to be outstanding. In the course of those conversations,<sup>1</sup> Committee staff agreed with Bureau staff’s

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<sup>1</sup> These conversations included telephone conferences on August 31, 2016 and September 16, 2016, during which Bureau staff walked through each item of the December 18, 2015 subpoena and identified which had been satisfied and which required further collaboration between Bureau staff and Committee staff. At Committee staff’s request, Bureau staff summarized in writing this status information. Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET). The Bureau—again at Committee staff’s request—also reiterated in writing the steps taken for all items the Bureau believed it had satisfied. Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Oct. 5, 2016 3:31 PM ET). Bureau staff and Committee staff continued discussion throughout 2016, negotiating search parameters and exchanging search reports for certain subpoena items, holding additional telephone conferences on October 7, October 13, October 27, November 22, December 9, and December 15, and exchanging numerous emails in that same period.



assessment that the Bureau had provided documents and information sufficient to satisfy 21 of the items in the December 18 subpoena, and further, that certain items needed clarification or narrowing in scope in order for further production to be practicable.<sup>2</sup> Where Committee staff worked with Bureau staff to clarify its interests and craft appropriate search parameters, the Bureau conducted additional review and made supplemental productions.<sup>3</sup> In the last of the conversations between Bureau staff and Committee staff on December 15, 2016, both parties agreed to a path forward regarding the specific subpoena items that the Committee views as outstanding and to continue to work together in the 115<sup>th</sup> Congress to meet the Committee's oversight needs. The Bureau has made every effort to meet those needs and, in fact, has already complied fully with several of the items contained in the Committee's April 4, 2017 subpoena.

In the letter accompanying the April 4 subpoena, and again in statements during the Committee's April 5 hearing, you described the Bureau's attempts to comply with the Committee's many oversight requests as obstruction. The Bureau's long and substantial record of facilitating the Committee's oversight belies this characterization.<sup>4</sup> When Committee requests have been clear and reasonably calculated to identify documents relevant to stated Committee interests, the Bureau has efficiently identified and produced requested materials. In other cases, when requests have been overly broad or unclear, Bureau staff has consistently contacted Committee staff in attempts to initiate and maintain collaborative discussions so that the Bureau may promptly identify and produce the documents of interest to the Committee.<sup>5</sup>

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<sup>2</sup> For some of the items that are now in the Committee's April 4, 2017 subpoena, Committee staff had actually agreed to provide further guidance before the Bureau would be expected to make additional productions. Committee staff has yet to provide the promised guidance.

<sup>3</sup> These productions continued through December 2016, on a time table set by Committee staff.

<sup>4</sup> The Bureau's record of compliance is indisputable. As noted above, Committee staff recognized the Bureau's production of records and/or narrative explanations sufficient to satisfy the Committee's information needs with respect to 21 of the 36 items on the Committee's December 18, 2015 subpoena. The Bureau believes it has satisfied those needs with respect to several additional items, and has long awaited pledged guidance on the scope of the remaining items. Furthermore, in the last Congress, the Bureau received scores of oversight requests from this Committee alone, in addition to the December 18 subpoena, and the Bureau made substantial efforts to comply with all of them.

<sup>5</sup> For certain requests, the Bureau has explained to the Committee that its productions must accommodate substantial privacy and confidentiality interests. In those instances, the Bureau has nonetheless sought to accommodate the Committee's requests by other means, such as through offering in camera review, briefings, or production of equivalent material that does not impinge on these interests. Though the Committee has insisted that it does not recognize any non-disclosure privileges, including the deliberative process privilege, judicial precedent and longstanding principles of inter-branch comity do not support this blanket rejection of all agency privileges. *See, e.g., Order, Comm. on Oversight and Gov't Reform v. Lynch*, 1: 12-cv-01332-ABJ (D.D.C. Jan. 19, 2016) (affirming that predecisional and deliberative agency records are protected by deliberative process privilege). Indeed, inter-branch comity and good faith negotiations have a long history as fruitful and important tools by which the needs of coequal branches can be met in the course of responding to congressional requests. *See* Mem. for the Heads of Exec. Departments and Agencies regarding Procedures Governing Resps. to Cong. Reqs. for Info. (Nov. 4, 1982) ("Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches."); Op. of the Att'y Gen. for the President, *Assertion of Exec. Privilege in Resp. to a Cong. Subpoena*, 5 Op. O.L.C. 27, 31 (1981) ("The accommodation required [between the Branches] is not simply an

The Committee’s insistence that the Bureau does not respond to congressional oversight—despite the Bureau’s extensive compliance and its efforts to be transparent about obstacles to production, to be proactive in resolving them, and to seek further guidance and collaboration when necessary—puts at risk the good faith and collaborative process essential for the Bureau to understand and address the Committee’s oversight interests. The Bureau has at all times been candid with the Committee and its staff about impediments to production and how they can be resolved. Bureau staff will continue working with Committee staff to furnish the materials you need to satisfy the Committee’s oversight interests. I am confident we can resolve these matters to your satisfaction when both parties engage one another with the comity and respect that undergirds the constitutionally-based accommodations process.

Description of the documents produced today, along with additional narrative information, discussion of the Bureau’s efforts to comply with the Committee’s previous, similar or identical requests, and identification of areas of needed staff-level clarification and scoping, follow.

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- 1. All records in the possession, custody, or control of the CFPB’s Office of General Counsel that were generated between January 1, 2014, and October 30, 2014, containing the terms “litigation hold,” “questionnaire,” OR “Williams,” and which also contain one or more of the following additional terms: “identity,” “whistleblower,” “Congress,” OR “Republican.”**

Item 1 originated in a September 9, 2014 letter from former Oversight and Investigations Subcommittee Chairman Patrick McHenry, which alleged, without any details or corroboration, that the Bureau had attempted to identify or retaliate against whistleblowers and requested assurances that the Bureau would not engage in efforts to identify whistleblowers or to intimidate employees cooperating with certain oversight bodies. In a reply dated October 2, 2014, the Bureau provided assurances that it had never engaged in such conduct, nor would it do so.

Chairman McHenry’s letter also requested a massive volume of documents generated by or in the custody of the Bureau’s Legal Division and containing certain search terms.<sup>6</sup> As the Bureau advised Committee staff in its October 2 response and on several other occasions, this broad request covered dozens of current and former Legal Division employees and purported to require search of email, shared drive, individual hard drive, and hard copy records for each of them, even though the vast majority of these materials would not address the Committee’s interests.<sup>7</sup>

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exchange of concessions or a test of political strength. It is an obligation of each Branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other Branch.”).

<sup>6</sup> The parameters of this request are substantially similar, though not identical, to those in Item 1 of the April 4, 2017 subpoena.

<sup>7</sup> The Bureau reiterated the problems with the Committee’s request and re-extended its invitation to work together to identify a more fruitful approach in several responses to Committee letters, including responses dated March 16, 2015 and June 5, 2015. As described in its June 5, 2015 letter, the Bureau conducted a test search in four email boxes, with

Moreover, the overwhelming majority of the documents are likely to implicate the deliberative process and attorney-client privileges, given the nature of work handled by the Bureau's Legal Division. The Bureau invited Committee staff to work with Bureau staff to identify a refined approach more likely to identify material relevant to the Committee's request.

On July 7, 2015, Committee staff indicated a particular incident involving a referral to the Office of Inspector General as a specific interest underlying this request and indicated that a good faith production of documents related to that referral would avoid any need to subpoena records. The Bureau promptly collected documents related to that referral and committed in a July 13, 2015 letter to producing those documents as soon as Bureau staff and Committee staff reached an agreement on how the Committee would handle documents containing sensitive personal information. As described in previous letters to the Committee, Committee staff ultimately declined to negotiate such terms and instead issued a subpoena for these and other records on December 18, 2015.<sup>8</sup>

In response to the December 18 subpoena, the Bureau, as a show of good faith, developed targeted searches (based on the Committee's terms) of three senior Legal Division employees involved in ethics and employment law issues. After reviewing the resulting documents and finding no documents relevant to the Committee's interests in whistleblower protection, the Bureau produced the OIG referral materials addressed above and a description of its email search results on January 15, 2016, along with records responsive to several other December 18 subpoena items.<sup>9</sup> After that, Bureau staff engaged in extended discussions and negotiations with Committee staff to identify December 18 subpoena requests that had been satisfied and to agree to paths forward on the remaining requests.

As part of that process, Committee staff and Bureau staff together identified a set of custodians, search strings, and time frames related to whistleblower activity, and the Bureau committed to produce responsive documents by December 9, 2016.<sup>10</sup> The Bureau fulfilled this agreement, asserting no privileges and taking a broad view of responsiveness, when it produced on December 9, 2016 documents related to whistleblower protection compliance and to the individual named in

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each custodian generating roughly 10,000 or more documents—without accounting for any additional documents each custodian may have had stored outside the email system. This test search of a tiny fraction of total Legal Division accounts—which the Bureau conducted in good faith to help chart a feasible path toward producing any responsive documents—corroborated the Bureau's concerns that the Committee's request was not reasonably calculated to identify documents relevant to its stated interests. The Bureau raised these concerns again, among other times, in a December 12, 2015 letter to the Committee.

<sup>8</sup> The Committee included a request substantially similar to this one, but requesting emails and attachments instead of all records, as Item 4 of the December 18, 2015 subpoena.

<sup>9</sup> Letter from Richard Cordray, Dir., CFPB to Hon. Jeb Hensarling, Chairman, H. Comm. on Fin. Serv. (Jan. 15, 2016).

<sup>10</sup> The Bureau provided search reports as part of these negotiations. Email from Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. to Anne Tindall, Assistant Gen. Couns., CFPB (Oct. 14, 2016 3:58 PM ET); Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Oct. 17, 2016 5:05 PM ET).

the Committee's initial related request.<sup>11</sup> Despite the Bureau's active engagement with the Committee to focus this request on specific Committee concerns, despite two productions tailored to Committee interests, and without any comment on or questions regarding the Bureau's December 9, 2016 production, the April 4, 2017 subpoena has expanded the December 18, 2015 subpoena's demand on this subject. The Bureau hopes that Committee staff will review the related materials produced to date and resume discussions with Bureau staff to determine what, if any, additional review and production is needed to address remaining questions about the Bureau's rigorous compliance with whistleblower protection laws.<sup>12</sup>

**2. All records relating to any instance whatsoever, from January 4, 2012-present, in which any CFPB employee directed another federal government employee not to transmit to any Member, Committee, or Subcommittee of Congress records requested or subpoenaed by any Member, Committee, or Subcommittee of Congress.**

Item 2 requests all records relating to any instance in which a Bureau employee directed another federal government employee not to transmit records to Congress. On Sunday, April 9, 2017, the Committee issued a subpoena *duces tecum* that included a request substantially similar to this item.<sup>13</sup> The Bureau's April 11, 2017 response to that subpoena fully addresses the substance of this request.

**3. All records indicating the exact dates, amounts, and uses of any funds withdrawn from the Settlement Fund pursuant to the Consent Order in *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).**

As described in the Bureau's letter to the Committee dated January 15, 2016, the Bureau does not control the escrow accounts used by Ally in conjunction with its settlement with the Bureau and the U.S. Department of Justice. Thus, the Bureau does not possess detailed records of the transactions

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<sup>11</sup> Letter from Catherine Galicia, Assistant Dir. for Legis. Affairs, CFPB to Hon. Jeb Hensarling, Chairman, Comm. on Fin. Servs., U.S. H.R. (Dec. 9, 2016).

<sup>12</sup> The Bureau has repeatedly requested details on any incidents the Committee believes may have occurred that could give rise to the concerns reported in requests related to this subpoena item, such as the time period or the individuals involved. The Bureau has advised the Committee that it is not aware of any incidents at the Bureau resembling those alluded to in former Chairman McHenry's September 2014 letter. Without further information, the Bureau cannot investigate any specific concerns the Committee may have.

<sup>13</sup> Furthermore, this item is substantially similar to Item 7 of the Committee's December 18, 2015 subpoena. In multiple communications with Committee staff about that subpoena, Bureau staff explained that the activity described is not consistent with Bureau oversight response processes, and that Bureau staff could not begin processing Item 7 without guidance. Specifically, Bureau staff walked through the difficulty involved in crafting an e-discovery tool search for responsive material. In a conversation on August 31, 2016, Committee staff expressed agreement that this item would benefit from clarification and did not lend itself to e-discovery searches, and agreed to provide Bureau staff further guidance. See Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET). Yet in the seven months between that agreement and issuance of the April 4, 2017 subpoena, the Committee did not follow up on this request or provide the promised clarification. Because this subpoena has actually expanded, rather than narrowed, the scope of this request and because Committee staff has not provided any guidance since the August 31 pledge to do so, the Bureau is no more able to process this request now than it was last year.

made on those accounts. Enclosed with this production are the Final Accounting Statement prepared by the Settlement Administrator,<sup>14</sup> the final Status Report prepared by the Settlement Administrator, and a letter sent by the Bureau to Ally regarding disgorgement of remaining settlement funds to the U.S. Treasury. Records documenting the disgorgement transaction are also enclosed herein. Together, these records satisfy the Committee's request.

**4. All records indicating the exact number of natural persons harmed by Ally's alleged discriminatory actions in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally.**

This item appears to be derived from Item 18 of the Committee's December 18, 2015 subpoena. As described in the Bureau's response to that request, and in subsequent conversations with Committee staff, neither the Bureau, nor Ally, nor the Settlement Administrator has made a determination of the exact number of consumers harmed by Ally's discriminatory actions.<sup>15</sup> Rather, as described in the Consent Orders, the Settlement Administrator provided the agencies with a list of participating consumers eligible to receive monetary relief from the settlement after confirming the identities and eligibility of borrowers participating in the settlement.<sup>16</sup>

As detailed in the final Status Report, enclosed herein, the Settlement Administrator issued checks to a total of 301,826<sup>17</sup> individual borrowers and co-borrowers as part of the settlement distribution. Note that this figure represents the number of harmed consumers participating in the settlement, not the exact number of persons harmed by Ally's discriminatory actions.

**5. All records indicating the total amount of compensation determined to be paid to qualified victims pursuant to the Consent Order for *In re: Ally Financial Inc., No. 2013-CFPB-0010* (Dec. 20, 2013).**

Enclosed with this production is a Final Accounting Statement prepared by the Ally Settlement Administrator. As that document indicates, a total of \$76,350,507.50 was claimed from the

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<sup>14</sup> The Final Accounting statement makes reference to a variance due to fraudulent checks. The referenced checks were fabricated by third parties who attempted to cash them against the settlement fund. Once the fraud was discovered, the fraudulently drawn funds were refunded to the account.

<sup>15</sup> During a call on September 16, 2016, Bureau staff explained to Committee staff why the Committee's inquiry into the exact number of consumers harmed by Ally's actions does not yield any responsive documents. After requesting and receiving further information about the steps the Bureau had taken to arrive at this response, Committee staff appeared to accept that no responsive documents exist regarding this request, and this item was never raised again during subsequent conversations between Bureau and Committee staff.

<sup>16</sup> See Ally Consent Order at 49 ("The Administrator's contract shall require the Administrator to adopt effective methods, as requested by the CFPB and the DOJ, to confirm the identities and eligibility of identified Borrowers and provide to the CFPB and the DOJ a list of identified Borrowers whose identities and eligibility have been confirmed . . . "); See also Dep't of Justice-Ally Consent Order at 22.

<sup>17</sup> The Status report also reflects a total of 324,956 unique checks mailed by the Settlement Administrator. The number of unique checks is larger than the number of individual recipients because some checks were voided and re-issued. The 23,128 checks mailed out on May 20, 2016, as reflected on the Status Report, were new checks issued to recipients of undeliverable and otherwise uncashed earlier checks, which were voided and re-issued following attempts to identify accurate addresses.

settlement fund by class members.<sup>18</sup> As described in the Bureau's and Department of Justice's September 27, 2016 letter to Ally, enclosed herein, pursuant to the Consent Orders, the agencies determined that the remainder of the settlement fund would be deposited in the U.S. Department of Treasury as disgorgement.

**6. All records indicating the final remuneration plan reached in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally.**

This item corresponds with Item 20 in the Committee's December 18, 2015 subpoena and appears to be based on an August 5, 2015 letter from the Committee. As part of its August 31, 2015 response to the August 5 letter, the Bureau produced the Statement of Work executed between Ally and the Settlement Administrator. In addition, the Bureau's January 15, 2016 response to the Committee's December 18, 2015 subpoena included the executable code used by the Bureau's contractor to calculate and determine the amount of monetary relief participating consumers were entitled to receive from the Ally settlement fund. These materials are enclosed with today's production for your reference. These documents, in conjunction with the information conveyed to staff at detailed briefings on September 11 and December 17, 2015, fully satisfy the Committee's stated interests in the Ally settlement.

As Bureau staff has explained in multiple conversations with Committee staff,<sup>19</sup> there is no Bureau document titled "Final Remuneration Plan" (or anything similar) that describes the Ally settlement plan. If the Committee has outstanding questions about these aspects of the Ally settlement, the Bureau welcomes further discussion with Committee staff to address the Committee's oversight needs.

- 7. All records indicating any of the final processes used, or to be used, in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally in order to identify, determine, contact, or notify affected consumers who are entitled to receive monetary relief from the settlement fund.**
- 8. All records indicating any of the final processes used, or to be used, in connection with the CFPB's and the U.S. Department of Justice's December 2013 settlement with Ally in order to calculate and determine the amount of monetary relief consumers are entitled to receive from the settlement fund.**

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<sup>18</sup> The entire settlement fund of \$80,317,206.34 (\$80,000,000.00 plus accrued interest) was distributed to class members. The remainder of \$3,966,698.84, which was disgorged to Treasury, represents uncashed checks.

<sup>19</sup> During a September 16, 2016 discussion between Bureau staff and Committee staff, Bureau staff explained why the documents submitted to date in response to this item are sufficient to fulfill the Committee's request. Bureau staff renewed their offer to provide a briefing to assist Committee staff in understanding the executable code, which memorializes the distribution of the Ally settlement fund. Committee staff agreed to consider accepting such a briefing. See Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET) (memorializing conversations of August 31 and September 16, 2016). The Bureau is still prepared to provide a briefing that will assist the Committee's understanding of the documents produced in response to this request.

**9. All records indicating any of the final processes used, or to be used, in connection with the CFPB’s and the U.S. Department of Justice’s December 2013 settlement with Ally in order to remunerate affected consumers or cause affected consumers to be remunerated.**

These items correspond with Items 21-24 of the Committee’s December 18, 2015 subpoena and appear to be based on requests made in the same August 5, 2015 letter described above. As part of the Bureau’s August 31, 2015 response to that letter, the Bureau produced the Statement of Work executed between Ally and the Settlement Administrator, as well as the consumer-facing materials used to contact consumers who were potentially eligible to participate in the settlement. On February 23, 2016, the Bureau supplemented this production with an example of the final check sent to settlement participants. Together, these materials constitute a complete response to the Committee’s request regarding records sufficient to show the final processes used to “identify and determine” and “contact and notify” affected consumers, respectively. The Bureau’s January 15, 2016 response to the Committee’s December 18, 2015 subpoena also included the executable code used by the Bureau’s contractor to calculate and determine the amount of monetary relief participating consumers were entitled to receive from the Ally settlement fund.

During a call with Committee staff on September 16, 2016, Bureau staff provided an explanation of the documents produced in response to these subpoena items, and detailed how these productions were sufficient to satisfy the interests expressed in these items.<sup>20</sup> In subsequent email exchanges, Committee staff requested that Bureau staff reiterate the information that had been provided verbally, describing the specific steps taken to comply with each complete subpoena item. Bureau staff obliged this request.<sup>21</sup> Committee staff appeared to accept the Bureau’s explanation, as these particular items were not raised again during the course of our subsequent negotiations.

Given the Bureau’s production of responsive documents, and the record of negotiations and accommodations between Bureau staff and Committee staff confirming that these subpoena items are completed, the Bureau does not know what additional information the Committee seeks. As always, the Bureau is happy to work with the Committee to determine how to address any outstanding oversight needs.

**10. All CFPB records released in connection with the November 24, 2015, U.S. House Financial Services Committee Majority Staff Report entitled *Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending*.**

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<sup>20</sup> See Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET) (memorializing conversations of August 31 and September 16, 2016).

<sup>21</sup> With respect to Items 21, 23, and 24 of the December 18, 2015 subpoena, which are the precursors to Items 7, 8, and 9 in the April 4, 2017 subpoena, Bureau staff explained that the Bureau had “consulted with the appropriate subject matter experts who would have knowledge of responsive documents relating to the Ally settlement. Based on those consultations, Bureau staff identified and produced to the Committee specific records sufficient to satisfy these requests.” See Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Oct. 5, 2016 3:31 PM ET).

This item corresponds with Item 27 of the Committee’s December 18, 2015 subpoena. As stated in the Bureau’s January 15, 2016 response letter, and numerous times in discussions with Committee staff, the Bureau remains puzzled by this request, which appears to seek documents already in the Committee’s custody. In response to the Bureau’s requests for clarification, Committee Counsel stated in a February 16, 2016 email to Bureau staff that “with respect to item 27, as Director Cordray notes in his letter dated January 15, 2016, the only internal Bureau records released in connection with the Committee’s staff report on the Bureau’s review of indirect auto lending were those published to the Committee’s website by the Committee’s majority staff. These are indeed the records the Committee is seeking from the Bureau.”<sup>22</sup> Pursuant to this guidance, we have included with today’s production copies of the records published on the Committee’s website in connection with the Committee’s November 24, 2015 staff report.

- 11. All e-mails contained in the e-mail accounts associated with Patrice Ficklin that were sent, received, or drafted between August 15, 2015, and October 6, 2015, pertaining to any of the following news reports written by *American Banker* reporter Rachel Witkowski and published in *American Banker* in September 2015: *CFPB Overestimates Potential Discrimination, Documents Show; The Inside Story of the CFPB’s Battle Over Auto Lending*; or *CFPB’s Outside Expert on Disparate Impact Also Advises Banks*.**
- 12. All e-mails contained in the e-mail accounts associated with Patrice Ficklin that were sent, received, or drafted, between August 15, 2015, and October 6, 2015, and which contain any of the following key words: “banker,” “reporter,” “Witkowski,” “markup,” “disparities,” “PARR,” “Siskin,” “BLDS,” “proxy,” “Ally,” “Honda,” OR “Fifth Third.”**

Since the Committee first made these requests in its letter of October 6, 2015, the Bureau has made considerable efforts to satisfy them. As noted in our reply letter of October 20, 2015, Bureau staff reached out to Committee staff upon receipt of the initial request to determine how to scope these requests appropriately to expedite document production responsive to the Committee’s interests. Despite the Committee’s failure to offer any scoping guidance, the Bureau produced 294 pages of responsive documents on October 29, 2015. These records encompass all materials Bureau staff identified as responsive to Item 11<sup>23</sup> that are not otherwise protected by the Bureau’s deliberative process, attorney-client, or work product privileges. Due to the search methodology used to identify documents responsive to Item 11, all items produced in response to this request are also responsive to Item 12.

Despite the Bureau’s production of responsive materials and open offer to work with Committee staff to develop a workable approach for supplemental review and production, the Committee included these requests in its December 18, 2015 subpoena. In the Bureau’s January 15, 2016 response to that subpoena, the Bureau again explained that it had produced all materials responsive to the request for emails pertaining to the referenced *American Banker* articles that are not otherwise protected by the Bureau’s deliberative process, attorney-client, or work product

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<sup>22</sup> Email from Joe Gammello, Couns., Comm. on Fin. Servs., U.S. H.R. to Anne Tindall, Assistant Gen. Couns., CFPB (Feb. 16, 2016 3:57 PM ET).

<sup>23</sup> Items 11 and 12 in the April 4, 2017 subpoena are identical to Items 28 and 29 in the December 18, 2015 subpoena.



privileges, and again offered to work with Committee staff to address any remaining interest in these items. The Bureau's January 15, 2016 response further explained that the parameters of the second request (which lists a set of keywords) are overbroad, and requested further discussions with Committee staff to scope the request appropriately to enable production of documents relevant to the Committee's oversight interests. Committee staff ultimately agreed to discuss these matters with Bureau staff, with a series of conference calls beginning on August 31, 2016.

During those conversations, which lasted into the winter of 2016, Bureau staff reiterated that the Bureau's October 29, 2015 production encompassed all materials identified by Bureau staff as responsive to Item 11 that are not otherwise protected by the Bureau's privileges or confidentiality interests. Committee staff requested a report detailing the search methodology for this subpoena item. The Bureau emailed that report to Committee staff on October 12, 2016<sup>24</sup> and provides it again with this response for your reference. The following day, Committee staff and Bureau staff held another conference call and agreed to a path forward for outstanding items from the December 18, 2015 subpoena, including Item 11. The Bureau memorialized that agreement in an email on October 17, 2016, stating that Bureau staff would conduct a search using the methodology outlined in the report it had transmitted on October 12 and that "[i]f the Bureau determines to withhold any records generated by the above search parameters on the basis of privilege, the Bureau agrees to engage the Committee in further discussions to identify a mutually agreeable path forward, including discussions of the topics and types of documents withheld, the bases for withholding, and the Committee's particularized interests, if any, in the withheld material." Committee staff agreed to this language on October 18, 2016.<sup>25</sup>

With respect to Item 12, Bureau staff explained during a September 16, 2016 call with Committee staff that due to the search parameters used to determine the universe of responsive documents for Item 11, all of the documents produced on October 29, 2015 in response to Item 11 are also responsive to Item 12. Bureau staff noted that it could not produce additional responsive documents for Item 12 without further scoping discussions with Committee staff. Committee staff acknowledged the value in further scoping of this item, including potentially eliminating certain search terms listed in Item 12, and both parties agreed to engage in a scoping discussion following the Bureau's production of a more detailed search report. The Bureau sent that search report to Committee staff on September 23, 2016<sup>26</sup> and has enclosed it herein for your reference. In subsequent discussions, Committee staff focused on other items from the December 18, 2015 subpoena and did not provide guidance concerning the scope of this item, without which the Bureau cannot identify or produce additional responsive documents.

Given the Bureau's efforts to comply with these subpoena items, and the progress made between Bureau staff and Committee staff toward satisfaction of the Committee's interests, the Bureau is

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<sup>24</sup> Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Oct. 12, 2016 5:27 PM ET).

<sup>25</sup> Email from Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. to Anne Tindall, Assistant Gen. Couns., CFPB (Oct. 18, 2016 10:13 AM ET).

<sup>26</sup> Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET).

surprised to find these items included in the April 4, 2017 subpoena. Bureau staff remains open to further collaboration with Committee staff on a workable path forward, and looks forward to receiving the scoping guidance Committee staff committed to provide and to discussing the privileges and confidentiality interests these requests trigger.

**13. All records generated by any vendor retained by the CFPB to perform any management consulting services between the beginning of Fiscal Year 2013 and December 18, 2015.**

The Bureau has produced records responsive to this request on four occasions—November 5, 2015; December 7, 2015; March 15, 2016; and October 7, 2016. As discussed below, Committee staff instructed the Bureau in October 2016 that it need not take further action until Committee staff reviewed these productions and provided further guidance. The Bureau has been awaiting the Committee’s guidance since then, and was surprised to find this item included in the Committee’s April 4, 2017 subpoena.

The substance of this request originated in an October 22, 2015 letter from former Oversight & Investigations Subcommittee Chairman Sean Duffy.<sup>27</sup> On November 5, 2015, the Bureau made an initial production of responsive records. One week later, on November 12, Bureau staff and Committee staff had a productive scoping discussion, during which Committee staff identified additional documents for production. Bureau staff agreed to locate and produce these documents, and Committee staff agreed it would review the production and provide further guidance before requiring the Bureau to produce additional documents. On December 7, the Bureau produced those records identified by Committee staff, but Committee staff never provided the guidance promised. Instead, the Committee issued a subpoena including this item on December 18, just 11 days after the Bureau produced the documents Committee staff requested.<sup>28</sup>

In response to the Committee’s subpoena, the Bureau explained that Committee staff had agreed to review the December 7 production and to offer further guidance and that the Bureau had not received that guidance. Nevertheless, to show its continued good faith, the Bureau produced more than 1,800 additional pages on March 15, 2016 and October 7, 2016.<sup>29</sup> The Bureau hoped that these productions would end the months of silence from Committee staff and expedite the necessary discussions that Committee staff had promised in November 2015. Without this scoping guidance, the Bureau cannot fully process the Committee’s request, due to the enormous volume of potentially responsive materials.

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<sup>27</sup> Letter from Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, Comm. on Fin. Serv., U.S. H.R. to Hon. Richard Cordray, Dir., CFPB (Oct. 22, 2015).

<sup>28</sup> Prior to December 18, the Bureau had every reason to believe that it was complying with Chairman Duffy’s October 22 request. The Bureau produced more than 200 pages and, on the November 12 call, explicitly agreed to make additional, rolling productions after receiving further guidance from Committee staff.

<sup>29</sup> Letter from Catherine Galicia, Assistant Dir., Legis. Affairs, CFPB to Hon. Jeb Hensarling, Chairman, Comm. on Fin. Servs., U.S. H.R. (Mar. 15, 2016); Letter from Catherine Galicia, Assistant Dir., Legis. Affairs, CFPB to Hon. Jeb Hensarling, Chairman, Comm. on Fin. Servs., U.S. H.R. (Oct. 7, 2016).

Bureau staff and Committee staff last discussed this request during an October 7, 2016 call. Specifically, Bureau staff advised that it would make a production of management consulting records later that day and, indeed, the Bureau made a production that afternoon.<sup>30</sup> Bureau staff explained that it could produce additional records of that nature; however, certain limitations, explained to Committee staff, made additional work on this request impracticable until Committee staff could provide the further guidance that it promised on November 12, 2015.<sup>31</sup> In order to move forward, Bureau staff suggested that Committee staff review the December 7, 2015 production and identify the contracts of most interest to the Committee. Once Committee staff identified those contracts, the Bureau agreed that, depending on the nature and scope of the contract, it would either (i) make a production of records similar to the production made on October 7, 2016 or (ii) provide a briefing with Bureau subject matter experts who would be able to answer the Committee's questions. Committee staff agreed to this approach on the October 7, 2016 call.

As a courtesy to the Committee, we are re-producing the documents contained in the Bureau's past productions.<sup>32</sup> As agreed during our October 7, 2016 call, we will await Committee staff's guidance before making additional document productions for this request.

#### **14. All contracts between the CFPB and BLDS, LLC, and all records pertaining to any such contracts.**

The Bureau previously produced records responsive to this request on November 19, 2015; December 17, 2015; and January 15, 2016. These documents consist of all contracts between the Bureau and BLDS and the modifications to those contracts, and all task orders between the Bureau and BLDS and the modifications to those task orders. Those documents are produced again herein. In addition, additional task orders that have been ratified since the Bureau's previous productions are included in this production.

#### **15. All communications from BLDS, LLC to the CFPB.**

This request appears to be derived from Item 33 of the Committee's December 18, 2015 subpoena. As explained in the Bureau's January 15, 2016 response letter, this request is extremely broad and implicates a large number of records, many of which are highly deliberative, unrelated to any oversight interest ever stated by the Committee, or both. During a conversation between Bureau

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<sup>30</sup> Those records, Bureau staff explained, were a representative sample of work product produced by management consultants on various contracts.

<sup>31</sup> Bureau staff explained that the Bureau's management consulting contracts span the Bureau's many offices and cover a diverse range of topics. It is therefore not possible for Bureau staff to devise an e-discovery search string that is reasonably directed towards capturing all of the records encompassed by the Committee's sweeping request. Furthermore, a number of these contracts involve services not necessarily captured in written work product, and therefore, a briefing on these contracts could be much more helpful for Committee staff than documents without context. Committee staff seemed receptive to these points.

<sup>32</sup> The Bureau is producing a modified version of the table produced on November 5, 2015 to reflect the fact that the Committee's subpoena has expanded the timeline in Chairman Duffy's original request. As the updated table reflects, one R408 contract was awarded between October 22, 2015 and December 18, 2015. We are producing the relevant base contract.

staff and Committee staff on September 16, 2016,<sup>33</sup> Bureau staff explained the barriers to responding to this request and asked Committee staff for additional guidance regarding its specific interests. Committee staff agreed to consider how the request might be scoped to allow for the production of further documents. Bureau staff welcomes such scoping guidance from the Committee to facilitate identification and production of material responsive to the Committee's oversight needs.

**16. All records indicating any instance, of any sort whatsoever, when BLDS, LLC acted as an employee of the CFPB, including the purpose and scope of any such action.**

BLDS, LLC has been retained by the Bureau as a contractor. The contracts and task orders prescribing that contractual relationship are attached hereto in response to Item 14. BLDS, LLC has never acted as an employee of the Bureau, thus there are no records responsive to this request.

**17. All records indicating in what matters in which the CFPB was a party, BLDS, LLC, or any of its employees was employed by a party other than the CFPB.**

This item appears to be derived from Item 36 of the Committee's December 18, 2015 subpoena. As described in the Bureau's January 15, 2016 response letter, the Bureau does not have in its possession records sufficient to show the scope of BLDS's relationships with other parties.

The Office of Inspector General recently conducted an evaluation, released March 15, 2017, to assess whether the Bureau effectively mitigates the risk of potential conflicts of interest associated with using vendors to support fair lending compliance and enforcement analysis. The OIG focused on a contract for fair lending enforcement analysis and expert witness services. The OIG's evaluation did not identify any actual conflicts of interest from June 2012 through January 2016 between the vendor and the firms subject to the vendor's analysis. Because this item appears to reflect Committee concern that the Bureau's relationship with BLDS represents a conflict of interests, that report is attached here for your reference.

**18. All records contained within the e-mail account associated with Richard Cordray, Mary McLeod, Meredith Fuchs, Anne Tindall, and Catherine Galicia that were sent, received, or drafted between March 2, 2015, and the present, and which contain any of the following key words: "interview!," "depos!," "subpoen!," "contempt," "obstruct!," OR "unsafe at any bureaucracy."**

This request, which the Committee had not submitted or discussed with the Bureau before issuing the April 4, 2017 subpoena, appears without any explanation of the Committee's underlying oversight interest. The search parameters provided return nearly 100,000 documents,<sup>34</sup> review of

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<sup>33</sup> See Email from Anne Tindall, Assistant Gen. Couns., CFPB to Elie Greenbaum, Couns., Comm. on Fin. Servs., U.S. H.R. (Sept. 23, 2016 5:32 PM ET).

<sup>34</sup> Several of the requested search terms seem particularly poorly-suited to identify documents of interest to the Committee. For example, the search term "depos!" would bring in all documents related to "depository" institutions, which make up a large portion of the entities regulated by the Bureau, while "interview!" would pull in all emails or

which would create a significant burden on Bureau resources and impede timely response to the Committee's other requests. Bureau staff welcomes a discussion with Committee staff to appropriately scope this request and enable production of documents responsive to clearly articulated Committee oversight needs.

**19. All communications relating to pre-dispute arbitration agreements between the CFPB and any of the following entities: (i) American Association for Justice; (ii) National Consumer Law Center; (iii) National Association of Consumer Advocates; (iv) Alliance for Justice; or (v) Public Justice.**

**20. All communications from one CFPB employee to another CFPB employee relating to pre-dispute arbitration agreements.**

Items 19 and 20 are substantially similar to requests 1 and 2 of an April 20, 2016 letter from former Oversight and Investigations Subcommittee Chairman Sean Duffy. Based on scoping guidance provided by the Committee to the Bureau regarding that letter's first request, the Bureau agreed to search the email accounts of certain Bureau custodians for correspondence containing the domain names of the specified external groups. As a result of that search, the Bureau produced 2,363 pages of responsive material on June 24, 2016, regarding which the Committee has provided neither comment nor follow-up questions. The Bureau is reproducing those documents today for the Committee's convenience. Additionally, the Bureau notes that *ex parte* filings reflecting the Bureau's interactions with outside groups regarding the proposed arbitration rule are available on the Federal Register website. Together, these materials should provide a comprehensive view of the Bureau's interactions with the specified groups. The Bureau remains ready to discuss any questions or concerns the Committee has regarding this production.

Item 20 would require loading and searching records in the custody of all current and former Bureau employees. Just the initial administrative component of such an undertaking—let alone review and production—would continue months beyond the April 4, 2017 subpoena's return date. A search for the term "arbitration" in accounts of agreed-to custodians for Item 19 generated over 10,000 items for review; expanding review to all current and former Bureau employees would be impracticable. Additional guidance is needed to productively tailor any search to the Committee's particular oversight interests.

**21. All records indicating the classes of putative victims with compensable uncompensated harm relating to Global Client Solutions that are eligible to receive compensation from the CFPB's Civil Penalty Fund.**

**22. All records indicating the basis or rationale for the allocation made from the CFPB's Civil Penalty Fund for putative victims of Global Client Solutions.**

Items 21 and 22 request records related to the allocation of funds from the Civil Penalty Fund to consumers harmed by the violations of law for which a civil money penalty was imposed against

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attachments related to interviews of any kind, including those conducted in filling staff positions or my interactions with the press. The Committee's scoping guidance is necessary to appropriately narrow these results.

Global Client Solutions. These subpoena items are substantially similar to requests 1 and 3, respectively, of a May 26, 2016 letter from former Subcommittee on Oversight and Investigations Chairman Duffy. In response to former Chairman Duffy's original requests, the Bureau produced responsive documents pertaining to Global Client Solutions on June 30, 2016.<sup>35</sup> Those documents, re-produced here for the Committee's convenience, satisfy Items 21 and 22 of the Committee's April 4, 2017 subpoena. The Bureau is also producing the complaint and stipulated final judgment and consent order entered against Global Client Solutions. These documents provide relevant background information on this matter, which we believe will assist the Committee in its review of the responsive documents.

In addition to the complaint, stipulated judgment and consent order, and the documents already produced to the Committee last June, the Bureau is producing an additional memorandum at this time. As we have previously explained to Committee staff, this document implicates the Bureau's deliberative process privilege, and the documents produced in June sufficiently satisfy the Committee's request. Nevertheless, as a sign of the Bureau's continued good faith efforts to assist the Committee with its oversight objectives, we are including the deliberative memorandum in today's production.<sup>36</sup>

**23. All communications between the CFPB and any third-party administrator that have distributed payments to putative victims of Global Client Solutions from funds allocated from the CFPB's Civil Penalty Fund.**

As of the date of this letter, the Bureau has procured a vendor to provide these services, but the vendor has not yet distributed payments to consumers from the Civil Penalty Fund. As a result, the Bureau does not have records responsive to the Committee's request at this time. Once distributions have been made, the Bureau would be happy to provide records responsive to this request. If the Committee requires information in the interim, Bureau staff will gladly organize a briefing with Bureau subject matter experts.

**24. All records indicating: (a) the names of all debt relief service providers for whom the CFPB alleged Global Client Solutions processed putative unlawful advance fees; (b) the number of consumers the CFPB alleged were charged unlawful advance fees by each debt relief service provider for whom Global Client Solutions processed putative unlawful advance fees; (c) the amount of uncompensated harm for each putative victim; and (d) the amount the CFPB allocated to each putative victim.**

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<sup>35</sup> Additionally, Bureau staff provided a briefing to Committee staff on August 23, 2016, during which Bureau subject matter experts answered specific, document-related questions posed by Committee staff. Based on this discussion, Bureau staff believed that, through the production of responsive documents and the subsequent briefing, the Bureau had satisfied requests 1 and 3 of Chairman Duffy's letter.

<sup>36</sup> This production does not constitute a waiver of the Bureau's deliberative process privilege, and the Bureau retains the right to assert such privilege in the future to prevent unauthorized disclosure of this memorandum. Furthermore, this production does not constitute a waiver of any privileges applicable to any undisclosed information, including further documents or information the Committee has requested or may request the Bureau to provide in connection with this subpoena.

This subpoena item is substantially similar to requests 4 and 5 of Chairman Duffy's May 26, 2016 letter, both of which the Bureau addressed in its June 30, 2016 response. Specifically, on June 30, 2016, the Bureau explained that it was still performing due diligence on the relevant data and, consequently, did not yet have a final victim list. As a result, records responsive to Chairman Duffy's fifth request did not exist at that time.<sup>37</sup> With respect to Chairman Duffy's fourth request, the Bureau produced responsive records, but noted that the information therein was subject to change once the Bureau completed its analysis of the data.<sup>38</sup> The Committee never followed up on either of these requests.

As of the date of this letter, the Bureau does not have a final victim list. However, we are producing the data file that the Bureau recently provided to the third-party administrator that will distribute payments to victims. The administrator is currently in the process of reviewing and refining this data so that the Bureau Fund Administrator can approve a final victim list.<sup>39</sup> The data provides the Committee with the following information for the class of victims eligible for payment from the Civil Penalty Fund: (i) the names of all debt relief service providers who processed unlawful advance fees and whose customers may receive payments from the Civil Penalty Fund, (ii) the number of customers of each debt relief service provider that were charged unlawful advance fees and who received no services in return, and (iii) an estimate of the amount of each consumer's uncompensated harm (referred to as the "refund amount" in the data).<sup>40</sup> This production satisfies subparts (a), (b), and (c) of Item 24. With respect to subpart (d), the Bureau does not allocate funds from the Civil Penalty Fund on a per victim basis; funds are only allocated to a class of victims. Therefore, the Bureau does not have records responsive to subpart (d).<sup>41</sup>

**25. All records contained in the email accounts associated with Members of the Civil Penalty Fund Governance Board, Fund Administrator, and Chief Financial Officer that were sent, received, or drafted between August 27, 2014, and the present, and which contain of the following key words: "Global Client Solution!," "Global Holdings," "GCS," "uncompensate!," AND "victim! /2 class!"**

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<sup>37</sup> More specifically, records responsive to subpart (b) of request 5 of Chairman Duffy's letter did not yet exist because the Bureau was still in the process of determining the amount of uncompensated harm for each consumer. Records responsive to subparts (a) and (c) of request 5 of Chairman Duffy's letter did not, and do not, exist because the Bureau does not allocate funds from the Civil Penalty Fund on a per victim basis.

<sup>38</sup> During my testimony before the Committee on April 5, 2017, Representative Keith Rothfus even cited this document, specifically stating "I have a document that the Bureau provided to this Committee . . ." and then describing the document that the Bureau provided in response to Chairman Duffy's fourth request. It is unclear why the Committee is using compulsory process to demand information that is already in the Committee's possession.

<sup>39</sup> The contents of the final victim list may be different from this initial data as a result of the third-party administrator's data refinement.

<sup>40</sup> For privacy reasons, we have redacted the personally identifiable information of the victims that may receive payments from the Civil Penalty Fund.

<sup>41</sup> To the extent the Committee seeks information about the amount that the Bureau will actually distribute to each victim, the Bureau can produce that information once the final victim list is completed.

In Item 25, the Committee provided a search string related to the Bureau's action against Global Client Solutions and requested that the Bureau conduct a search within the email accounts of certain Bureau employees.<sup>42</sup> Bureau staff has used the Committee's requested search string to identify responsive documents containing those keywords. We are producing those responsive records identified by this search.<sup>43</sup>

**26. All records relating to the sales practices of Wells Fargo Bank, N.A. that are described in the CFPB's consent order against Wells Fargo Bank, N.A. filed on September 8, 2016.**

Enclosed with this production is the material provided to the Bureau by Wells Fargo in response to the Bureau's Civil Investigative Demands (CIDs) requiring production of documents related to Wells Fargo sales practices. These materials formed the basis of the findings described in the Bureau's Consent Order with Wells Fargo. If the Committee seeks any additional information about Wells Fargo sales practices, the Bureau welcomes a discussion with Committee staff to identify the Committee's outstanding interests and determine how we can satisfy them.

**27. All records relating to the CFPB's "investigation of Wells Fargo" that is described in your letter to the Committee dated September 23, 2016.**

The Bureau's September 23, 2016 letter to which this item refers<sup>44</sup> was a response to the Committee's September 16, 2016 request for several categories of documents relating to the Bureau's Wells Fargo enforcement action. As part of that response, the Bureau produced to the Committee: the Bureau's Supervision, Enforcement and Fair Lending (SEFL) Integration Memorandum; the SEFL Policy on Continuously Supervised Institutions; the Memoranda of Understanding, Common Interest Agreements and Access Agreements between the Bureau and the Office of the Comptroller of the Currency and the Los Angeles City Attorney's Office; and

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<sup>42</sup> The substance of this request also originated in Chairman Duffy's May 26 letter. As Bureau staff explained to Committee staff during the August 23, 2016 briefing, the search terms originally proposed by Chairman Duffy's letter yielded a large volume of emails, many of which are not related to the Committee's interests and/or are covered by the Bureau's deliberative process privilege. We appreciate that the Committee has provided a new, and more manageable, search string; however, we do not believe compulsory process was necessary under these circumstances. One of Bureau staff's objectives for the August 23 briefing was to scope this request, and this objective was communicated clearly to Committee staff. As Bureau staff explained in that briefing, the Bureau would have gladly re-run its search using an alternative search string, such as the one that the Committee has now provided, and could have produced responsive documents months ago, without compulsory process. Nevertheless, Committee staff never proposed an alternative search until the issuance of this subpoena.

<sup>43</sup> Previous discussions with Committee staff provide the Bureau with sufficient understanding of the connection between the requested string and the Committee's oversight interests. By providing these documents, the Bureau does not concede that the Committee possesses oversight authority to demand production of search string results divorced from a stated oversight interest.

<sup>44</sup> Though we assume the referenced letter is the Bureau's September 23, 2016 response to the Committee's September 16, 2016 letter regarding Wells Fargo, the Bureau actually sent two letters to the Committee on September 23, 2016 regarding the Wells Fargo matter. The second letter was the final reply in a series of correspondence about a staff briefing on the Wells Fargo matter. In that second September 23 letter, the Bureau offered to address the Committee's interest in Wells Fargo both through a staff briefing by Bureau subject matter experts, and through testimony from Director Cordray at the Committee's hearing on Wells Fargo. The Committee declined both of those offers.



supervisory correspondence between the Bureau and Wells Fargo. In a supplemental production on November 7, 2016, the Bureau produced the CIDs sent to Wells Fargo by the Bureau during the course of our investigation, as well as transcripts of the testimony of Wells Fargo officials taken by the Bureau pursuant to those CIDs. Those documents are reproduced today for your reference.

As noted above, enclosed with today's production are additional materials representing the documents produced to the Bureau by Wells Fargo in response to the Bureau's CIDs. This material, in conjunction with the material previously produced, comprises the key documentation of the Bureau's investigation of Wells Fargo. As always, we are happy to work with the Committee to determine how we can facilitate any outstanding oversight interests the Committee may have in this matter.

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The enclosed production and narrative discussion above represent a good faith and substantial response to the Committee's 27 itemized production demands. The Bureau looks forward to working with the Committee to appropriately scope and refine any outstanding requests in order to facilitate production of additional materials. We are confident that productive dialogue between the Bureau and Committee will clarify our mutual understanding of the status of these inquiries and enable the expedient satisfaction of the Committee's oversight interests.

The enclosed documents contain confidential information of the Consumer Financial Protection Bureau. 12 C.F.R. 1070.40 et seq. prohibits recipients of the Bureau's confidential information from further disclosing the information either orally or in writing, except in specified circumstances, without first obtaining the prior permission of the Bureau. The documents may also be subject to disclosure restrictions set forth in other Federal laws, including but not limited to the Freedom of Information Act, 5 U.S.C. § 552, the Trade Secrets Act, 18 U.S.C. § 1905, the Procurement Integrity Act, 41 U.S.C. §2102, and the Privacy Act of 1974, 5 U.S.C. § 552a. The Bureau therefore requests that the Committee protect this information from any disclosure that would cause an unwarranted invasion of privacy or harm to any of the interests served by the law and policy prohibiting the public release of these documents or exempting them from disclosure.

The Bureau is providing these materials to you without waiving applicable protections and will assert those protections to keep sensitive information from being disclosed without appropriate authorization. The Bureau also trusts that the Committee will reach out to receive that input prior to any further dissemination of confidential records to the press or public, via the Committee website, or through other means.

Should you have any questions about this response, please contact me or have your staff contact Steven Bressler in the Bureau's Legal Division or Patrick O'Brien of the Office of Legislative Affairs. Mr. Bressler can be reached at [Redacted by the Committee] and Mr. O'Brien can be reached at [Redacted by the Committee]. As always, I would be happy to meet with you in person to discuss these matters.

Sincerely,



Richard Cordray  
Director

cc: The Honorable Maxine Waters, Ranking Member, Committee on Financial Services

# **Attachment C**

**From:** Dewey, Samuel  
**To:** [Bressler, Steven \(CFPB\)](#)  
**Cc:** [Galicia, Catherine \(CFPB\)](#); [O'Brien, Patrick \(CFPB\)](#); [Tindall, Anne \(CFPB\)](#); [Clark, Joseph](#); [Greenbaum, Elie](#); [Sisto, Brett](#); [Peto, Lisa](#); [Burris, Kevin](#); [Read, Jennifer](#); [Morgan, Hallee](#); [Johnson, Brian](#)  
**Subject:** Re: Letter from Chairman Wagner to Director Cordray  
**Date:** Thursday, May 11, 2017 7:00:58 PM

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Steve:

Thank you for your email. We respond to your points below.

First. You seem to have missed the point of our earlier email. The meet and confer process-- whether it stems from legal compulsion or a negotiated process is to resolve issues prior to the return date. The process has no meaning if the CFPB is content to ignore return dates and only seek to confer piecemeal after default and in a manner that strongly suggests the process of running out the clock.

Since your email is unclear, we again put the point: Do you wish to meet and confer, or will you make a complete response to the interrogatories by the return date of tomorrow? That is a very simple question. If you do wish to meet and confer, despite the fact that I am on a family vacation we will do so at a time and modality of your choosing. Again we are happy to talk on the record or via email tonight.

Second. As to the CID regulation you again miss the point. It is not legally binding here. But the principle is certainly operative. You meet and confer before the return date. Your response is concerning because it suggests that the CFPB believes that everyone else plays by one set of rules, and it by another.

Third. We restate our earlier inquiry from our correspondence with Ms. Tindal. Does the CFPB take the position that it has a coordinate entity to Congress? Or is it merely part of the Executive Branch answerable to the President? Please advise.

Fourth. We will not orally meet and confer unless it is on the record. This is not a lack of good faith on our part. We have been extremely responsive and have made offers as to scheduling that very few other committees would make.

Again we believe a record protects us all and advances timely resolution of issues. As you know there have been numerous letters between our principles controverting what was said at verbal meet and confers. We assign no blame there, but we believe that episode demonstrates how a record is helpful. We simply do not understand how it would hurt candid discussions to have a record of what was said. We are not afraid of having our comments recorded.

(By the way we are not aware of agency staff conferring on the record, but we are fully aware of other Committees taking the position I certainly maters that all exchanges must be on the record).

Fifth. We have sought answers to highly data driven questions via interrogatories under a belief that such a path would be more efficient for all involved. Be advised that these interrogatories are directly linked to investigating the complete default made by Director Cordray on the Committee's April 4 and 9<sup>th</sup> Subpoenas. We refer you to the Chairman's cover letter of April 4, 2017, in which the Chairman is crystal clear that he will issue

subpoenas for custodial depositions in this matter. Again, we urge you to deal with these matters in the manner we outline above.

Best,

Sam

Sent from my iPhone

On May 11, 2017, at 2:22 PM, Bressler, Steven (CFPB) **Redacted by the Committee** wrote:

Mr. Dewey,

Thank you for your most recent email. As noted, the Bureau is preparing its written response to Chairman Wagner's letter, and we expect correspondence or informal discussions between staff will be helpful soon thereafter, consistent with the constitutionally-based process of negotiation and accommodation that has served the Executive and Legislative Branches well. The regulation you cite governs recipients of Civil Investigative Demands issued by the Bureau pursuant to statute, but does not, by its terms or otherwise, apply to discussions between an independent agency of the Executive Branch and a committee of the Congress.

We would like all our communications to be as productive and collegial as possible. For the reasons noted by Anne Tindall in her April 24, 2017 email to you, it would not be appropriate for us to agree, and we cannot agree, to meet and confer subject to recording or transcription, unless of course a judicial officer is presiding. We hope Committee staff will speak with Bureau staff in good faith and absent such an unprecedented step, as Executive Branch agency staff and Congressional committee staff – including those from this agency and this Committee – have always done. If you are not willing to speak with us consistent with those traditions, we are happy to correspond in writing. Moreover, if you are aware of other circumstances in which agency staff have agreed to such discussions subject to recording or transcription, please advise.

Best,  
Steve

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**From:** Dewey, Samuel **Redacted by the Committee**  
**Sent:** Wednesday, May 10, 2017 8:24 PM  
**To:** Bressler, Steven (CFPB); Galicia, Catherine (CFPB)  
**Cc:** O'Brien, Patrick (CFPB); Tindall, Anne (CFPB); Clark, Joseph; Greenbaum, Elie; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian  
**Subject:** RE: Letter from Chairman Wagner to Director Cordray

**Mr. Bressler:**

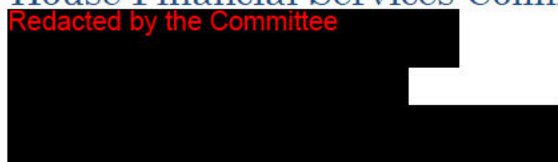
Thank you for your email below. If we understand you correctly, you do not need to meet and confer prior to the May 12, 2017 return date on the interrogatories. If that is the case, we expect to receive a full and complete response to both sets of interrogatories by that date. As you know, the purpose of meeting and conferring is to resolve any questions and issues, and to seek and show cause for any requested extensions, *prior* to the return date. See 12 C.F.R. § 1080.6(c) (*requiring* CID recipients to meet and confer well prior to CID return dates). If you have questions, need clarification, or need an extension on either Set of Interrogatories, we strongly advise that you confer with us prior to the return date. Again are happy to talk on the record at any time: If you would like to convene a call this evening we will gladly do so.

Best,

Samuel Everett Dewey

Senior Counsel  
Oversight & Investigations  
House Financial Services Committee

Redacted by the Committee

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**From:** Bressler, Steven (CFPB) [Redacted by the Committee]  
**Sent:** Wednesday, May 10, 2017 7:28 PM  
**To:** Dewey, Samuel; Galicia, Catherine (CFPB)  
**Cc:** O'Brien, Patrick (CFPB); Tindall, Anne (CFPB); Clark, Joseph; Greenbaum, Elie; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian  
**Subject:** RE: Letter from Chairman Wagner to Director Cordray

Mr. Dewey,

I write in response to your email to Catherine Galicia of Tuesday afternoon (below). Thank you for your offer. The Bureau is preparing its response to Chairman Wagner's letter and we expect correspondence or informal discussions between staff will be appropriate and helpful soon thereafter.

Best,  
Steve Bressler

**Steven Y. Bressler**

Assistant General Counsel for Litigation & Oversight  
Consumer Financial Protection Bureau  
Tel: [Redacted by the Committee]

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**From:** Dewey, Samuel [Redacted by the Committee]  
**Sent:** Tuesday, May 09, 2017 12:46 PM  
**To:** Galicia, Catherine (CFPB)  
**Cc:** Bressler, Steven (CFPB); O'Brien, Patrick (CFPB); Tindall, Anne (CFPB); Clark, Joseph; Greenbaum, Elie; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian  
**Subject:** RE: Letter from Chairman Wagner to Director Cordray  
**Importance:** High

Catherine:

I hope this email finds you and your colleagues well. I just wanted to write to follow-up on the letter below to see if you had any questions, or wanted to confer. We are happy to make ourselves available to discuss on the record at any time or to confer at any time over email.

Best,

Sam

---

**From:** Dewey, Samuel  
**Sent:** Tuesday, May 02, 2017 8:43 PM  
**To:** 'Galicia, Catherine (CFPB)'  
**Cc:** Bressler, Steven (CFPB); O'Brien, Patrick (CFPB); Tindall, Anne (CFPB); Clark, Joseph; Greenbaum, Elie; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian  
**Subject:** Letter from Chairman Wagner to Director Cordray  
**Importance:** High

Catherine:

Attached, please find a letter from Chairman Wagner to Director Cordray enclosing formal interrogatories propounded to CFPB employees.

Best,

Sam

<< File: 2017-05-02 AW to Cordray of CFPB re CIDs.pdf >> << File: 2017-05-02 COR Records Systems Interrogatories.pdf >> << File: 2017-05-02 CID Interrogatories.pdf >>

Samuel Everett Dewey

Senior Counsel  
Oversight & Investigations  
House Financial Services Committee

Redacted by the Committee





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# Attachment D

**From:** [Bressler, Steven \(CFPB\)](#)  
**To:** ["Dewey, Samuel"](#)  
**Cc:** [Galicia, Catherine \(CFPB\)](#); [O'Brien, Patrick \(CFPB\)](#); [Clark, Joseph](#); [Greenbaum, Elie](#); [Gammello, Joe](#); [Sisto, Brett](#); [Peto, Lisa](#); [Burris, Kevin](#); [Read, Jennifer](#); [Morgan, Hallee](#); [Johnson, Brian](#)  
**Subject:** April 4, 2017 subpoena  
**Date:** Thursday, June 01, 2017 6:43:00 PM  
**Attachments:** [April 4 Production Summary Chart.pdf](#)

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Sam,

With respect to the Committee's April 4 subpoena, we are happy to discuss the specifics of the Bureau's responses and any information the Committee believes to be outstanding. We do not understand your prior characterization of our response as "complete default," given the Bureau's production of a 19-page narrative response and 64,000 pages of material on this subpoena's return date and its previous production of over 18,000 pages in response to the subpoena issued in the last Congress (which overlaps substantially with the April 4, 2017 subpoena). The Bureau is eager to cure any inadvertent deficiencies in its productions or simply to provide additional information that would assist the Committee, but it cannot do so unless the Committee clearly and specifically identifies the records or information it believes are missing from these productions. To facilitate further discussion, I have attached a table summarizing the status of each item of the April 4 subpoena.

As the Bureau explained at length in its May 2, 2017 response to the April 4 subpoena, the Bureau has made a robust response to the subpoena—on May 2 as well as in previous productions—and has been clear with Committee staff when further production is impracticable or impossible without clarification of the scope and the nature of the Committee's legislative interests and collaboration on feasible searches reasonably likely to identify records responsive to those interests.

You have stated that the burden of proposing workable parameters rests with the Bureau and that the Bureau has not carried its burden with respect to the April 4 subpoena. However, many of the requests in the April 4 subpoena relate to previous requests that Bureau staff and Committee staff discussed on multiple occasions last year. In those discussions, Bureau staff proposed search and review approaches for a number of requests, where the Bureau had sufficient understanding of the Committee's interests to frame approaches reasonably likely to identify responsive material. Where Committee staff worked with Bureau staff to agree on such search proposals, the Bureau completed review and made supplemental productions last year. Details of these discussions are included in the Bureau's May 2 letter and the correspondence referenced within it. Based on these discussions and review of its productions to date, the Bureau believes that it has produced material sufficient to satisfy a substantial number of items on the April 4 subpoena, as detailed in the attached table. To the extent the Committee articulates concrete interests that have not been satisfied or records it believes have not been produced, Bureau staff will be happy to propose an approach to supplement its productions.

For several other requests, the Bureau explained that it could not produce the requested records, either because they did not exist or because they were not in the Bureau's custody or control. In those cases, the Bureau provided related information or records to the extent they existed and were within the Bureau's custody or control (including through offers of staff briefings), and with respect to many requests, Committee staff agreed that no further production was required. Items in this category are detailed in the attached table.

In the remaining cases, the Bureau identified specific barriers to search and production for discrete requests and explained how issues with these requests, including breadth and lack of a clearly articulated legislative interest, left Bureau staff unable to develop or propose searches reasonably likely to identify material useful to the Committee. The Bureau requested guidance from the Committee, precisely so that Bureau staff would be able to propose reasonable search parameters, reach agreement with the Committee on an approach, and proceed with review and production. Your email notes that the Bureau often possesses information necessary to frame reasonable requests, such as an understanding of Bureau staff and functions. We agree that the Committee and the Bureau can only agree on reasonable search and review approaches when Committee staff has the predicate facts necessary to scope its requests and when Bureau staff has a clear understanding of the information the Committee seeks. For that reason, Bureau staff spent substantial time on staff-to-staff calls last year answering questions necessary for Committee staff to frame the guidance the Bureau requested and offered staff briefings to aid the Committee in interpreting records and refining its requests. Committee staff agreed to provide guidance based on those discussions, but the Bureau has not yet received it. Subpoena items where the Bureau has made partial productions and awaits guidance to allow supplemental productions are described in detail in the attached table.

The Bureau relied on the guidance provided by Committee staff last year—including staff recognition that requested material had been produced or did not exist. The Bureau further assumed that additional guidance Committee staff had agreed to provide for other requests had been pledged in good faith and would be forthcoming and that reiterating that information to the Committee was not necessary. The Bureau described these discussions generally in its May 2, 2017 letter but, rather than spend more of its limited time reconstructing these discussions, the Bureau focused between receipt of the subpoena and its return date on collecting and producing information and records to the greatest extent possible.

If the Committee will articulate which items in the subpoena it views to be incomplete and identify what material related to those requests the Committee believes is absent from the Bureau's extensive productions, we will be happy to explain the specific circumstances, including confirming where responsive documents do not exist and describing the methodology the Bureau used to identify the material it produced. We will also work with you to design supplemental searches where doing so is likely to identify additional material relevant to the Committee's stated interests.

Thank you,  
Steve

**Steven Y. Bressler**

Assistant General Counsel for Litigation & Oversight  
Consumer Financial Protection Bureau

Tel: Redacted by the Committee

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# **Attachment E**

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**From:** Bressler, Steven (CFPB) **Redacted by the Committee**  
**Sent:** Wednesday, June 14, 2017 1:59 PM  
**To:** Dewey, Samuel  
**Cc:** Galicia, Catherine (CFPB); O'Brien, Patrick (CFPB); Greenbaum, Elie; Gammello, Joe; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian; Powell, Jason; Ross, Amena  
**Subject:** RE: April 4, 2017 subpoena

Sam,

Though we did not receive a response to the email below, which sought to engage with you about the remaining items from the April 4 subpoena that the Committee views as outstanding, we understand, based on the Committee's recent interim majority staff report, that items 26 and 27 related to Wells Fargo are a priority for the Committee. For that reason, we will rely on the report as guidance to search for and produce additional records responsive to those specifications. We would still, however, appreciate the guidance we requested regarding the scope of the remaining items. We would be happy to confer with you in order to ensure our upcoming production is appropriately tailored to meet the Committee's oversight interests.

Best,  
Steve

(-Joseph Clark, +Jason Powell and Amena Ross)

---

**From:** Bressler, Steven (CFPB)  
**Sent:** Thursday, June 01, 2017 6:43 PM  
**To:** 'Dewey, Samuel'  
**Cc:** Galicia, Catherine (CFPB); O'Brien, Patrick (CFPB); Clark, Joseph; Greenbaum, Elie; Gammello, Joe; Sisto, Brett; Peto, Lisa; Burris, Kevin; Read, Jennifer; Morgan, Hallee; Johnson, Brian  
**Subject:** April 4, 2017 subpoena

Sam,

With respect to the Committee's April 4 subpoena, we are happy to discuss the specifics of the Bureau's responses and any information the Committee believes to be outstanding. We do not understand your prior characterization of our response as "complete default," given the Bureau's production of a 19-page narrative response and 64,000 pages of material on this subpoena's return date and its previous production of over 18,000 pages in response to the subpoena issued in the last Congress (which overlaps substantially with the April 4, 2017 subpoena). The Bureau is eager to cure any inadvertent deficiencies in its productions or simply to provide additional information that would assist the Committee, but it cannot do so unless the Committee clearly and specifically identifies the records or information it believes are missing from these productions. To facilitate further discussion, I have attached a table summarizing the status of each item of the April 4 subpoena.

As the Bureau explained at length in its May 2, 2017 response to the April 4 subpoena, the Bureau has made a robust response to the subpoena—on May 2 as well as in previous productions—and has been clear with Committee staff when further production is impracticable or impossible without clarification of the scope and the nature of the Committee's legislative interests and collaboration on feasible searches reasonably likely to identify records responsive to those interests.

You have stated that the burden of proposing workable parameters rests with the Bureau and that the Bureau has not carried its burden with respect to the April 4 subpoena. However, many of the requests in the April 4 subpoena relate to previous requests that Bureau staff and Committee staff discussed on multiple occasions last year. In those discussions, Bureau staff proposed search and review approaches for a number of requests, where the Bureau had sufficient understanding of the Committee's interests to frame approaches reasonably likely to identify responsive material. Where Committee staff worked with Bureau staff to agree on such search proposals, the Bureau completed review and made supplemental productions last year. Details of these discussions are included in the Bureau's May 2 letter and the correspondence referenced within it. Based on these discussions and review of its productions to date, the Bureau believes that it has produced material sufficient to satisfy a substantial number of items on the April 4 subpoena, as detailed in the attached table. To the extent the Committee articulates concrete interests that have not been satisfied or records it believes have not been produced, Bureau staff will be happy to propose an approach to supplement its productions.

For several other requests, the Bureau explained that it could not produce the requested records, either because they did not exist or because they were not in the Bureau's custody or control. In those cases, the Bureau provided related information or records to the extent they existed and were within the Bureau's custody or control (including through offers of staff briefings), and with respect to many requests, Committee staff agreed that no further production was required. Items in this category are detailed in the attached table.

In the remaining cases, the Bureau identified specific barriers to search and production for discrete requests and explained how issues with these requests, including breadth and lack of a clearly articulated legislative interest, left Bureau staff unable to develop or propose searches reasonably likely to identify material useful to the Committee. The Bureau requested guidance from the Committee, precisely so that Bureau staff would be able to propose reasonable search parameters, reach agreement with the Committee on an approach, and proceed with review and production. Your email notes that the Bureau often possesses information necessary to frame reasonable requests, such as an understanding of Bureau staff and functions. We agree that the Committee and the Bureau can only agree on reasonable search and review approaches when Committee staff has the predicate facts necessary to scope its requests and when Bureau staff has a clear understanding of the information the Committee seeks. For that reason, Bureau staff spent substantial time on staff-to-staff calls last year answering questions necessary for Committee staff to frame the guidance the Bureau requested and offered staff briefings to aid the Committee in interpreting records and refining its requests. Committee staff agreed to provide guidance based on those discussions, but the Bureau has not yet received it. Subpoena items where the Bureau has made partial productions and awaits guidance to allow supplemental productions are described in detail in the attached table.

The Bureau relied on the guidance provided by Committee staff last year—including staff recognition that requested material had been produced or did not exist. The Bureau further assumed that additional guidance Committee staff had agreed to provide for other requests had been pledged in good faith and would be forthcoming and that reiterating that information to the Committee was not necessary. The Bureau described these discussions generally in its May 2, 2017 letter but, rather than spend more of its limited time reconstructing these discussions, the Bureau focused between

receipt of the subpoena and its return date on collecting and producing information and records to the greatest extent possible.

If the Committee will articulate which items in the subpoena it views to be incomplete and identify what material related to those requests the Committee believes is absent from the Bureau's extensive productions, we will be happy to explain the specific circumstances, including confirming where responsive documents do not exist and describing the methodology the Bureau used to identify the material it produced. We will also work with you to design supplemental searches where doing so is likely to identify additional material relevant to the Committee's stated interests.

Thank you,  
Steve

**Steven Y. Bressler**

Assistant General Counsel for Litigation & Oversight  
Consumer Financial Protection Bureau

Tel: Redacted by the Committee

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# APPENDIX F



July 10, 2017

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First St. NE  
Washington DC 20002

Dear Rich:

I am requesting the Consumer Financial Protection Bureau's (CFPB) share with OCC data used to develop and support its proposed final rule banning class-action waivers in arbitration agreements and to have our agencies work together to resolve potential safety and soundness concerns with the proposal.

The OCC has a mandate to ensure the safety and soundness of the federal banking system. A variety of OCC staff have reviewed the CFPB's arbitration proposal from this perspective and have expressed concerns about its potential impact on the institutions that make up the federal banking system and its customers. We feel obligated to communicate our safety and soundness concerns regarding this proposal given the requirements of section 1023 of the Dodd-Frank Act.

As you know, arbitration can be an effective alternative dispute resolution mechanism that can provide better outcomes for consumers and financial service providers without the high costs associated with litigation. As some have noted, the CFPB's proposal may effectively end the use of arbitration in cases related to consumer financial products and services. Eliminating the use of this tool could result in less effective consumer protection and remedies, while simply enriching class-action lawyers. At the same time, the proposal may potentially decrease the products and services offered to consumers, while increasing their costs.

The proposal also may force institutions to confront “potentially ruinous liability” and to settle unmeritorious claims to mitigate the significant costs and risks associated with class-action law suits.<sup>1</sup> The increased cost associated with litigation and the loss of arbitration as a viable alternative dispute resolution mechanism could adversely affect reserves, capital, liquidity, and reputations of banks and thrifts, particularly community and midsize institutions.

While staff have raised these questions, we can only answer them through shared analysis of your agency’s data. We would like to work with you and your staff to address the potential safety and soundness implications of the CFPB’s arbitration proposal. That is why I am requesting the CFPB share its data, which will be given appropriate confidential treatment. I have directed OCC staff to work expeditiously with CFPB staff to examine the data once we receive it and determine if our concerns are allayed by the data or to work with CFPB staff to resolve any safety and soundness concerns that persist.

Finally, I want to commend you and your staff for the work the CFPB has done on this important issue. At the OCC, we share the mission of ensuring that our supervised institutions provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

Sincerely,



Keith A. Noreika  
Acting Comptroller of the Currency

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<sup>1</sup> *Shady Gove orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1465 n.3 (Ginsburg, J., dissenting)(observing that defendants in class actions suits face “pressure . . . to settle even unmeritorious claims” once a class is certified due to the “potentially ruinous liability” of such suits).

# APPENDIX G



Consumer Financial  
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

July 12, 2017

The Honorable Keith A. Noreika  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 Seventh Street SW  
Washington, D.C. 20219

Dear Keith:

I am writing in response to your letter of July 10, 2017, in which you suggest that the arbitration rule which the Consumer Financial Protection Bureau issued that day might raise concerns with respect to the safety and soundness of the federal banking system.

I was surprised to receive your letter. As you may be aware, the issuance of the rule marked the conclusion of a multi-year process that included the Bureau's completion in March 2015 of an arbitration study that was required by law.<sup>1</sup> The rulemaking process itself spanned more than two years. Throughout that process, the Bureau consulted repeatedly with representatives of the staff of the Office of the Comptroller of the Currency, as well as the other prudential regulators, precisely to discuss "prudential, market, or systemic objectives administered by such agencies" in accordance with Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. At no time during this process did anyone from the OCC express any suggestion that the rule that was under development could threaten the safety and soundness of the banking system. Nor did you express any such concerns to me when we have met or spoken. Indeed, the only recent communication we had received from the OCC on this subject prior to July 10 was an e-mail from your staff on June 26 "confirm[ing] that the OCC has no comments on the draft text and commentary." The points you now raise in your letter were not conveyed until after the Bureau had completed the interagency consultation process, and had already transmitted the final rule to the Office of the Federal Register for publication. Thus they do not satisfy the statutory requirement that an agency "has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States" and has been unable to do so.<sup>2</sup>

Additionally, there is no basis for claiming that the arbitration rule puts the federal banking system at risk. The Bureau found in the final rule that it will create an effective means by which consumers can seek to vindicate their legal rights under federal and state consumer protection laws and under their contracts. There is no question, and considerable past and present experience to

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<sup>1</sup> CFPB, "Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)," (2015), available at [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>2</sup> Section 1023(b)(1)(A) of the Dodd-Frank Act.

demonstrate, that U.S. banks are capable of operating safely and soundly in a legal system in which consumers can pursue redress for violations of the law. To the extent the rule makes redress available to consumers, it also will affect the incentives for providers of financial services to conform their conduct to the law. Indeed, the deterrent effect of the rule is designed to prevent exactly the type of unlawful conduct that itself can raise safety and soundness concerns, as it did in the lead-up to the financial crisis.

I have asked Bureau staff to review this issue and they have prepared the attached memorandum for me. To highlight a few key points:

- A majority of depository institutions today operate without arbitration agreements. There is no evidence that these banks and credit unions are less safe and sound than their counterparts with such agreements, and no regulator (including the OCC) has ever indicated that is so.
- The Bureau's final rule estimates an annual cost for additional federal litigation for all covered (bank and non-bank) entities of \$523 million per year and a significant but smaller amount for additional state court litigation.<sup>3</sup> These costs would be borne by an industry with trillions of dollars in assets, and in which last year the banks alone earned over \$171 billion in profits. In other words, if all of the projected costs were borne by banks (and they are not), the rule would reduce net revenue by .3 percent.
- The mortgage market, the largest consumer financial market (dwarfing the other consumer markets in which banks participate), currently operates with a ban on arbitration agreements and has effectively done so since 2004. That prohibition has not posed any discernable risk to the safety and soundness of the mortgage lending markets that are a key part of the United States' economic, financial, and banking systems, and no regulator (including the OCC) has given any indication to the contrary.
- Similarly, since 2009, banks representing approximately 47% of credit card loans outstanding have operated without arbitration agreements; the rulemaking did not adduce any evidence that this absence impaired the safety and soundness of these institutions. Indeed, when certain major credit card issuers agreed to temporarily eliminate their mandatory arbitration provisions, which they did as a provision in a class action settlement, the OCC received notice pursuant to the Class Action Fairness Act and did not interpose any objection on safety and soundness or other grounds. Nor, so far as we are aware, has the OCC downgraded these institutions – or any other institution which eschews arbitration agreements – in its CAMELS rating, which is a nonpublic indicator of the safety and soundness of the bank, on the basis that these institutions are exposed to class action liability. And none of the banks covered by the settlement has elected to reinstate an arbitration clause after the settlement expired.

I believe these data conclusively put to rest any safety and soundness concerns.

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<sup>3</sup> See Final Rule at 671 Table 1.

In your letter you suggest that the Consumer Bureau staff and OCC staff conduct a “shared analysis” of the Bureau’s data. This, too, is a more than belated request: as I noted earlier, the Bureau publicly released its arbitration study on which our rule is predicated over two years ago. Furthermore, the Bureau’s estimates as to the rule’s impacts were set forth in the Notice of Proposed Rulemaking which the Bureau issued over a year ago. Until I received your letter this week, the OCC had not expressed any interest in the data relating to the rule.

With that said, I would be happy to have our staff who worked on the arbitration study and on our cost estimates in the rule take the time to review the study data and our rulemaking analysis with your staff. I am confident that a briefing will prove sufficient to answer any questions and allay any concerns.

Let me conclude by thanking you for your interest in the Bureau’s work. We appreciate the concern you stated that institutions supervised by the OCC provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. Please do not hesitate to call me anytime to discuss these matters further.

Sincerely,



Richard Cordray  
Director



July 12, 2017

Memorandum for the Director

**FROM** Arbitration Agreements Rulemaking Team

---

**THROUGH** David Silberman, Associate Director, Research, Markets and Regulations

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**SUBJECT** Letter from the Acting Comptroller

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This memorandum analyzes the suggestion in the letter from Acting Comptroller Noreika to you that the arbitration agreements rule, which the Consumer Financial Protection Bureau sent to the Office of the Federal Register on June 30 and publicly announced on Monday, implicates the safety and soundness of the federal banking system.

**Procedural Background**

As you know, section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau 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.” Dodd-Frank section 1023, in turn, provides a process by which a prudential regulator can petition the Financial Stability Oversight Council to overturn a Bureau rule if the petitioner “has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States.” Any such action to overturn the arbitration rule would be subject to a legal challenge over whether this standard has been satisfied, as the statute explicitly authorizes.<sup>1</sup>

As it does in every rulemaking, the Bureau consulted with the prudential regulators (and other potentially interested agencies) throughout the rulemaking process. Specifically, Bureau staff first consulted with OCC staff in September 2015, about the same time that we started our small entity review panel process in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996. Bureau staff again consulted with OCC staff in February 2016, prior to our release of the Notice of Proposed Rulemaking. Most recently, Bureau staff consulted with OCC staff yet again prior to our release of the final rule, which did not change drastically from the proposal. On June 6, Bureau staff held an interagency consultation on the final rule at which several OCC staff participated, and on June 9 we sent

<sup>1</sup> Dodd-Frank section 1023(c)(8) of the Dodd-Frank Act (“JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.”).



draft regulatory text to the OCC. On both the June 6<sup>th</sup> call and in the June 9<sup>th</sup> e-mail, Bureau staff requested feedback on the rule no later than June 23.

At no time during this consultation process stretching over almost two years did the OCC express any concern over the potential impact of the rule that was under consideration on the safety and soundness of the banking system. In fact, in response to the most recent consultation, Bureau staff received an e-mail on June 26<sup>th</sup> “confirm[ing] that the OCC has no comments on the draft text and commentary.”<sup>2</sup>

In his letter to you, the Acting Comptroller stated that “staff have raised ... questions” pertaining to the impact of the rule on the safety and soundness of the banking system. No such concerns have been raised with the Bureau.

Given this history, and the requirements of section 1023, invoking those statutory processes at this point, as suggested in the letter, would be procedurally improper and would also fail to make a plausible case for meeting the required standard. As noted above, the Dodd-Frank Act provides for consultation *during* the rulemaking process to resolve prudential concerns and allows for a petition only if the process fails – *i.e.*, if an agency “has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States” and has been unable to do so.<sup>3</sup> The belated statements of the Acting Comptroller that the OCC has unspecified safety and soundness concerns, conveyed in a letter received after the Bureau had completed the interagency consultation process and had already transmitted the final rule to the Office of the Federal Register for publication, do not satisfy the OCC’s statutory obligations.<sup>4</sup>

### **The Safety and Soundness Concern**

Procedural issues aside, we believe the rulemaking record here – including the Bureau’s Arbitration Study<sup>5</sup> on which the rule is predicated – demonstrate that this rule does not put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

As you know, the principal effect of the rule will be to create an effective means by which consumers can seek to vindicate their legal rights under federal and state consumer protection laws and under their contracts. To the extent the rule makes redress available to consumers, it also will affect the incentives of financial service providers to conform their conduct to the

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<sup>2</sup> E-mail from Fred Petrick, OCC to Eric Goldberg, CFPB (June 26, 2017).

<sup>3</sup> Dodd-Frank section 1023(b)(1)(A).

<sup>4</sup> As an aside, we would note that Dodd-Frank section 1023(b)(1) provides for petitions to be filed “in accordance with rules prescribed pursuant to subsection (f).” It is our understanding that the FSOC has not issued any such rules. Thus, it is unclear whether the FSOC is even in position to entertain a petition at this time.

<sup>5</sup> CFPB, “Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a),” (2015), available at [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf) (“the Study”).

law. The financial crisis has taught us all that greater attention by providers to conformity with consumer protection laws would aid safety and soundness.

Moreover, the Bureau's Study shows that a majority of depository institutions do not use arbitration agreements.<sup>6</sup> As the Bureau stated in the preamble to the final rule, this evidence shows that depository institutions without arbitration agreements

are able to remain safe and sound despite their exposure to class action liability. The Bureau has no reason to believe that depository institutions with arbitration agreements are less financially sound than those without or that requiring certain depository institutions to amend their agreements will cause them to become less financially sound.<sup>7</sup>

Additionally, the potential costs of the arbitration rule do not raise any concern about such risks. Under the Dodd-Frank Act, the Bureau is required to assess the costs and benefits of any proposed or final rule on covered persons as well as on consumers.<sup>8</sup> The Bureau's final rule estimates an annual cost for additional federal litigation for covered entities of \$523 million per year and a significant but smaller amount for additional state court litigation.<sup>9</sup> These sums will be spread across approximately 600 additional federal class actions and a similar number of additional state class actions. The final rule also estimates that depository institutions with less than \$10 billion in assets will face very few of these cases. In particular, the final rule estimates that there will be, on average, less than one federal class settlement per year involving these depository institutions and that the magnitude of these settlements would be relatively smaller.<sup>10</sup> Taken as a whole, the rule is estimated to affect approximately 53,000 providers in various covered markets, which extend well beyond the banking system to thousands of non-bank entities as well. These are conservative (*i.e.*, upper bound) estimates; indeed, during the comment process a number of trade associations representing financial institutions argued that the Bureau's data was skewed by a few large class settlements (specifically in the overdraft multidistrict litigation) and that therefore the Bureau was overestimating the benefits of class actions for consumers and, derivatively, the costs to providers.

Importantly, these estimates, and the assumptions on which they are based, were set forth in detail in the Notice of Proposed Rulemaking, which was issued more than a year ago.<sup>11</sup> At no time until now has anyone from the OCC expressed any interest in further discussion about any data pertaining to the rule, including these estimates, or contested any of the data on which they are based.

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<sup>6</sup> See Study, section 2 at 9-17.

<sup>7</sup> Final Rule at 648; *see also id.* at 649.

<sup>8</sup> See Dodd-Frank section 1022(b)(2).

<sup>9</sup> See Final Rule at 671, tbl. 1.

<sup>10</sup> See *id.* at 694-95

<sup>11</sup> 81 FR 32829 (May 24, 2016).

It seems clear that a rule that would result in the annual costs set forth above – under a billion dollars per year – and additional investments in compliance with the law to prevent additional class litigation exposure, spread over some portion of the entire universe of consumer financial markets, including both banks and non-bank entities, cannot pose a threat to the stability of the financial system with its trillions of dollars of assets. In fact, the annual costs for depository institutions would be less than a half-billion dollars per year, whereas the profits of those institutions exceeded \$171 billion in 2016.<sup>12</sup>

It is instructive in this regard to consider what we know about markets in which arbitration agreements do *not* operate. As the final rule noted, the mortgage market – which is, of course, the largest consumer financial market (dwarfing the other consumer markets in which banks participate) – currently operates with a ban on arbitration agreements and has effectively done so since 2004.<sup>13</sup> To our knowledge, that prohibition has not posed any discernable risk to the safety and soundness of the mortgage lending markets that are a key part of the United States’ economic, financial, and banking systems. Similarly, banks representing approximately 47% of credit card loans outstanding at the end of 2013 operated without arbitration agreements; the Bureau did not receive any evidence that this absence impaired the safety and soundness of these institutions, or that their regulators identified any risk differential between companies that did or did not use arbitration agreements. When certain major credit card issuers agreed to eliminate their mandatory arbitration provisions, which they did as a provision in a class action settlement, the OCC received notice pursuant to the Class Action Fairness Act and did not interpose any objection on safety and soundness grounds, or any other grounds.<sup>14</sup> Nor, so far as we are aware, has the OCC downgraded its CAMELS rating of these institutions – or any other institution which eschews arbitration agreements – on the basis that these institutions are exposed to class action liability.<sup>15</sup> Further, when the class action settlement expired, none of the card issuers elected to reinstate their arbitration agreements, indicating that they did not believe the absence of such agreements was posing any substantial threat to their institutions.

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<sup>12</sup> FDIC, “Quarterly Banking Profile: Fourth Quarter 2016” (vol. 11, num. 1; 2017) available at [https://www.fdic.gov/bank/analytical/quarterly/2017\\_vol11\\_1/fdic\\_v11n1\\_4q16.pdf](https://www.fdic.gov/bank/analytical/quarterly/2017_vol11_1/fdic_v11n1_4q16.pdf).

<sup>13</sup> See Kenneth Harney, “Fannie Follows Freddie in Banning Mandatory Arbitration,” Wash. Post, Oct. 9, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A18052-2004Oct8.html>. Since 2004, Fannie Mae and Freddie Mac underwriting guidelines have prohibited arbitration agreements. Subsequently, the Congress expressly prohibited arbitration agreements in the mortgage market more broadly in the Dodd-Frank Act. See Dodd-Frank section 1414, codified in Regulation Z at 12 CFR 1026.36(h).

<sup>14</sup> We understand that the OCC Bulletin 2006-20 (Apr. 21, 2006) requires depository institutions to provide these notices to the OCC within 10 days of filing of a proposed settlement.

<sup>15</sup> The OCC’s handbook explains that: “A bank’s composite rating under Uniform Financial Institutions Rating System (UFIRS) or “CAMELS” integrates ratings from six component areas: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. Evaluations of the component areas take into consideration the institution’s size and sophistication, the nature and complexity of its activities, and its risk profile.” OCC Bank Supervision Process: Comptroller’s Handbook at 14 (September 2007, updated 2012), available at <https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html>.

## The Acting Comptroller's Data Request

In his letter to you, the Acting Comptroller requests access to the Bureau's data. It may be helpful to you in responding to have some background on the data on which the Bureau's estimates as to the impacts of the rule on financial institutions are based.

As you will recall, as part of the Bureau's Arbitration Study, the Bureau developed estimates as to the prevalence of arbitration agreements in various financial markets. To do so, the Bureau assembled a dataset consisting of approximately 850 standard-form contracts used by various providers of financial products and services. Most of those contracts are publicly available, including credit card agreements which card issuers are required to furnish to the Bureau pursuant to the CARD Act, and deposit account agreements which are typically found on bank websites. As explained in the Bureau's Study, the Bureau supplemented this publicly-available data with contracts obtained from certain providers pursuant to an information order under Dodd-Frank section 1022(b)(4). From these data, the Bureau estimated the percentage of various markets covered by arbitration agreements and thus potentially affected by the Bureau's rule.

To estimate the impact the rule would have on this segment of the market, the Bureau relied on its findings as to the amount that financial institutions had paid in class action settlements (both to consumers and in attorney fees and defense costs) over a five-year period. Those findings were derived from the case records of 419 consumer finance class actions that were settled in federal court over a period of five years. The Bureau's study explains the methodology the Bureau used to identify these cases – which we believe comprise all or virtually all class action settlements in consumer finance cases during the period studied. The records from those cases are, of course, public and the Bureau provided full case citations to the cases in its Notice of Proposed Rulemaking.<sup>16</sup>

Recognizing that the Bureau's rule also could open the door to putative class actions that are settled individually or otherwise not resolved on a class basis, the Bureau estimated those impacts by relying on a separate data set consisting of 562 consumer finance cases filed as putative class actions in federal court and certain state courts over a three-year period. The Bureau's study explains the methodology the Bureau used to identify those cases. Those case records, too, are of course public.

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<sup>16</sup> 81 FR 32829 at App'x A (May 24, 2016).

# APPENDIX H



July 17, 2017

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First St., NE  
Washington DC 20002

Dear Rich:

Thank you for your letter of July 12, 2017, regarding my safety and soundness concerns with the newly released Consumer Financial Protection Bureau (CFPB) rule (Final Rule) banning class-action waivers in arbitration agreements.

My letter, dated July 10, requested that the CFPB share the data and method used to develop and support the Final Rule (CFPB data). Independent analysis of the CFPB data by the Office of the Comptroller of the Currency's (OCC) economists would help answer my questions as I attempt to fulfill my statutory safety and soundness obligations and review the final rule pursuant to Section 1023 of the Dodd-Frank Act (Section 1023). I am writing today to reiterate that request, in the spirit of the *Coordination Principles* that you and my predecessor signed. Despite your prior telephonic and in-person assurances that we would have access to the CFPB data, your July 12 letter ignores my request.

Given your issuance of the Final Rule, notwithstanding your prior receipt of my letter and an earlier e-mail from my staff stating that I wished to discuss this matter with you, I further request that you delay publication of the Final Rule in the *Federal Register* until my staff has had a full and fair opportunity to analyze the CFPB data so that I am able to fulfill my safety and soundness obligations.

I appreciate you giving me your reassurances that the Final Rule does not have any safety and soundness impact on the federal banking system. As you know, the CFPB is, by design, not a safety and soundness prudential regulator. Hence, Congress included Section 1023 in Title X of the Dodd-Frank Act at the same time that it created the CFPB to address potential safety and soundness concerns. When I became aware of the then proposed Final Rule several weeks after becoming Acting Comptroller of the Currency on May 6, 2017, I requested that my Economics Department analyze the proposed Final Rule for its impact on the federal banking system. On July 5, my chief economist requested that I ask for the CFPB data so that we could complete that review. I had hoped to discuss this request with you prior to the release of the Final Rule, but the timing of the release of the Final Rule was not shared with me in advance.

I appreciate you agreeing to have your staff review the study and rulemaking analysis with OCC staff. That review will be helpful, but not sufficient, to allay my concerns. As the prudential regulator for the federal banking system, the OCC should be granted the opportunity to conduct an independent review of the CFPB data to determine the safety and soundness implications of the Final Rule. I will make every effort to expedite that review.

Sharing the CFPB data would further transparency in our government, a goal that I am sure you share and is our obligation when engaging in rulemaking under the Administrative Procedure Act. Therefore, the OCC's request for the CFPB data should not add to the burden or obligation of the CFPB regarding this rulemaking.

As Acting Comptroller, I, like you, oversee an agency with a statutory mission to ensure fair access to financial services, fair treatment of customers, and compliance with applicable laws and regulations. Additionally, the OCC's mission includes ensuring that the federal banking system operates in a safe and sound manner. I appreciate your assistance in helping me fulfill that mission. I know that significant time has been spent in developing the Final Rule during the past several years. A few additional weeks to address the prudential concerns that I have raised seem a sound investment.

Thank you for your continued cooperation.

With all best wishes,



Keith A. Noreika  
Acting Comptroller of the Currency

# APPENDIX I



July 18, 2017

The Honorable Keith A. Noreika  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 Seventh Street SW  
Washington, D.C. 20219

Dear Keith:

I have your letter from yesterday, renewing your suggestion that the CFPB's recently-finalized arbitration rule might pose a risk to the safety and soundness of the federal banking system.

First, let me be clear that we are happy to share the data underlying our rulemaking. I understand that our teams are in communication and we are in the process of assembling the data your staff has requested.

I continue to fail to see any plausible basis for your claim that the arbitration rule could somehow affect the safety and soundness of the banking system. The economic analysis of the rule shows that its impact on the entire financial system (not just the banking system) is on the order of less than \$1 billion per year. Even if you think that estimate could be off by some amount, the banks alone made over \$171 billion in profits last year. So on what conceivable basis can there be any legitimate argument that this rule poses a safety and soundness issue?

In addition, Congress explicitly banned arbitration agreements in the mortgage market, which is larger than all these other consumer finance markets combined. Yet nobody suggests that outcome poses a safety and soundness issue. So while you may disagree with the policy judgments for the rule, I question why it would be appropriate to distort the FSOC process to review a claim that is so plainly frivolous, when congressional and judicial forums are available to pursue such matters.

Again, I would be interested to know more about what you view as the basis for your claim here. As for timing, I signed the final rule and we sent it to the Federal Register for publication before you raised these issues on July 10. Feel free to call me anytime to discuss these matters further.

Sincerely,



Richard Cordray  
Director

# APPENDIX J



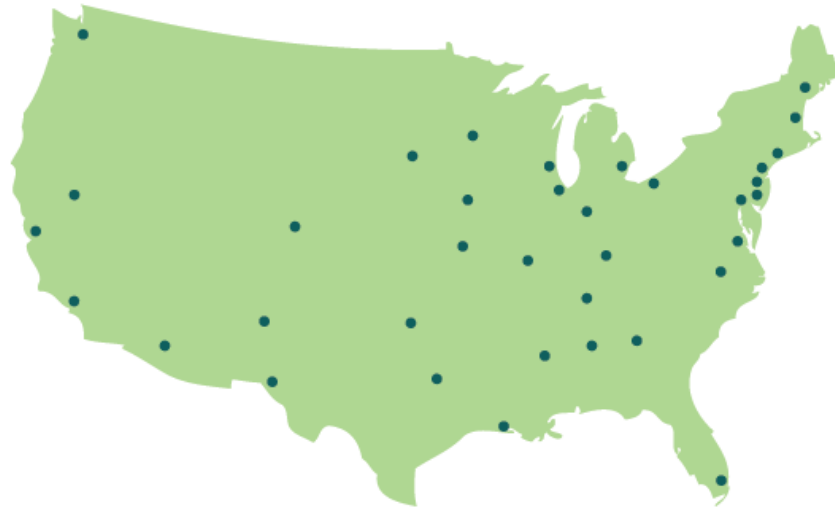
Consumer Financial  
Protection Bureau

## FACTSHEET

# Consumer Financial Protection Bureau: By the numbers

- **\$11.8 billion:** Approximate amount of relief to consumers from CFPB supervisory and enforcement work, including:
  - \$3.7 billion in monetary compensation to consumers as a result of enforcement activity
  - \$7.7 billion in principal reductions, cancelled debts, and other consumer relief as a result of enforcement activity
  - \$371 million in consumer relief as a result of supervisory activity
- **29 million:** Consumers who will receive relief as a result of CFPB supervisory and enforcement work
- **\$597 million:** Money ordered to be paid in civil penalties as a result of CFPB enforcement work
- **1,218,600+:** Complaints CFPB has handled as of June 1, 2017
- **13 million:** Unique visitors to [Ask.CFPB](#)
- **4.4 million:** Mortgages consumers closed on after consumers received the CFPB's [Know Before You Owe](#) disclosures
- **139:** Banks and credit unions under the CFPB's supervisory authority as of June 2017
- **12 million:** Consumers who take out payday loans each year; the CFPB has proposed rules to put an end to payday debt traps
- **70 million:** Consumers who have debts in collection on their credit record; the CFPB is developing proposed rules to protect consumers from harmful collection practices

- **3,244** Colleges voluntarily adopting the CFPB and Dept. of Ed [Financial Aid Shopping Sheet](#)
- **148:** Visits to military installations by the Office of Servicemember Affairs since 2011
- **63:** Times senior CFPB officials have testified before Congress
- **40:** Cities where CFPB has held public town halls or field hearings



- |                         |                       |                        |                        |
|-------------------------|-----------------------|------------------------|------------------------|
| □ Philadelphia, Pa.     | □ Baltimore, Md.      | □ New Orleans, La.     | □ Albuquerque, N.M.    |
| □ Minneapolis, Minn.    | □ Des Moines, Iowa    | □ Reno, Nev.           | □ Kansas City, Mo.     |
| □ Cleveland, Ohio       | □ Miami, Fla.         | □ El Paso, Texas       | □ Sacramento, Calif.   |
| □ Birmingham, Ala.      | □ Los Angeles, Calif. | □ Indianapolis, Ind.   | □ Salt Lake City, Utah |
| □ New York, N.Y.        | □ Portland, Maine     | □ Wilmington, Del.     | □ Charleston, W.Va.    |
| □ Sioux Falls, S.D.     | □ Itta Bena, Miss.    | □ Oklahoma City, Okla. | □ Los Angeles, Calif.  |
| □ Durham, N.C.          | □ Chicago, Ill.       | □ Newark, N.J.         |                        |
| □ Detroit, Mich.        | □ Boston, Mass.       | □ Richmond, Va.        |                        |
| □ St. Louis, Mo.        | □ Dallas, Texas       | □ Milwaukee, Wis.      |                        |
| □ Seattle, Wash.        | □ Phoenix, Ariz.      | □ Denver, Colo.        |                        |
| □ Mountain View, Calif. | □ Nashville, Tenn.    | □ Louisville, Ky.      |                        |



Consumer Financial  
Protection Bureau

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*The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit [www.consumerfinance.gov](http://www.consumerfinance.gov).*

# APPENDIX K

# The CFPB's Office of Servicemember Affairs ensures that military personnel and their families have a voice

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## About our mission:

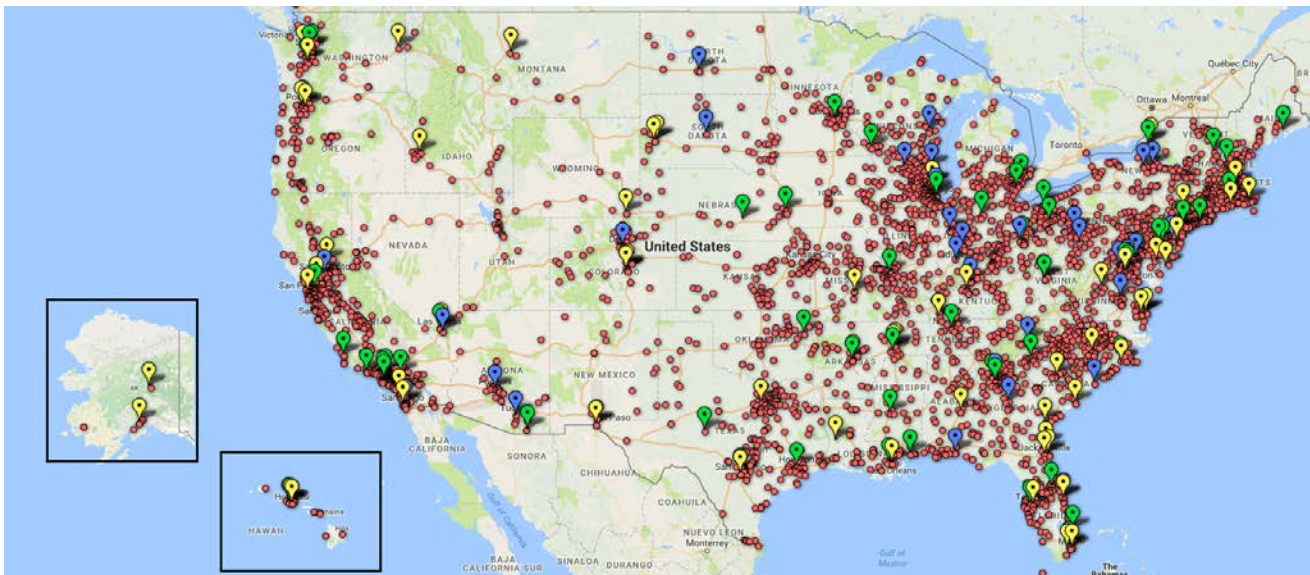
1. We monitor military consumer complaints and the resolution of those complaints;
2. We develop and implement initiatives to educate and empower servicemembers and their families to make better-informed decisions regarding consumer financial products and services; and
3. We coordinate the efforts of Federal and State agencies regarding consumer protection measures for servicemembers, veterans and their families, with a view toward improving consumer-protection measures for military personnel and their families.

## The Office of Servicemember Affairs (OSA) by the numbers:

- **\$130 million:** approximate amount of relief through CFPB enforcement actions to servicemembers, veterans and their families harmed by illegal practices
- **\$60 million+:** relief back to over 78,000 servicemembers harmed by SCRA violations identified through OSA's monitoring of complaints
- **\$35 million+:** the amount servicemembers are projected to save per year in payday loan payments as a result of the new DoD Military Lending Act rules, which were drafted with support from technical assistance by the CFPB
- **\$3.7 million:** approximate amount of monetary relief provided to military consumers that submitted a complaint to the CFPB, as reported by companies
- **82,000+:** complaints from servicemembers, veterans and their families handled from July 2011 through June 2017
- **74,000:** total number of visitors to [www.consumerfinance.gov/servicemembers](http://www.consumerfinance.gov/servicemembers)
- **75,000+:** quantity of financial education products provided to military leaders, service providers, servicemembers, veterans and their families by OSA

- **1.3 million:** active duty servicemembers affected by DoD’s policy change to end the use of military allotments for purchase, rent, or lease of personal property, based on consultation with OSA<sup>1</sup>
- **13,000+:** number of future servicemembers participating in OSA’s financial literacy training before attending basic training
- **1,000+:** number of Ask CFPB questions with answers to commonly-asked consumer questions, with dozens of servicemember-specific questions
- **169:** visits to military installations since 2011
- **50 states:** complaints received from all 50 states and from all branches of the military

The OSA staff brings more than 200 years of combined experience to military consumers. Touching military consumers in every state, nationwide, including:



**Legend**

- Future servicemember
- Direct to veterans
- Direct to servicemembers
- Financial coaching sites

<sup>1</sup> Press release announcing DoD allotment policy changes at <https://www.defense.gov/News/News-Releases/News-Release-View/Article/605286/department-of-defense-announces-new-policy-on-service-member-allotments>