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Attention: Chief FOIA Officer
1700 G Street, NW
Washington, DC 20552
Email: FOIA@cfpb.gov

RE: FOIA Request #CFPB-2014-223-F

July 24, 2014

This letter is in final response to your Freedom of Information Act (FOIA) request dated June 12, 2014. Your request sought a copy of all Questions for the Record (QFRs), without enclosures/attachments, provided to Congress by the CFPB from January 1, 2009 to the present. As previously advised, the CFPB was not created until July 21, 2010. Therefore, no documents exist prior to that date.

Attached to this letter, please find our response to your request, which consists of 360 pages that are granted in full. No deletions or exemptions have been claimed on these records.

There are no fees associated with this request.

For questions concerning our response, please feel free to contact CFPB's FOIA Service Center by email at FOIA@cfpb.gov or by telephone at 1-855-444-FOIA (3642).

Sincerely,

Martin Michalosky
FOIA Manager
Operations Division

Consumer Financial Protection Bureau

1801 L Street NW, Washington, DC 20036

April 30, 2012

The Honorable Patrick McHenry
224 Cannon House Office Building
Washington, DC 20515

Dear Chairman McHenry:

I am writing in response to your recent questions for the Director of the Consumer Financial Protection Bureau, Richard Cordray, following his appearance before your Subcommittee on January 24, 2012. Enclosed please find Director Cordray's responses to your questions. Please contact me at 202-435-7960 if you have any questions.

Sincerely,

Lisa M Konwinski

Lisa Konwinski
Assistant Director for Legislative Affairs
Consumer Financial Protection Bureau

Questions for Director Richard Cordray
Consumer Financial Protection Bureau

Chairman Patrick McHenry
Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs
Committee on Oversight and Government Reform
Hearing on "How Will the CFPB Function Under Richard Cordray?"

**Questions from Chairman McHenry:**

1. **On January 19, 2012, the CFPB issued examination guidelines for the payday lending market.[1] This document clarified that a payday loan "is neither an overdraft line of credit nor an overdraft service."[2] When asked at the Subcommittee's hearing about this distinction in the examination guidance, you replied: "[W]e were trying to focus our exam guidance there on a particular type of product in the nonbank sector."[3] Please describe the characteristics of a payday loan and how it differs from an overdraft line of credit. Does the CFPB's examination and supervisory authority over short-term, small- dollar lending vary depending on whether the product is a payday loan, overdraft protection, or other similar extension of credit? Please explain fully. Does the CFPB's examination and supervisory authority over short-term, small-dollar lending vary depending on whether the lender is a bank or a nonbank? Please explain fully.**

   We will not use our authorities to differentiate supervision based on the type of entity that is providing the product. Indeed, leveling the playing field for all industry participants to create a fairer marketplace for consumers and the responsible businesses that serve them is a key goal of the Bureau.

   The CFPB's *Small-Dollar, Short Term Lending* Procedures describe three common features of payday loans: (1) the loans are small-dollar; (2) they are short-term, in that borrowers must repay loan proceeds quickly; and (3) they require that a borrower give the lender access to repayment through a claim on the borrower's deposit account via check or automatic clearing house authorization.

   An overdraft line of credit differs from a payday loan in the following respects. First, overdraft lines tend to be larger dollar amounts. Second, consumers are not generally required to repay an entire overdraft line of credit within a short time period. Third, although an overdraft line of credit may protect against a shortage in a deposit account, automatic repayment from a deposit account is a feature that varies across products. Finally, depository institutions underwrite overdraft lines of credit using traditional methods.

[1] *See* Press Release) Consumer Financial Prot. Bureau, Consumer Financial Protection Bureau Examines Payday Lending (Jan. 19, 20 12).
[2] Consumer Financial Prot. Bureau, CFPB Examination Procedures: Short-Term, Small-Dollar Lending 2 n . l (20 12).
[3] *"How Will the CFPB Function Under Richard Cordray?": Hearing before the Subcomm. on TARP, Financial Services, and Bailouts of Public and Private Programs of the H. Comm. on Oversight and Gov't Reform)* 112th Cong. (20 12) (question and answer with Rep. Gowdy).

Questions for Director Richard Cordray
Consumer Financial Protection Bureau

Chairman Patrick McHenry
Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs
Committee on Oversight and Government Reform
Hearing on "How Will the CFPB Function Under Richard Cordray?"

2. **On February 22, 2012, the CFPB announced that it would seek information from banks on overdraft fee policies and practices.[4] What does the CFPB intend to do with the information gathered from banks on their overdraft fee policies and practices? Will the CFPB prohibit overdraft fees?**

   On February 28, 2012, the CFPB published a Notice and Request for Comment on the impact of overdraft programs on consumers. 77 Fed. Reg. 12031. As explained in the Notice, existing regulations under the Truth in Savings Act (Regulation DD) and the Electronic Fund Transfer Act (Regulation E) regulate overdraft fees and prohibit them in some circumstances. However, various prudential regulators have continued to express concern about overdraft programs and have issued additional agency-specific supervisory guidance to supplement the regulations. Thus, different entities with different prudential regulators are currently subject to different standards. The CFPB solicited comment as part of its review of existing regulations and supervisory guidance. The CFPB will use the comments to inform future policy making by the Bureau. This includes assessing whether existing regulations and guidance are effective and what their impact has been on financial institution policies and consumers. The CFPB also made a data request to banks about their overdraft programs. The information learned through that data request will be used, among other things, to inform future policy making by the Bureau in this area.

3. **In July 2011, the CFPB issued an interim final rule concerning the disclosure of information by regulated institutions[5] In a subsequent guidance document interpreting this rule, the CFPB asserted a right to require regulated institutions to disclose "*all* information that, in [the CFPB's] independent judgment *may* bear on its supervisory responsibilities."[6] [emphasis added] Will the CFPB require banks and nonbanks to disclose privileged or confidential information on their short-term, small-dollar lending practices? How will the CFPB adequately protect this sensitive information?**

   Often financial institutions will possess privileged information that is responsive to a CFPB supervisory request. In fulfilling its supervisory responsibilities, the CFPB may require the submission of certain confidential information from financial institutions relating to a range of financial products and services, including short-

[4] *See* Maya Jackson Randall, *Watchdog Targets Overdraft Charges*, Wall St. J., Feb. 22, 2012.
[5] Disclosure of Records and Information, 76 Fed. Reg. 45,372 (July 28, 2011).
[6] Memorandum to Chief Executive Officers of Depository Institutions, Credit Unions, and their Affiliates Subject to the Bureau's Supervision Authority, CFPB Bulletin 12-01, at 2 (Jan. 4, 2012).

term, small-dollar loans. As explained in CFPB Bulletin 12-01, like the prudential regulators, the CFPB regards all information provided to it in the course of its supervisory processes as confidential and privileged, and will assert appropriate privileges and exemptions in response to third parties' attempts to obtain such information.

The CFPB recognizes the importance of the attorney-client and other privileges to our legal system and to the confidentiality interests of financial institutions. It will not seek privileged information from institutions unless such information is material to its supervisory objectives and it cannot practicably obtain the same or similar information from non-privileged sources. Where supervisory requests for such information are necessary, the CFPB will consider institutions' requests to limit the form or scope of requests that encompass privileged information. The CFPB will maintain the confidentiality of any privileged information obtained from supervised institutions in accordance with its applicable policies and rules, and will take all reasonable and appropriate steps to assist supervised institutions in rebutting claims that submission of the information to the CFPB in response to a supervisory request vitiates any applicable privilege.

4. **The CFPB has convened a Small Business Review Panel to review its mortgage disclosure form consolidation.[7] As a part of this review, the CFPB has proposed eliminating the current ten-percent tolerance on a cost estimate when a lender requires or recommends a third-party servicer.[8] In its place, the CFPB proposes a zero tolerance level, which some analysts suggest could "create greater risk for lenders."[9] Please explain why the CFPB is proposing this zero tolerance level. Does the CFPB believe that a zero tolerance level could lead to lenders increasing their margins and higher lending costs for borrowers? Please explain fully.**

The CFPB is considering proposals that would balance the objective of improving the reliability of the estimates lenders give consumers shortly after they apply for a mortgage, with the objective of preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process. Improving the reliability of the estimates may benefit consumers by improving their ability to compare loan terms and reducing the likelihood that they could face unexpected changes in cost. It is important to bear in mind that the proposal under consideration would allow third-party

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[7] *See* Consumer Financial Prot. Bureau, Consumer Financial Protection Bureau Convenes Small Business Panel for Know Before You Owe Mortgage Disclosures (Feb. 21, 20 12).
[8] Brian Collins, *CFPB Shifts Gears on Revising Good Faith Estimate Form*, Am. Banker, Feb. 27,2012.
[9] *Id.*

costs to increase under certain circumstances, such as a valid change in circumstances. Applying a stricter standard to a larger range of charges and to services selected by the lender, unless the lender can show that an exception applies, would address concerns that lenders could profit directly or indirectly from an unjustified 10 percent cost increase.

The CFPB recognizes that a lender may have to absorb costs if the costs of affiliates or of providers selected by the lender are higher than expected and are not considered a valid change as defined by regulation. If this occurred frequently enough to raise the lender's operating costs, lenders would likely pass some or all of these increases on to consumers through charges like higher origination fees but these fees could place the lender at a competitive disadvantage and strengthen the competitive position of lenders with costs that are lower and more reliable.

The CFPB plans to issue a notice of proposed rulemaking in July of this year, consistent with its Dodd-Frank mandate, and will carefully consider the public comments it receives.

Consumer Financial Protection Bureau

June 19, 2012

The Honorable Daniel Akaka
U.S. Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
601 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Akaka:

I am writing in response to your recent questions for the Assistant Director of the Consumer Financial Protection Bureau, Camille Busette, following her appearance before your Subcommittee on April 26, 2012. Enclosed, please find Dr. Busette's responses to your questions. Please contact me at 202-435-7960 if you have any questions.

Sincerely,

Erika Moritsugu
Deputy Assistant Director for Legislative Affairs

**Questions for Assistant Director Camille Busette**
**Consumer Financial Protection Bureau**

**U.S. Senate Committee on Homeland Security and Governmental Affairs**
**Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia**

**"Financial Literacy: Empowering Americans to Prevent the Next Financial Crisis"**
**April 26, 2012**

<u>**Questions from Chairman Daniel K. Akaka**</u>

1. **The U.S. Government Accountability Office (GAO) has reported that a challenge facing the Financial Literacy and Education Commission ("Commission") is limited resources, which may increase the difficulty of effectively implementing the national strategy. As you know, the Commission has no independent budget, no dedicated staff, and is forced to rely upon financial and in-kind donations from its member agencies. What resources and staff does the Consumer Financial Protection Bureau (CFPB), as Vice-Chair of the Commission, plan to share with the Commission?**

   The CFPB's Director serves as the Vice Chair of the Commission. In addition, staff from the CFPB's Office of Financial Education also participate in the Commission subcommittees that are responsible for advancing the work of the Commission.

2. **At the hearing, it was noted that a consumer who knows the right questions to ask, understands economic fundamentals, and most importantly, has the confidence to challenge products that seem too good to be true, is a regulator's best weapon in consumer protection. How are the CFPB consumer protection and financial education components working together to make each more effective?**

   A well-functioning marketplace for consumer financial products and services is one where consumers can see prices and risks up front and where they can easily make product comparisons; where the opportunities to build a business model around unfair, deceptive, or abusive practices are minimized; and one that works for American consumers, responsible providers and the economy as a whole.

   In the Office of Financial Education, we are focused on ensuring that consumers have the information they need to make informed financial decisions. We understand that the Bureau's consumer protection components are essential to ensuring that the market functions well. For that reason, we coordinate with other CFPB offices on policy development, outreach, and other activities that are critical to ensuring that the market operates transparently and efficiently.

3. **Ms. Bair's testimony discussed research finding that unexplained or unexpected fees were the most common reason that households leave the banking system. To mitigate this problem, she recommended that the CFPB require all financial institutions to provide a clear, concise, and uniform disclosure that highlights important fees and terms of checking accounts. Will the CFPB implement this recommendation?**

While we strongly advocate for transparent pricing and disclosures, better transparency alone may not help consumers select better accounts because, for example, people often do not anticipate incurring overdrafts at the time they enroll in new accounts. As a result, in February, we launched a research effort to review what practices and processes are at work with respect to overdrafts and how they affect consumers. In connection with this effort, we published a notice and request for information in the Federal Register (See 77 Fed. Reg. 12031 (February 28, 2012) and 77 Fed. Reg. 24687 (April 25, 2012) (extending the comment period to June 29, 2012)).

Part of this analysis includes an inquiry into:

- How consumers are informed of alternatives to overdraft protection programs and how such alternatives are marketed to new customers, existing customers, and to particular customer segments;
- How posting order rules are communicated to consumers and the extent to which consumers understand them; and
- Changes in consumer behavior or understanding of overdrafts that have resulted from the changes that took effect in Regulation DD in 2010.

**Responses to Questions for the Record**
**The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau**

**Senate Committee on Banking, Housing and Urban Affairs**
**Hearing on "Implementing Wall Street Reform: Enhancing Bank Supervision and Reducing Systemic Risk"**

**June 6, 2012**

**Questions from Senator Kirk:**

**As you are aware, the Dodd-Frank legislation included a provision requiring the Consumer Financial Protection Bureau (CFPB) to convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel before promulgating regulations that are believed to have a significant economic impact on a substantial number of small entities. While I understand it is your position that the Qualified Mortgage rule does not legally necessitate a SBREFA panel because the Federal Reserve originally proposed the rule rather than the CFPB, there is nothing legally preventing the CFPB from convening such a panel.**

**In my opinion, convening a SBREFA panel for the Qualified Mortgage rule may help alleviate some the serious concerns that the small business community has raised regarding this rule. In your testimony you explained that convening a SBREFA panel would not be possible for Qualified Mortgage rule because there is not enough time to finish the panel process before the statutory deadline at the end of this year.**

**I appreciate the fact that properly conducting the SBREFA Panel process can take several months to complete, but I am fearful that your rationale could set an unfortunate precedent for future CFPB avoidance of small business review panels. As such, I have the following questions:**

- **Do you believe the Qualified Mortgage rule will have a have a significant economic impact on a substantial number of small business entities?**
- **Which small business entities face a significant economic impact as a result of the Qualified Mortgage rule, and why?**

We are analyzing these questions as we work on the final rule and the impact analyses that are required under the Regulatory Flexibility Act, the Paperwork Reduction Act, and the *Dodd-Frank Act* itself.

As part of this process, the Bureau is planning to hold in August a structured roundtable about the Ability to Pay rule with representatives of small lenders. Individual lenders and trade association staff will have the opportunity at this roundtable to comment on questions the Bureau recently published for comment and to discuss the potential impacts of the statute and the proposed rule on small entities. A summary of the proceedings will be published in the public comment file, and the Bureau will carefully consider this input in both the final rule and related impact analyses.

**Responses to Questions for the Record**
**The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau**

**Senate Committee on Banking, Housing and Urban Affairs**
**Hearing on "Implementing Wall Street Reform: Enhancing Bank Supervision and Reducing Systemic Risk"**

**June 6, 2012**

The Bureau's decision not to convene a SBREFA panel for the Ability to Pay rulemaking was driven by the unique circumstances involved in a transfer of rulemaking authority after a proposal had already been issued and the very specific statutory deadline that Congress has set for the Ability to Repay rulemaking. We are balancing very carefully ways to obtain comprehensive input while ensuring that we can provide the certainty to the market that it needs.

- **To date, the CFPB has already conducted a number of SBREFA panels for other rulemakings. For those panels, how long did the process take from the date of the CFPB determination that a SBREFA panel was necessary to completion of the process and what aspects of the process have you found most time consuming?**

  Convening a small business review panel under the statutory process involves a substantial commitment of time and resources from all three participating agencies, as well as the individual small entity representatives. We are finding that the panel process requires a minimum of three to four months of intensive work to complete, including preparation time. Although the panel itself must complete its report within 60 days after convening under the statute, there is substantial time involved in preparing background materials on the rulemaking and impact analyses, recruiting and screening potential participants, handling related logistics, and allowing the participants time to review the materials prior to providing feedback to the panel. Additional time is needed after the panel process is complete to consider the recommendations and findings as we prepare to issue the proposed rule in question.

  Holding three panels so close together and at a time when the Bureau is still in the process of stand up has further complicated the resource and timing issues. We have worked to complete the process as quickly as possible in light of statutory deadlines for the underlying rules.

- **Are there any upcoming CFPB rules that you believe may have a significant economic impact on a substantial number of small entities for which a SBREFA panel will not be convened?**

  No, the CFPB does not have plans to issue a proposed rule that requires notice and comment without conducting a SBREFA panel unless the Bureau certifies the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the *Regulatory Flexibility Act*.

**Finally, in the spring of 2012 the CFPB convened a SBREFA panel to nnderstand the impacts on small businesses from the streamlining of the TILA/RESPA disclosures as required by Dodd-Frank sectious 1032(f) and 1098. The Small Business Regnlatory Enforcement and Fairness Act requires that a panel report be completed within 60 days after convening such a panel. This period has now passed. However, it is my understanding that the CFPB does not plan on releasing the panel report to the pnblic until the pnblication of the proposed rnle.**

- **Was the panel report for the TILA/RESPA SBREFA Panel completed within the 60-day period?**

  Yes.

- **If so, what is the rationale behind keeping the report confidential rather than immediately making it available to the pnblic?**

  The report reflects and becomes a part of our internal deliberative processes. The statute itself recognizes the need to balance agency deliberations with public transparency, and requires that the report be issued with the proposal. We follow that requirement strictly and believe it is an appropriate one. It allows the Bureau to complete its deliberation and drafting process and then provide the public with the context it needs to understand how the Bureau uses the report. In the proposal we demonstrate how we have considered the report and factored it into our decisions about what alternatives to propose for comment and what additional information to seek. All members of the public then have a full opportunity to comment as part of the general rulemaking process.

**Responses to Questions for the Record**
**The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau**

**Senate Committee on Banking, Housing and Urban Affairs**
**Hearing on "Implementing Wall Street Reform: Enhancing Bank Supervision and Reducing Systemic Risk"**

**June 6, 2012**

**Questions from Ranking Member Shelby:**

1. **In a question for the record following your testimony before this Committee in January, I provided you with the following quote from Senator Dodd, then the Chairman of the Senate Banking Committee, during the debate of the Dodd-Frank Act. During a discussion of the Bureau's new authority over "abusive" products, he said "I acknowledge the word 'abusive' does need to be defined, and we are talking about striking that or making that better." That, however, did not happen. Section 1031(b) authorizes the Bureau to prescribe rules identifying unfair, deceptive, or abusive acts or practices. In the question for the record, I asked you whether the Bureau will conduct or engage in any supervisory or enforcement actions with respect to "abusive" acts or practices before this term is more clearly defined by regulation. Your response provided the definition of "abusive" that is in Dodd-Frank. You also stated that "the Bureau will be vigilant in observing and adhering to the limits of its authority under this provision." However, you did not answer my question. I ask again: will you be issuing a rule on the abusive standard before using this standard as part of an enforcement or supervisory action?**

   Congress has provided an explicit definition of "abusive" in the *Dodd-Frank Act*, and any supervisory and enforcement actions taken by the Bureau will be consistent with that definition. While the Bureau does not currently anticipate drafting regulations about the definition, we will continue to carefully consider opportunities to provide greater clarity regarding "abusive" acts or practices, whether under our rulemaking authority, by providing guidance through our supervisory function, through enforcement actions, or otherwise.

2. **Earlier this year the Bureau published a proposed rule defining "larger participants in the market" for debt collection companies and credit reporting companies. The thresholds chosen for these industries were $10 million and $7 million in annual receipts, respectively. The proposal indicated that the Bureau based this determination on definition of annual receipts adapted from that used by the Small Business Administration. However, in October of last year the SBA published a proposal to revise its standards for small business concerns in these industries to $14 million. Why did the Bureau fail to take into account the SBA's revised threshold of $14 million?**

The purpose of the proposed rule was to establish, in part, the scope of coverage of the Bureau's nonbank supervision authority pursuant to section 1024 of the *Dodd-Frank Act* in two markets: consumer reporting and consumer debt collection.[1] The proposal set forth a test for each market to determine whether a nonbank entity is a larger participant of that market, and thus subject to the Bureau's supervisory authority.

The Bureau looked to existing Federal statutes and regulations for examples of measurement tools that might be adapted for use in the proposed rule to measure the level of a nonbank's participation in the consumer reporting or consumer debt collection markets. The Bureau selected "annual receipts" as the criterion to measure, guided by the Small Business Administration ("SBA") definition of the same term. The SBA measures annual receipts for purposes of small business loan eligibility.

The Bureau chose to use an adaptation of the SBA's definition of "annual receipts" for the convenience of nonbank participants in the proposed markets. "Annual receipts" has been used as a measurement tool by the SBA for many years, is a well understood concept, and generally may be calculated using IRS forms. The Bureau did not intend by adapting the SBA's definition of "annual receipts" for use in the proposed rule, however, to tie the larger-participant thresholds for the consumer reporting and consumer debt collection markets to the SBA's small business size standards for the analogous markets. As the Bureau recently explained in adopting a final rule for the consumer reporting market, the SBA's size standards and the Bureau's thresholds are used for different purposes and targeted to different statutory objectives. In setting its size standards, the SBA considers myriad factors—such as eligibility for Federal small-business assistance and Federal contracting programs; startup costs, entry barriers, and industry competition; and technological change[2]—that differ from the concerns that motivate the Bureau's definition of "larger participants" in the proposed rule.

In addition, the Bureau's "annual receipts" criterion differs in important respects from the SBA's. For example, the SBA counts all of a person's receipts in calculating annual receipts, while the proposed rule counted only receipts resulting from a market-related

[1] The Bureau recently issued its final rule defining larger participants in the consumer reporting market (77 *Fed. Reg.* 42,873 (July 20, 2012)).

[2] 76 *Fed. Reg.* 63,513.

activity. Because of these differences, an entity's receipts as calculated under the SBA regulation may be greater than its receipts for purposes of the proposed rule.

3. **The Bnreau has indicated that it will not conduct the SBREFA panels required by Dodd-Frank § 1100G for rules that were proposed, but not final, at any time prior to July 21, 2011, and that have transferred to the Bureau. Please provide us with a comprehensive list of every proposed rule that transferred to the Bureau on Jnly 21, 2011 and indicate whether, for each rule, the Bureau will be conducting a SBREFA panel before the rule is finalized.**

Three *Dodd-Frank Act* rulemakings with specific deadlines transferred to the Bureau after a proposal had been issued by another agency. Those rulemakings concerned foreign remittances by consumers, a requirement that mortgage lenders assess borrowers' ability to repay, and escrow requirements. In all three cases, the Bureau has not conducted a SBREFA panel, but has had additional dialogue with small entities and related trade associations and has published or will publish a final regulatory flexibility analysis.

The Bureau also inherited pending proposals by the Federal Reserve Board concerning regulation and disclosures for closed-end mortgages and for open-end home equity lines of credit under the *Truth in Lending Act* (TILA) and by the Federal Trade Commission concerning certain notices to consumers regarding their rights under the Fair Credit Reporting Act. Significant portions of the Board's proposals concerning closed-end mortgage credit were addressed in the SBREFA panel and proposal on merging disclosure forms under TILA and the Real Estate Settlement Procedures Act. The Bureau has not yet decided when and how it will proceed with the other proposals; for instance, it might choose to withdraw or issue a new proposal rather than to proceed with the pending rulemaking. The Bureau will make decisions about SBREFA and outreach to small businesses generally as part of that larger process.

**Committee on Small Business**
**"Know Before You Regulate: The Impact of CFPB Regulations on Small Business"**
**August 1, 2012**
**Questions for the Record**

**1. On July 9, 2012, the CFPB posted the "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" proposed rule (the TILA-RESPA Rule) on its website. However, the TILA-RESPA Rule still has not been published in the Federal Register, as required under 5 U.S.C. § 553(b). The TILA-RESPA Rule became available to view on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 but is not scheduled to be published in the Federal Register until August 23, 2012.**

**a. On what date did CFPB transmit the TILA-RESPA Rule to the Office of Federal Register for publication?**

The Bureau transmitted the TILA-RESPA Proposed Rule to the Office of the Federal Register (OFR) on Monday, July 9$^{th}$, 2012.

**b. The version of the TILA-RESPA Rule posted on CFPB's website on July 9, 2012 is 1,099 pages. The version of the TILA-RESPA Rule posted on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 is 1,096 pages. What changes have been made to the documents that account for the three page discrepancy?**

The three-page discrepancy is the result of formatting changes made following the OFR's review of the document. Several typographical errors were also corrected, but these edits did not affect the length of the document.

**c. Did the CFPB ask for the publication of the TILA-RESPA Rule to be delayed until August 23, 2012? If yes, why did the CFPB ask for publication to be delayed for an extended period of time?**

No. In a letter dated July 12, 2012, the Bureau requested immediate filing for public inspection and publication as soon as possible. (See Attachment A.) As is customary for Federal Register submissions, the OFR staff conducted a formatting review of the proposed rule and submitted their changes to the Bureau on August 2, 2012. The Bureau reviewed the changes, requested several typographical edits, and renewed the request that OFR immediately file the document for public inspection and publish it as soon as possible. The OFR placed the document on public inspection on August 6 and scheduled the document for publication on August 23.

On September 6, a Bureau notice extending the comment period for comments on the definition of the finance charge in the TILA-RESPA proposed rule to November 6, 2012 was published in the *Federal Register*.

**2. In your written testimony you stated that CFPB's procedures for the Small Business Advocacy Review (SBAR) panels have "already evolved over the course of the first three panels ... based on lessons learned from each rulemaking."**

**a. How have CFPB's procedures evolved?**

Prior to convening its first panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Bureau consulted with the agencies that have participated in prior panels: the Small Business Administration's Office of Advocacy (SBA), the Office of Management and Budget (OMB), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA). Through these consultations, we received valuable information about different approaches to conducting SBREFA panels.

The Bureau's first SBREFA panel was convened to assist the Bureau in the preparation of the TILA-RESPA Proposed Rule. For that panel, we decided that the meeting with the small entity representatives (SERs) should last for a full day to allow sufficient time for discussion of all the relevant issues, that the meeting should be conducted in private to facilitate open discussion, and that each SER should be permitted to bring a guest to the meeting to assist them. The feedback from the SERs on the meeting itself was very positive, but some SERs recommended that in the future more time be provided in advance of the meeting to review the materials and more time be provided after the meeting to submit written feedback. Accordingly, for the subsequent SBREFA panels on mortgage servicing loan originator compensation, we provided as much time before and after the meeting as possible in light of the Bureau's deadline to issue final rules to implement these Dodd-Frank Act provisions, which would otherwise take effect on January 21, 2013.

**b. What lessons have you learned from the first three SBAR panels?**

We believe that the open discussion, between the SERs themselves and with the representatives of the Bureau, SBA, and OMB, gave the SERs a better understanding of the proposed regulations, while providing the Bureau with a greater appreciation of the costs and benefits of the proposals under consideration. We also learned that including SERs who represented diverse subsets of consumers, businesses, and parts of the country enabled an open exchange of different, and sometimes conflicting, perspectives. Such robust discussion yielded comprehensive and insightful feedback.

**3. What is the CFPB's process for determining whether a SBAR panel needs to be conducted for a proposed rule?**

The Regulatory Flexibility Act (RFA), as amended by section 1100G of the Dodd-Frank Act, specifies when a SBREFA panel needs to be conducted for a proposed rule. The Bureau is not required to convene a panel for proposed rules that are subject to the RFA but that the Director certifies will not have a significant economic impact on a substantial number of small entities, such as the High-Cost Mortgage and Homeownership Counseling Amendments proposed rule

(HOEPA Proposed Rule).[1] When such certifications have been appropriate, the Bureau has explained the decision transparently by publishing detailed analyses of economic impact in the notice of proposed rule, and solicited public feedback on the Bureau's determination. For example, in the HOEPA Proposed Rule the Bureau conducted the economic impact analysis by developing an overview of the market for high-cost mortgages, determining the number and classes of affected entities, and then analyzing the impact of the various proposed provisions on the affected entities.[2] In addition, the RFA does not require a SBREFA panel in the case of rulemakings in which a notice of proposed rulemaking is not required by the Administrative Procedure Act. Finally, the Bureau is not required to convene a SBREFA panel when the rule was originally proposed by the Federal Reserve Board such as the Qualified Mortgage rule.[3]

**4. What is the CFPB's process for identifying and selecting small entity representatives (SERs) for a SBAR panel?**

By statute, the SBREFA panel focuses on the small entities that are directly subject to and must comply with the rule. The Bureau, in consultation with the SBA, selects the SERs who will meet with and provide advice and recommendations to the panel. Potential representatives for the TILA-RESPA, mortgage servicing, and loan originator compensation panels were identified through a variety of methods. We received suggestions from the SBA, trade associations and other industry groups, consumer organizations, and non-profit organizations. We also learned of interested SERs through our own outreach efforts.

**5. Why has the CFPB chosen not to make public the names of the SERs upon their selection?**

To protect the privacy of the SERs and to promote open discussion with the panel, the Bureau chose not to release the names of participating SERs to the general public before the panel completed its work. However, the Bureau included the name and company of each participating SER in the panel reports. Also, nothing prevented a SER from making her or his name public, as some chose to do.

**6. What is CFPB's process for preparing materials to provide to the SERs participating in the SBAR panel process?**

The Bureau's goal is to provide participating SERs with materials that will facilitate meaningful feedback and dialogue about the proposals under consideration. Once the Bureau has conducted sufficient outreach, research, and analysis of the issues to formulate preliminary proposals, Bureau staff have prepared an outline of the proposed rule under consideration, possible rulemaking alternatives, and the potential economic impacts on small businesses. These materials have been provided to the SERs in advance of the meeting, along with a list of issues or discussion items on which the Bureau is interested in receiving more input from small businesses during the meeting.

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[1] 77 FR 49089 (Aug. 15, 2012).

[2] *Id.* at 49140-5. A similar analysis was conducted for the Appraisals Proposed Rule, 77 FR 50390, at 50400-2 (Aug. 21, 2012).

[3] *See* 76 FR 27390 (May 11, 2011).

**7. In response to Representative Allen West's question regarding whether CFPB had provided the SERs selected for the TILA-RESPA SBAR Panel enough notice in advance of the March 6, 2012 meeting and enough time to adequately respond to the qnestions CFPB raised, you stated that "in retrospect, you know, we would have preferred to have had more time to prepare the panels. And we will in the future have more time to prepare the panels." The SERs and their trade association representatives have stated that two weeks' notice was insufficient.**

**a. How much notice (e.g., a month, six weeks, two months) will CFPB give to SERs in advauce of the panel outreach meetiug so that SERs have adequate time to make work and travel arrangements and review the regulatory proposal?**

The Bureau values the informed and thoughtful feedback provided by the SERs, and recognizes the amount of preparation that is necessary to provide such feedback. In an effort to develop the best possible process, the Bureau will provide advance notice to SERs tailored to the complexity of and circumstances surrounding each particular rulemaking. It may be appropriate to adjust the time period in response to specific circumstances, such as a statutory deadline, a request from Congress, or an urgent need to address a market issue. In all cases, the Bureau is committed to providing SERs with sufficient advance notice to make necessary work arrangements.

**b. SERs have also commented that they were unable to provide detailed information and feedback in the time frame that CFPB mandated, one week after the March 6, 2012 meeting. How much time will CFPB give SERs to provide written feedhack?**

The RFA does not require written SERs feedback as part of the SBREFA panel process. However, the Bureau welcomes such feedback. Much like the Bureau's procedure for providing advance notice, the Bureau intends to tailor the amount of time provided for written feedback to the particular rulemaking. In some cases, SERs may need more time to prepare written feedback if unforeseen issues are raised during the meeting. In other cases, a lengthy time period may be unnecessary. Notably, the Bureau extended the written feedback deadline for the loan originator compensation SBREFA panel because some SERs requested additional time.

**c. Will the CFPB prepare more detailed guidance for its rulewriters on how to comply with the Regulatory Flexibility Act (RFA) and conduct robust SBAR pauels, and will the CFPB make that guidance document public as the EPA has done?**

The Bureau has produced detailed and robust SBREFA panel materials and RFA analyses. The Bureau has created a public "Fact Sheet" on the SBREFA panel process that is provided to SERs and has been posted on the Bureau's website. As part of its commitment to transparency, the Bureau has made copies of substantive materials distributed to the small business representatives available to the public, including other small businesses, on its website at about the same time they are sent to the small business representatives.

**8. The CFPB completed the SBAR Panel Final Report (Panel Report) for the TILA-RESPA Rule on April 23, 2012. However, CFPB did not make the Panel Report public**

**until it posted the proposed rule on its website on July 9, 2012. The CFPB has stated that one of its primary missions is to make the financial products and services that consumers use more transparent.**

**a. Why did the CFPB decide not to release the Panel Report for the TILA-RESPA Rule when it was completed?**

The statute requires the Panel report be made public as part of the rulemaking record, but does not specify when the report should be released to the public. The CFPB released the TILA-RESPA report with the proposed rule in July so that the public can consider them together.

**b. In the spirit of transparency, will the CFPB make panel reports public when they are completed?**

The Bureau highly values transparency. Publicly releasing the panel report with the Proposed Rule promotes transparency. However, as panel reports must be interpreted in the context of the corresponding proposed rule, the Bureau must also consider whether releasing the panel report before the proposed rule would cause unnecessary confusion.

**9. According to the TILA-RESPA Rule, the CFPB interviewed 92 consumers and 22 industry participants between May 2011 and March 2012 to determine if they understood the form and liked the design. The SERs recommended that you test the forms on actual, real-world real estate mortgage closings before finalizing the rule.**

**a. Will the CFPB test the forms on actual real estate mortgage closings?**
**b. If not, why not?**

The Bureau is investigating the possibility of additional testing. On March 28, 2012, the Bureau published a notice for comment under the Paperwork Reduction Act in connection with potential quantitative testing of the proposed forms, specifically inviting comment on whether the information collected will have practical utility, the accuracy of the Bureau's burden hour estimates, and ways to enhance the quality of the information collected and to minimize the burden on respondents.[4] Although the Bureau received no comments in response to this notice, the Bureau continues to study whether additional testing procedures may help further improve the proposed TILA-RESPA forms. The Bureau solicited comment in the TILA-RESPA Proposed Rule regarding the impact of the proposed disclosures on actual real estate closings. The Bureau will consider this feedback in determining whether additional testing is appropriate, including testing using actual loan files or in actual closings.

**10. The initial regulatory flexibility analysis did not include economic analysis or cost estimates for several parts of the regulatory proposal.**

**a. How many Ph.D. level regulatory economists does the CFPB have on staff?**

[4] 77 FR 18793 (Mar. 28, 2012).

**b. How many regulatory economists does the CFPB have analyzing the costs and benefits of CFPB regulations?**

There are currently twelve Ph.D. level economists on staff, roughly half of whom are analyzing the costs and benefits of Bureau regulations.

**c. Please describe the process that CFPB uses to estimate the costs and impacts of proposed rules, in particular small business impacts.**

The Bureau begins the process of estimating the costs and impacts of proposed rules on small business by determining what types of small businesses, as defined by the Regulatory Flexibility Act, may be affected by the rule. As you know, whether or not a business is a "small business" for purposes of the RFA is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[5] The Bureau then determines the number of entities subject to these categories. For example, for the TILA-RESPA Proposed Rule, the Bureau determined the number of entities subject to the NAICS categories by reference to several data sources, such as the December 2010 National Credit Union Administration Call Report data and the Nationwide Mortgage Licensing System Call Report data for Q2 and Q3 of 2011.[6] The Bureau then develops cost estimates based on information collected from a variety of sources, including feedback provided to the Bureau, information learned during the SBREFA panels, and data collection efforts. For example, for the TILA-RESPA Proposed Rule, the Bureau relied on data publicly available from the Bureau of Labor Statistics to determine the average compensation for a loan officer, while relying on information submitted by settlement agents to determine how much time businesses could save by implementing the TILA-RESPA standard forms.[7] The Servicing Proposed Rule and Loan Originator Compensation Proposed Rule followed the same procedures.[8]

**d. Is the CFPB conducting its own research and attempting to estimate costs before conducting SBAR panels?**

Yes, the Bureau researches and analyzes costs before preparing the SBREFA materials and conducting the panels. For example, for the TILA-RESPA Proposed Rule, the Bureau conducted extensive outreach before conducting the SBREFA panels, which was used to inform our decisions and collect information related to costs. We spoke with small businesses, and trade associations representing small businesses many times during the year prior to convening the panels. This research was used in estimating the costs and benefits of potential regulatory approaches.

**11. Under Section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended the RFA, the CFPB is required to include in each**

[5] 5 U.S.C. 601(3). The current SBA size standards are found on SBA's Web site at http://www.sba.gov/content/table-small-business-size-standards.
[6] *See* 77 FR 51115, 51285-6 (Aug. 23, 2012).
[7] *Id* at 51288-9.
[8] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 125-6, and Truth in Lending Act; Loan Originator Compensation Proposal at 269-71.

**initial regulatory flexibility analysis "any projected increase in the cost of credit for small entities," and advice and recommendations of representatives of small businesses relating to that issue. We are concerned that CFPB's analysis of cost of credit is lacking in the mortgage disclosure rulemaking.**

**a. Can you describe how CFPB is analyzing the impacts to the costs of credit?**

The CFPB's regulatory authority is focused on financial products meant for consumers. We therefore expect that most of the CFPB's rulemakings will have no effect on small business credit. There may be a few limited exceptions.

For proposed rules subject to this RFA requirement, the Bureau has and will continue to consult with small businesses on the potential impact of the proposals under consideration on the cost of credit. This consultation may take place either as part of the SERs meeting or during separate consultation meetings convened by the Bureau that focus on small business credit issues. In addition, the Bureau collects, and will continue to collect, market-wide data related to the cost of credit. With respect to the TILA-RESPA Proposed Rule in particular, the Bureau determined that the proposal would have little to no effect on the cost of credit, and therefore would have little to no effect on the cost of credit for small businesses.[9] The lender SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes, and therefore would not be subject to the Proposed Rule.[10] The Bureau made a similar determination for the Mortgage Servicing Proposed Rule and for the Loan Originator Compensation Proposed Rule.[11] We will carefully review any comments we receive regarding potential impacts on the cost of credit for small businesses and will address these in the final rulemaking documents.

**b. Does CFPB have economists working on this type of analysis?**

Yes, the Bureau has hired and continues to hire Ph.D. economists, financial analysts, and industry experts to assist our consideration of potential impacts of Bureau regulations on the cost of credit for small entities.

**c. Is CFPB only relying on small entities to try to explain these impacts?**

In addition to the information received during the SBREFA panels, the Bureau is conducting its own research, and has sought input from industry experts and trade associations. The Bureau has also solicited public information about costs and impact, including impact on small businesses, in its proposals.

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[9] *Id.* at 51297.
[10] *Id. See also* TILA section 104(1); RESPA section 7(a)(1).
[11] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 244, *and* Truth in Lending Act; Loan Originator Compensation Proposal at 291.

**d. Will CFPB analyze the impact on the cost of credit for small entities for every rule and make that analysis public?**

The Bureau will continue to fully comply with Dodd-Frank section 1100G's requirements that the Bureau consider the impact certain rules will have on the cost of credit for small businesses, and to evaluate specific alternatives to minimize any increases in the cost of credit while accomplishing applicable statutory objectives. The Bureau will continue to include a description of these efforts in the Initial Regulatory Flexibility Analysis, as required by the statute.[12]

**12. Currently, CFPB is working on several rulemakings that are inter-related, including the Qualified Mortgage (QM) Rule, Qualified Residential Mortgage Rule, and the TILA-RESPA Rule that will impact the residential mortgage industry.**

**a. Is the CFPB considering how these rules are going to work together?**

The Bureau is carefully considering how these rules will work together. As required by the Dodd-Frank Act, the Bureau is currently working on rulemakings related to HOEPA, mortgage servicing, loan originator compensation, appraisals, qualified mortgages, and escrow accounts. In the proposals issued this summer, the Bureau stated that it regards these rulemakings as components of a larger undertaking.[13] Accordingly, the Bureau is coordinating carefully the development of these final rules. Each rulemaking will adopt new regulatory provisions to implement Dodd-Frank Act mandates. In addition, each rule may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

**b. What steps are you taking to analyze and mitigate the cumulative impact of these rules on the affected small businesses?**

We have solicited comment regarding the potential impact of these proposed rules on small businesses. We have also asked for commenters to provide us with data illustrating the impact on small businesses. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should provide us with sufficient information to analyze the impact on small businesses and adopt regulatory approaches that will serve the needs of both consumers and small businesses.

**13. Will the CFPB conduct SBAR panels for rules that are transferred from other agencies, such as the QM Rule, if the proposed rule is expected to have a significant economic impact on a substantial number of small businesses? If not, how will the CFPB ensure that it meets its analytical requirements under the RFA?**

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[12] 5 U.S.C. 603(d)(1).

[13] 77 FR 49089, 49093 (Aug. 15, 2012); 77 FR 51115, 51125 (Aug. 23, 2012).

The RFA requires that a panel be convened only for rules proposed by the Bureau, the EPA, and OSHA. In the case of the qualified mortgage rulemaking, a SBREFA panel is not required because the proposed rule was issued by the Federal Reserve Board. However, the Bureau consistently has sought the input of small financial services providers in rulemakings that affect them. For example, on June 5, 2012, the Bureau reopened the comment period to the qualified mortgage proposal to seek additional public comment on new data and information that the Bureau had received.[14] A number of small businesses and the SBA submitted comment letters during the reopened comment period. Furthermore, in connection with the qualified mortgage proposal, the Bureau has met with a variety of stakeholders, including small businesses and trade associations for small businesses, to hear their feedback and comments on the proposal, including any potential economic impacts on small businesses.

**14. On page 577 of the TILA-RESPA Rule the CFPB states that it "believes that the ongoing costs of compliance with the proposed disclosnre would likely be equal to or less than current ongoing compliance costs."**

**a. What led you to this conclusion?**

The Bureau believes that ongoing compliance costs associated with the integrated disclosures will likely be equal to or less than the compliance costs associated with current disclosure requirements. For example, the Bureau believes that the integrated disclosures will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, most small entities that participated in the SBREFA panel process for the TILA-RESPA Proposed Rule stated that the integrated forms would be easier to explain to consumers than current forms, which would lead to time savings for creditors and settlement agents. Further, information submitted to the Bureau by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. These time savings could lead to decreased compliance costs.[15]

**b. Wouldn't you need to test these forms in a real world setting to actnally validate this statement?**

As discussed above, tbe Bureau is currently evaluating whether such testing would be feasible and produce valuable information.

**15. In the TILA-RESPA rule, the CFPB estimates that the total one-time costs of revising software and systems and training employees to implement the changes to the disclosure forms is $100,100,000. However, on page 575 of the regulation, the CFPB states that, "the Bureau does not believe that adoption of the integrated Loan Estimate and Closing Disclosure would impose any direct costs on consumers.**

[14] 77 FR 33120 (June 5, 2012).
[15] 77 FR 51115, 51271 (Aug. 23, 2012).

**a. Who do you believe will pay this $100,100,000?**

This figure is an estimate of the direct costs to creditors, mortgage brokers, and settlement agents. The Bureau estimates that the integrated disclosures would result in one-time costs to revise software and compliance systems of approximately $100,100,000, which amounts to less than three dollars per origination when amortized over five years and spread across the estimated 8,000,000 mortgage originations per year.[16]

**b. Isn't it logical to assume that businesses may find it necessary to pass some costs onto consumers?**

The Bureau does not believe that adoption of the integrated disclosures would impose any direct costs on consumers. However, as noted in the TILA-RESPA Proposed Rule, consumers may bear some of the costs of the new disclosures if covered persons pass through some or all of the costs that would be imposed on them. The Bureau estimates that any increased costs to consumers per origination would be small and that, after one-time costs are absorbed, the proposal would likely reduce the cost per origination.[17]

**16. One part of the TILA-RESPA Rule may change which party, the lender or a settlement agent, is responsible for providing the Closing Disclosure form to a consumer. In analyzing the costs of the proposed rule on small business, the CFPB only analyzes the impact of the rule on lenders. No information is provided on the impact to settlement agents or mortgage brokers. Yet, settlement agents serving as SERs to the SBAR panel provided specific information to CFPB on the costs a settlement agent will incur upgrading software and training employees.**

**a. Why did the CFPB fail to assess the impact to settlement agents, which consists mainly of small businesses, and mortgage brokers?**

The Bureau proposed two alternatives for provision of the integrated Closing Disclosure. Under the first alternative, the creditor would be solely responsible for providing the disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would share this responsibility, although the creditor would retain ultimate responsibility. Mortgage brokers would not be responsible for provision of the integrated Closing Disclosure under either proposed alternative.

For purposes of the Bureau's Initial Regulatory Flexibility Analysis, the Bureau assumed that the creditor will bear the costs of revising software and compliance systems. However, the Bureau also stated its belief the costs would be similar if borne by settlement agents. The TILA-RESPA Proposed Rule requests comment on this approach to estimating costs, including whether settlement agents would incur costs that are substantially different from those incurred by creditors if they were responsible for providing the Closing Disclosure.

[16] *Id.* at 51272.
[17] *Id.*

**b. Why didn't the CFPB use the data and cost estimates provided by the settlement agents to estimate the economic impact of the TILA-RESPA Rule on settlement agents?**

The Bureau considered all available data, including data provided by settlement agents through the Small Business Review Panel process, in estimating the economic impact of the Proposed Rule. As discussed above and in the TILA-RESPA Proposed Rule, the Bureau believes that if settlement agents, rather than creditors, bore the one-time costs associated with complying with the Closing Disclosure requirements, the costs would likely be similar to the costs to creditors. Furthermore, the cost estimates provided by settlement agents informed certain recommendations of the SBREFA panel, which the Bureau then relied on in developing the proposal. For example, with respect to the costs associated with modifying the line number format, the Panel recommended that the Bureau solicit comment on whether an alternative design or numbering format would impose a lower amount of software-related costs on settlement agents.[18] The Bureau did so in the Proposed Rule.[19]

**17. Indnstry has stressed to the CFPB that they will need a significant amouut of time to implement any final TILA-RESPA Rule. Small businesses have told CFPB that they will need 12 to 18 months to upgrade software and systems and train their employees.**

**a. Will CFPB provide a compliance period of 12 to 18 months to allow small businesses to come into compliance with the new regulation?**

Because the TILA-RESPA final rule will provide important benefits to consumers, the Bureau wishes to make the rule effective as soon as possible. However, the Bureau understands that the final rule will require small businesses to make extensive revisions to their software and to retrain their staff. We have solicited comment, both generally and in relation to specific proposed regulatory provisions, regarding the impact of such a rule on small businesses. We have also asked for commenters to provide us with data illustrating the small business impact. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should allow us to collect a significant amount of data, analyze the impact on small businesses, and explore approaches finely tuned to address the needs of small businesses.

The Bureau is aware of the software-related challenges experienced by small businesses in the past. We are committed to minimizing the disruption and delays related to training and system upgrades. The Bureau has not only solicited comment on the appropriate implementation period, but has solicited comment on whether small businesses need a different implementation period than the rest of industry. We also took the additional step of consulting directly with small business software providers. We frequently discussed disclosure issues with software providers during the development of the TILA-RESPA forms, communicated with them regarding potential regulatory issues, and will continue coordinating with them to facilitate the

[18] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements*, at 28-29 (Apr. 23, 2012), available at *http:// files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.*

[19] 77 FR 51115, 51240 (Aug. 23, 2012).

implementation process. We are confident that small businesses will have the time and support to come into compliance with the new regulations.

**18. The design of the new Closing Disclosure eliminates the current line numbering that exists on settlement statements. According to the SBAR Panel Final Report, several SERs wrote that "changes of location or numerical reference cause significant system programming issues and are one of the largest drivers of software development costs and implementation time." The CFPB stated in the TILA-RESPA Rule that it was soliciting comment on whether an alternative design or numbering format will lower the costs of the software upgrades.**

**a. What was the reasoning behind the decision to remove the line numbers?**

Both consumer and industry participants at the Bureau's testing stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit and underlying real estate transactions. However, consumer participants at the Bureau's testing appeared overwhelmed by the three and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that numbering system. The Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. The Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants, with some industry participants preferring it over the system of the current RESPA settlement statement. Accordingly, the proposed disclosure format contains a two-digit line numbering system that is different than the current RESPA settlement statement.

**b. Did the CFPB contact any software providers to learn about potential programming issues that might be caused by removing the line numbering that currently exists and the costs involved with the redesigning of the forms?**

The Bureau contacted software providers during the preparation of the proposed rule and is aware of the potential programming issues that might be caused by changing the current line numbering. However, given the results of the Bureau's testing, the Bureau thought it appropriate to acquire more specific information on this topic to enhance the Bureau's ability to make an informed decision. Thus, the proposal requested comment on the impact of the line number changes given the rest of the changes in the integrated closing disclosure contemplated by this proposal.

**c. If not, why didn't the CFPB try to learn about programming issues from software providers?**

Not applicable. Please see above.

**19. The TILA-RESPA Rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The CFPB is proposing that Loan**

**Estimates be retained electronically for 3 years and Closing Disclosures be retained for 5 years. This is electronic data retention requirement is not required under TILA, the RESPA, or the Dodd- Frank Act. The CFPB acknowledges that "requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic systems or use vendor software." Small businesses are concerned that this provision will be unduly burdensome.**

**a. Why is CFPB proposing this requirement if it is not required under any of the related statutes?**

The Bureau believes that the proposed data retention requirement will ensure that records associated with the integrated disclosures are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA. This proposed regulation may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records in a standard format.[20] Furthermore, a prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, a standardized electronic format that reduces industry burden may, in the long run, reduce costs to consumers as well.[21]

**b. Why did CFPB fail to estimate compliance costs for this requirement?**

As noted above, the Bureau conducted extensive outreach regarding the degree to which small creditors use electronic systems. The Bureau was informed by small businesses, trade associations, and software providers alike that, given the complexity of modern underwriting, investor requirements, and State and Federal legal requirements, all creditors use electronic systems for some aspect of the mortgage loan process. Thus, the Bureau is unaware of any creditors that do not currently have such electronic systems or use vendor software. However, the Bureau solicited comment on this issue. If the Bureau receives feedback indicating that paper-based creditors do exist, such feedback would be reflected in the Final Regulatory Flexibility Analysis, should the Bureau decide to adopt the proposed requirement in the final rule.

**c. How does this requirement improve consumer's understanding of the mortgage disclosure forms?**

The proposed requirement would help the Bureau and other regulators monitor compliance to ensure that the disclosures provided are reliable. Ensuring reliability will improve consumers' ability to understand their transaction and compare mortgage loans, as well as preventing tactics, such as bait-and-switch, designed to confuse consumers.

**20. Many small businesses that are trying to navigate your website find it confusing. SBAR panel materials are difficult to locate because the materials on SBAR panels are on**

[20] *Id.* at 51186.
[21] *Id.* at 51276.

**different pages on the CFPB website and until very recently, there was no search box on the CFPB website.**

**a. Are you aware of how the website is structured and of these concerns?**

Yes, the Bureau is aware of these concerns.

**b. Will the CFPB improve its website so that small businesses can easily find the information on rules subject to the SBAR panel process?**

Since the Bureau launched consumerfinance.gov more than year and a half ago, we have heard from all of the site's audiences – consumers, small businesses, and many more – about features that are working well and ones that could be improved. In that time, the Bureau has refreshed the design of its homepage and navigation structure twice to respond to those concerns and make it easier for all members of the public to access the information and resources they need. For example, we have recently added a search box with natural language search functionality. We believe the website will always be a work in progress – constantly evolving to the needs of the people the Bureau serves – and will continue making improvements in the months and years ahead.

**"Private Student Loans: Providing Flexibility and Opportunity to Borrowers?"**
**July 24, 2012**

**<u>Questions for Mr. Rohit Chopra, Student Loan Ombudsman, Consumer Financial Protection Bureau, from Senator Reed:</u>**

1) *Are we seeing some signs of renewed growth in volume for private student loans? What steps should we take now to prevent a return to the lax underwriting and predatory lending that we saw between 2001 and 2008?*

Since 2008, origination of private student loans has grown, but has not reached the level seen prior to the financial crisis. In the Report on Private Student Loans submitted by the Director of the Consumer Financial Protection Bureau (CFPB) and the Secretary of Education, CFPB Director Richard Cordray and Education Secretary Arne Duncan each recommended that Congress consider requiring all private student loans to be "certified" by the school's financial aid office. This step could help students to avoid overborrowing and help to ensure that schools have the opportunity to counsel students about potentially lower-cost loan options before students take out private student loans.

2) *Are you seeing patterns of complaints from borrowers? What are some of the more frequent complaints? How have they been resolved?*

Since launching our consumer response function for student loan complaints in March of this year, we've received over 2,500 complaints from borrowers experiencing difficulties with their private student loans. Prior to the establishment of the CFPB and the ombudsman function for private student loans, there was no single point of contact for consumers to file complaints about private student loans.

The most notable subset of these complaints involves borrowers seeking loan modifications due to difficulty securing adequate employment. A significant number of borrowers are experiencing general servicing problems, ranging from billing disputes and lost paperwork to difficulties obtaining alternative payment plans advertised by lenders and servicers.

We are pleased that many of these complaints have been favorably resolved by lenders and servicers. Borrowers have been able to enroll in new payment plans and have received refunds for errors by lenders and servicers. Pursuant to Section 1035 of the Dodd-Frank Act, we will provide a report to Congress later this year providing further details on the student loan complaints we have received.

3) *In the private student loan report that the CFPB and the Department of Education submitted to Congress last week, it was noted that in the wake of the student loan boom and bust there is more than $8 billion in defaulted private student loans. What steps can lenders take to assist borrowers who are in default on their private student loans? Are there examples of lenders that have made significant efforts in this regard?*

Unlike many other consumer financial products, such as auto loans and mortgages, student loans are not secured by collateral and very difficult to restructure in bankruptcy. These attributes might reduce the incentive of lenders to employ typical loss mitigation interventions. It is also very difficult to restructure private student loans in bankruptcy proceedings, further diminishing lenders' incentives to offer loan modifications.

To our knowledge, there have not been examples of successful large-scale efforts by lenders to modify private student loans in default. Generally speaking, defaulted loans are charged off and lenders often take legal action or utilize third-party debt collectors to make recoveries.

**"Empowering and Protecting Servicemembers, Veterans and their Families in the Consumer Financial Marketplace: A Status Update"**
**June 26, 2012**

**Questions for Ms. Hollister K. Petraeus, Assistant Director for Servicemember Affairs, Consumer Financial Protection Bureau, from Senator Bennet:**

*In your written testimony, you mentioned Executive Order 13607, which creates certain requirements for schools to support the unique needs of service members and veterans. It's my understanding that the Order also created a complaint system for service members.*

*A young enlisted soldier from Ft. Carson recently contacted my office to discuss some of his challenges that arose while he was enrolled in an-online class at a for-profit college. While he was in Afghanistan, the soldier asked the school to re-schedule one of his requirements because he was sent on a two-week mission in a remote part of the country. The school, however, declined his request, failed him for not handing in work on time, and billed him for $1,000. His mission was to support the Navy SEALs who conducted a raid on the Bin Laden compound. The school also failed several soldiers for not handing in their work on time.*

*Would the Executive Order have addressed this issue? If not, what steps can we take to address such conduct? What remedies would a service member typically have under such circumstances?*

On April 27, 2012, the President signed Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members" ("Executive Order") . These principles were developed to strengthen consumer protections for our service members, veterans, and their families.

Institutions approved to receive funding from the Post 9/11 GI Bill programs have been strongly encouraged to commit to the Principles of Excellence outlined in the Executive Order. It is our understanding that the Department of Defense is working with institutions approved to receive funding from the military Tuition Assistance and MyCAA programs to enter into new agreements where the institutions agree to the principles.

Section 2(e) of the Executive Order generally provides that, to the extent permitted by law, educational institutions receiving funding pursuant to Federal military and veterans educational benefits should:

> (e) allow service members and reservists to be readmitted to a program if they are temporarily unable to attend class or have to suspend their studies due to service requirements, and <u>take additional steps to accommodate short absences due to service obligations</u>, provided that satisfactory academic progress is being made by the service members and reservists prior to suspending their studies;

Accordingly, institutions that agree to comply with the Principles of Excellence are expected to "take additional steps to accommodate short absences due to service obligations." Generally speaking, I would find it hard to understand how a school that denies a forward deployed servicemember a simple accommodation, like rescheduling an assignment, would be in compliance with this principle.

In addition, on July 13, 2012, the Department of Education issued additional guidance (GEN-12-10) to post-secondary institutions on implementation of the Executive Order. The guidance was provided to assist institutions with understanding how to best comply with the Executive Order. The guidance outlines in detail for post-secondary institutions that agree to comply with the principles in the Executive Order readmission and refund policy expectations with respect to service members, reservists and/or their family members who are generally unable to attend classes or must otherwise suspend their studies due to service obligations.

**Questions for Ms. Hollister K. Petraeus, Assistant Director for Servicemember Affairs, Consumer Financial Protection Bureau, from Senator Hagan:**

*Ms. Petraeus, Can you discuss the status of the CFPB's Consumer Advisory Board (the "Board")? How will the Board enhance and improve focus on the military community and its financing needs?*

On September 12, 2012, the Bureau announced the appointment of 25 consumer experts from outside the federal government to its newly-formed Consumer Advisory Board which will provide advice to CFPB leadership on a broad range of consumer financial issues and emerging market trends.

As outlined in Section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB's Consumer Advisory Board (the "Board") will "advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws" and "provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information."

On February 23, 2012, the CFPB published in the Federal Register a notice outlining the functions of the Board and soliciting nominations for members to serve on the Board.

The newly appointed Board members include experts in consumer protection, financial services, community development, fair lending, civil rights, and consumer financial products or services. They also represent depository institutions that primarily serve underserved communities, and they represent communities that have been significantly impacted by higher-priced mortgage loans.

The first meeting of the Consumer Advisory Board will take place Sept. 27, 2012 and Sept. 28, 2012 in St. Louis, MO. By statute, the Board will meet no less than twice per year. Members will have staggered three-year terms.

In meeting this statutory objective, the Board will also enhance and improve focus on the military community and its financing needs by engaging members who represent a diversity of expertise and viewpoints in discussions of the consumer financial products or services industry, including the unique needs of military servicemembers. Further, the Board will identify and assess the impact of new, emerging and changing products, practices, or services on servicemembers, amongst other consumers, during its discussions. The Bureau looks forward to receiving information, analysis and recommendations from the Board that will speak to the unique perspectives and experiences of the military community.

Questions for the Record for Mr. Richard Cordray, CFPB
Financial Services Committee Hearing
"The Semi-Annual Report of the Consumer Financial Protection Bureau"
September 20, 2012

Chairman Spencer Bachus

1. **On other occasions when you have testified before Congress, you have heard a great deal about the concerns small bnsinesses have about the costs of complying with new CFPB rules. In a nod to those concerns, the remittance transfer rule recently issued by the CFPB contains an exemption for institntions that conduct 100 or fewer remittance transfers per year. In the CFPB's press release on the final rule, you commented that "[w]e recognize that in regnlations, one size does not necessarily fit all." Will this recognition be reflected in fntnre CFPB rnlemaking through thresholds, exemptions or other approaches that will ease the burden on small businesses?**

The Bureau is currently exploring a variety of methods for reducing the burden on small businesses. In some cases, the Bureau is considering using regulatory thresholds and exemptions similar to those adopted in its remittances rulemaking. For example, in the proposed mortgage servicing rules, the Bureau proposed an exemption from the periodic mortgage statement requirements for small mortgage servicers that serviced 1,000 or fewer mortgage loans where the servicer services only those loans which it (or an affiliate) owns or originated. The Bureau has requested comment regarding whether that threshold should be increased and whether a small mortgage servicer exemption should apply to other aspects of the proposed mortgage servicing rules. Similarly, in the TILA-RESPA mortgage disclosure integration proposal, the Bureau solicited comment on an exemption for small creditors from the requirement to retain disclosure data in an electronic, machine-readable format.

The Bureau is also seeking to reduce the burden on all affected businesses by providing clear and thorough guidance on how to comply with its rules, which will save time, energy, and costs for industry. For example, in response to requests from industry, the Bureau's TILA-RESPA proposal includes extensive guidance, including samples of completed forms for a variety of different types of mortgage loans.

Finally, the Bureau is seeking to reduce burden by supporting compliance efforts after its rules are finalized. For example, Bureau staff recently presented a webinar on the new remittance requirements attended hy over three thousand industry representatives. We have also released a small business compliance gnide for the remittance rule, and our staff continues to answer guidance questions received from institutions across the country. We plan similar efforts for the Dodd-Frank Act mortgage rulemakings.

2. **At the same time that the CFPB announced the settlement of its enforcement actiou against Capital One, it also released a bulletin providing general gnidance on marketing credit card add-on products. While focused on credit card add-on products, the bulletin is also intended to serve as guidance for the marketing of similar products offered in connection with other forms of credit or deposit services. While it is useful**

**for the CFPB to make its expectations known to the industry, some see the CFPB's issuance of the bulletin as de facto rulemaking.**

a. **Does this bulletin portend a trend by the CFPB to use its enforcement authority as a method for imposing industry-wide standards?**
b. **Shouldn't industry-wide standards instead be established throngh the rulemaking process required by Dodd-Frank and the Administrative Procedure Act?**

Any enforcement action is based on the facts and circumstances of the situation. However, complaints received by the Bureau indicate – and the Bureau's supervisory experience confirms – that consumers have been misled by the marketing and sales practices associated with add-on products offered by various institutions. Such practices violate current law. Consequently, the Bureau issued a compliance bulletin as a means of alerting the industry to existing compliance requirements under existing laws and regulations and providing insight into Bureau expectations. Notably, the bulletin does not impose any new legal requirements. Going forward, the Bureau will continue to use the rulemaking process for adopting new requirements, while providing prompt guidance through bulletins and other methods regarding compliance with existing requirements.

3. **Many of the Title XIV rules are reqnired to be final in January 2013, hnt are only just now just heing proposed. Given that the CFPB will have to sort through the mass of comment letters sent by industry, is the January 2013 deadline too aggressive? Do you need more time to do the job right?**

The Bureau is currently in the process of reviewing the comments on the proposed rules and performing additional analysis in order to prepare the final rules. The Bureau is committed to meeting the deadlines established by Congress and plans to issue the required rules by January 21, 2013.

4. **The CFPB's new closing rule requires that lenders give consumers their closing documents at least three business days before the consumer closes on the loau. The last time this was tried, iu the 1970s, it proved to be extremely disruptive to the very borrowers it was meant to help. Given that this provision could cause delays in closing a mortgage loan, it is not far-fetched to reason that it conld ultimately prompt consumers to pay higher fees or lose their deposit and rate lock.**

a. **Is tbe CFPB concerned that requiring three days between disclosure and settlement – and possibly an additional three days if there are changes to the deal – conld have disrnptive results for consnmers?**
h. **Would the CFPB consider giving consumers the right to opt out of this requirement if the consumer would be financially hurt by waiting three additional business days?**

The Bureau has proposed to require that consumers receive the combined Closing Disclosure three business days before closing, subject to limited exceptions (as discussed below). As the question notes, this is not a new idea. In a 1998 report to Congress, the Federal Reserve Board and HUD recommended that "three days prior to closing, creditors be required to redisclose significant changes in the APR or other material disclosures and provide an accurate copy of the RESPA settlement statement. Consumers would receive final cost disclosures prior to closing (rather than at closing, the current practice) and would then be able to study the disclosures in an unpressured environment." In 2008, Congress amended TILA to require that consumers generally receive revised statements of cost for certain mortgages no later than three business days before closing. In 2009, settlement industry representatives advocated amending RESPA to provide consumers with three business days to review loan documents "so that circumstances don't pressure [consumers] into agreeing to a bad loan or excessive closing costs."[1] In light of this history and advances in the mortgage settlement process, we believe that it is time to reexamine the ability of lenders and settlement agents to provide consumers with important loan information in advance of closing.

The Bureau's proposed rule does, however, permit a consumer to waive the timing requirement in the event of a bona fide personal financial emergency. This exception serves an important purpose: consumers should be able to waive the protection afforded by the waiting period if the consumer faces a financial emergency. The Bureau specifically sought comment on the nature of waivers based on bona fide personal financial emergencies in the proposal. The Bureau will analyze the comments on this issue and determine whether modifications to this waiver are appropriate.

5. **The proposed TILA-RESPA rule provides that the new form may contain lines for both appraisal and management fees, thereby breaking out what has traditionally been one entry into two entries.**

    a. **Why did the Bureau decide to separate these lines?**
    b. **Will this proposed change benefit consumers? How?**
    c. **Will these lines be subject to quantitative testing?**

Section 1475 of the Dodd-Frank Act amended section 4(c) of RESPA to permit the separation of the fees paid by the consumer to the appraisal management company and the fee received by the appraiser on the disclosures required by RESPA. Consistent with this amendment, the Bureau proposed to permit, but not require, creditors to disclose the cost of the appraisal on the integrated TILA-RESPA disclosures in this manner. The Bureau qualitatively tested prototype disclosures both with and without this optional disclosure. The Bureau has not yet determined whether to focus its quantitative testing on this issue.

6. **Recent news reports indicate that the CFPB has advertised to recruit investigators whose activities are intended to inform the CFPB's enforcement division about consumer experiences with different financial products and services. This has led some to speculate that the CFPB may be planning to use "mystery shoppers." Mystery**

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[1] *See* American Land Title Association, *ALTA Supports Pro-Consumer Mortgage Bill*, December 8, 2009 Press Release, available at http://www.alta.org/news/news.cfm?newsID=9714. *See also* Borrowers' Right to Inspect Closing Documents Act of 2009, H.R. 4229, 111th Cong. (Dec. 8, 2009).

**shoppers have commonly been nsed in the past to identify weaknesses in fair lending compliance, particularly with regard to pre-application discrimination.**

a. **Will the CFPB similarly use mystery shoppers to target fair lending or other specific compliance weaknesses?**
b. **Will the CFPB use mystery shoppers in connection with its authority to prohibit "unfair, deceptive or abusive" acts or practices?**
c. **If the CFPB is considering the use of "mystery shoppers," will it offer an opportuuity for public comment on its plans?**

In its Office of Enforcement, the CFPB intends to hire investigators to further that office's mission, which is to ensure compliance with the federal consumer financial laws and address violations of those laws. We anticipate that these employees will use a variety of investigative techniques to inform our Enforcement Office about what consumers may experience with different financial products or services. The Bureau is considering "mystery shopping" as an investigative technique, and to perform research and collect information that may inform other areas of its work.

Mystery shopping may be a useful investigative tool when looking at deceptive marketing and other practices not captured in company policies and procedures. CFPB's enforcement jurisdiction extends to entities such as online and offshore fraudsters, loan modification and debt settlement scammers, debt collectors, payday, auto and student lenders, and other entities where deceptive marketing is a critical concern. Tools like mystery shopping could be particularly important in investigations of entities over which we have enforcement jurisdiction, but no supervisory authority. Mystery shopping is often used by both government and private industry -- including the banking industry -- to monitor compliance with the law as well as consumer satisfaction.

7. **The CFPB has filed six amicns briefs over the past year, four that were in Truth in Lending Act cases and two that were in Fair Debt Collection Practices Act cases. A recent blog posting on the CFPB's website states that these amicus briefs "help ensure tbat consnmer financial protection statutes and regulations are correctly and cousistently interpreted hy the courts." Critics have pointed out that the CFPB's approach to filing amicus briefs stands in stark contrast to the approach taken by the Fed when it implemented federal consnmer financial protection statutes. When the Fed felt the conrts were incorrectly interpreting the statute in question, the Fed would generally address the issue by proposing revisious to the implementing regulatiou or official staff commentary rather than by submitting an amicus brief.**

    a. **Why is CFPB taking a different approach to snbmitting amicus briefs?**
    b. **Has the Bureau received reqnests from industry to submit briefs advocating against the position taken by a consumer?**
    c. **How does the CFPB decide when it is appropriate to submit a brief?**

    The CFPB has a number of tools at its disposal to assist the courts, consumers, and regulated entities in the interpretation of Federal consumer financial laws and regulations. These tools include, among other things, the ability to adopt and amend Bureau regulations, issue official staff commentary, release supervisory bulletins, and file amicus briefs. The Bureau plans to use each of these tools, and others, in appropriate circumstances. The Bureau uses amicus briefs to assist the courts in their interpretation of statutes and regulations under the Bureau's jurisdiction in the same way that other governmental agencies have done in private litigation involving questions of law under their jurisdiction. For example, the Board of Governors of the Federal Reserve has in the past filed amicus briefs in private litigation, *see, e.g.*, *Shaner v. Chase Bank U.S.A.*, No. 09-1157 (1st Cir.) (available at 2009 WL 6841351); *Aronson v. Peoples Nat'l Gas Co.*, No. 99-3000 (3d Cir.) (available at 1999 WL 33631856), as have other prudential regulators (*see, e.g.*, list of amicus briefs of the Office of the Comptroller of the Currency at http://www.occ.gov/topics/laws-regulations/litigation/occ-briefs.html). Indeed, in some cases, the courts have specifically requested the Bureau (and other federal agencies) to file an amicus brief to assist the courts' review.

In determining whether to file an amicus brief in a particular case, the Bureau considers, among other factors, whether the case requires the court to interpret a provision of Federal consumer financial law or an implementing regulation under the Bureau's jurisdiction; whether the question is actively being litigated in multiple courts; whether courts have divided over the issue being litigated; whether the court's decision will have substantial precedential impact; and whether, in the circumstances, the court would welcome an amicus brief from the Bureau as the best means for communicating the Bureau's views. The Bureau also regularly consults with both parties to litigation in which it is considering filing an amicus brief.

In August 2012, the Bureau launched a web site (see www.consumerfinance.gov/amicus) to provide information and solicit public input on its amicus program. Among other outreach and transparency efforts, Bureau officials held a series of roundtables with industry associations, consumer groups, and representatives of state and local governments to discuss the program in October 2012. As a result, the Bureau has received a number of requests for amicus involvement in litigation. The Bureau does not segregate requests based on whether the request is from a regulated entity, industry association, consumer, or governmental entity, but rather looks at the legal issues presented by each request independently to see whether an amicus brief is appropriate. The Bureau welcomes requests for amicus briefs from any interested party and is committed to reviewing each request on the merits.

8. **Between July and October, the CFPB brought separate enforcement actions against three major credit card issuers for illegal and deceptive practices. Collectively, the companies must pay $46.1 million in fines, which is required to be placed in the Victim's Relief Fund. Dodd-Frank stipulates that these funds are to be used for payments to victims of wrongful activity, but there is no requirement that the proceeds of a civil penalty must be paid to victims of the specific wrongful activity for which the penalty was imposed. How will the CFPB distribute these particular penalties?**

In the Dodd-Frank Act, Congress authorized the Bureau to use civil penalties only for payments to victims, and, in certain circumstances, consumer education and financial literacy programs. In particular, § 1017(d)(2) provides:

> *Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.*

The Bureau has made available on its website an overview of the Civil Penalty Fund: http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_factsheet.pdf. As that document notes, the Bureau has created a Civil Penalty Fund Governance Board, which is responsible for ensuring that the Civil Penalty Fund is administered in a manner that is consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act. In addition, the Civil Penalty Fund Governance Board is responsible for developing policies and procedures, including appropriate internal controls, to ensure that money deposited in the Civil Penalty Fund is distributed in a manner that:

- Supports the Bureau's mission, responsibilities, policies, and priorities;
- Complies with the Dodd-Frank Act and all other applicable laws and regulations, as well as internal CFPB policies and procedures and legal opinions of the CFPB's Office of General Counsel;
- Protects against waste, fraud, and abuse;
- Provides appropriate transparency regarding the use of CPF monies, including the manner of distribution, any associated administrative expenses, and, where applicable, the mechanism for identifying individual victims;
- Ensures appropriate and robust oversight of contractors; and
- Enhances program efficiency through regular operational analyses and development of appropriate performance metrics.

The Bureau has also posted the criteria it will use in making available Civil Penalty Fund monies for Consumer Education and Financial Literacy programs: http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_criteria.pdf. The Bureau will use the federal procurement process for these programs.

Questions for the Record for Mr. Richard Cordray, CFPB
Financial Services Committee Hearing
"The Semi-Annual Report of the Consumer Financial Protection Bureau"
September 20, 2012

Randy Neugebauer

1. **The CFPB recently released a draft rule for servicing reforms, including changes to force-placed insurance. Did the CFPB research the impact of the proposed rule on underwriting practices for homeowners insurance? Are you aware that the risk profile for a home is substantially different once a homeowner goes into default or foreclosure? Did you do any cost benefit analysis of the proposed rule on the homeowners insurance market?**

Section 1463 of the Dodd-Frank Act amended Section 6 of the Real Estate Settlement Procedures Act to impose requirements before a lender can impose a charge for force-placed insurance on a borrower. Force-placed insurance is a different type of insurance than a standard homeowners insurance policy. Force-placed insurance is generally substantially more expensive than a homeowner insurance policy that a borrower could purchase. It also generally provides less protection against loss than insurance that a borrower could purchase. These differences exist because a force-placed insurance policy is not an underwritten insurance product and properties subject to force-placed insurance generally present different risks, including a higher likelihood that such properties may be in the foreclosure process or vacant.

The Bureau undertook substantial research regarding property insurance, including with respect to force-placed insurance, homeowners insurance, and flood insurance, in connection with proposing rules to implement the protections in the Dodd-Frank Act with respect to force-placed insurance. As set forth in the proposal, and as required by the Dodd-Frank Act, servicers would not be permitted to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided required notices. One notice to the borrower would be required at least 45 days before charging for forced-place insurance coverage, and a second notice would be required no earlier than 30 days after the first notice. The proposal contains model forms that servicers could use. If a borrower provides proof of hazard insurance coverage, then the servicer would be required to cancel any force-placed insurance policy and refund any premiums paid for periods in which the borrower's policy was in place. In addition, if a servicer makes payments for hazard insurance from a borrower's escrow account, a servicer would be required to continue those payments rather than force-placing a separate policy, even if there is insufficient money in the escrow account. The rule would also provide that charges related to force-placed insurance (other than those subject to State regulation as the business of insurance or authorized by Federal law for flood insurance) must relate to a service that was actually performed. Additionally, such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

These protections are designed to notify borrowers about the risks and costs of force-placed insurance and are designed to ensure that borrowers have the opportunity to obtain a homeowners insurance policy before a charge is imposed for force-placed insurance. The

Bureau has no reason to believe that these protections with respect to force-placed insurance will impose costs on the homeowners insurance market, because force-placed insurance and homeowners insurance are different types of products. We have received public comments on the proposed rules, including with respect to the provisions relating to force-placed insurance, and are carefully considering those comments in connection with finalizing the force-placed insurance rules.

Questions for the Record from
Rep. Blaine Luetkemeyer (MO-9)
Committee on Financial Services
U.S. House of Representatives

Hearing held on September 20, 2012, entitled
"The Semi-Annual Report of the Consumer Financial Protection Bureau"

Witness: The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau

1. **During your testimony before the Committee, you responded to a question I asked about a provider's liability when a sender gives an incorrect account number that if it is determined that the sender gave incorrect information, a provider can "work this out" with the consumer. However, isn't it true that the rule requires a provider to refund or resend the entire principal amount in the event funds go to the wrong account due to sender error? Is this what you mean by "working things out"? Also, setting aside the issue of whether you think this concern is overstated, do you think this approach is fair?**

Section 1005.33(c) of the rule requires a remittance transfer provider to refund or resend a transfer that was sent to the wrong account. As noted in the Bureau's recent industry compliance webinar, however, we agree with some of the concerns that have been expressed about this part of the rule when a consumer provides incorrect account or routing information. In those circumstances, though we think the provider should be responsible for trying to remedy the situation. If the money was properly transmitted in accordance with the sender's instructions and cannot be recovered, we share concerns about liability resting on the provider. We expect to take action shortly to address this issue.

2. **Dodd-Frank doesn't require that any foreign taxes be disclosed to people sending money overseas, but your remittance transfer rule makes this a requirement. You have charged that providers can estimate foreign taxes. The only estimates that are permitted are when a tax rate must be applied to a transfer amount that has been estimated. Is it correct that providers must still know all the applicable taxes in all the countries that they send transfer to as well as the exemptions and exclusions that apply to those taxes? In your discussions with the industry, has any entity said it will be able to comply with this requirement? Are you aware of any service or technology solutions available to institutions to help them make these disclosures?**

Section 919(a)(2)(A)(i) of the Electronic Fund Transfer Act requires a remittance transfer provider to disclose the amount to be received by the designated recipient. The Bureau believes that the plain language of the statute requires providers to disclose all fees and taxes specifically related to the remittance transfer, regardless of the entity that charges or collects them, as these elements have a direct impact on the amount received by the designated recipient. Taxes may be estimated when the tax is based on an estimated amount (such as a percentage of the amount of foreign currency). Generally speaking, the statute provided for limited scenarios in which the Bureau could permit providers to estimate amounts that are required to be disclosed.

While some providers have expressed confidence about their ability to comply with the rule when it takes effect, we realize compliance with this requirement may be difficult for some providers and in certain remittance corridors. To the extent that existing open networks will be able to accommodate this part of the rule, we understand that work is ongoing. Furthermore, we understand that many providers are working diligently with their business partners, or are exploring alternative business models, to come into compliance by the effective date. Separately, the Bureau is considering whether we can facilitate industry efforts to figure out the correct tax information.

3. **Section 1073 of Dodd-Frank specifically directed the Federal Reserve and Department of the Treasury "to expand the use of the automated clearinghouse system ... for remittance transfers to foreign countries" and required biennial reports to Congress on the status of such efforts. How did you ensure that this regulation reflects the directive to expand the use of the ACH Network? Can you provide us with examples where the regulation provides for the flexibility necessary for the operation of an open network like the ACH Network?**

In drafting the remittance rule, the Bureau carefully considered the ACH system and its role in the remittance transfer markets. Section 1073(a) of the Dodd-Frank Act requires specific consumer disclosures and includes only limited circumstances where estimates may be provided. Section 1073(a) applies these requirements to open network transfers, such as those sent through the ACH system as required by Section 1073(a).. Operating within those constraints, the Bureau adopted several provisions in the final rule that provide flexibility for, or are otherwise accommodating toward, ACH transfers. For example, in the final rule, the Bureau reduced the time period for cancelling a transfer from one business day, which was proposed by the Federal Reserve Board, to thirty minutes. In adopting the shorter period, the Bureau noted that ACH transfers generally cannot be cancelled once the payment order has been accepted by the sending institution; thus, a cancellation period of one business day could prevent a sender from sending a remittance transfer quickly. Relatedly, the final rule allows providers to use combined disclosures (rather than separate pre-payment disclosures and receipts) to facilitate compliance with the rule. In monitoring the implementation of the remittance rule, the Bureau will continue to consider the impact of the rule on the use of the ACH network.

4. **Does the CFPB have a view on peer-to-peer lending, crowdfunding and other new sources of capital for micro-businesses?**

The Bureau has not had occasion to evaluate these new forms of financing, but in general, the laws that the Bureau administers and enforces relate primarily to financial products and services offered to consumers and not to businesses..

5. **The FDIC recently released a new study showing more than one in four U.S. households are unbanked or underbanked. Tens of millions of consumers have ongoing, often critical, needs for credit but they have limited credit options. Please tell us what specific actions you believe can be taken by Congress and by the CFPB to help solve this critical credit access problem?**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to use its authority to ensure both that consumers have access to markets for consumer financial products and services and that these markets are fair, transparent, and competitive. The largest financial crisis since the Great Depression cut deeply into Americans' access to credit, but that is now improving in many markets. Credit card originations are growing at a modest pace. We are seeing growth in auto lending, and private student lending has stabilized after a rapid decline. But mortgage lending standards are still quite tight, and it appears that many creditworthy borrowers cannot buy homes. We are now working to put in place common-sense rules of the road to help set the stage for the return of a stable, fair, and transparent private mortgage market.

Credit access is also a consideration in our ongoing efforts to streamline the body of regulations we inherited. We recently proposed a rule to implement the ability-to-pay rule of the CARD Act to ensure that repayment ability is properly balanced with credit access for spouses who are not currently employed outside the home. In each of these rulemakings, we explicitly consider the potential effect of a rule on access to credit. The Dodd-Frank Act specifically requires us to do that. As we consider potential alternative approaches to exercising our authority, we consider the benefits and costs of these alternatives for consumers and providers, including what kinds of effects different alternatives would have on access to consumer financial products and services.

6. **The CFPB has broad authority to enforce the various federal consumer financial protection laws and regulations. Do you believe that these laws generally provide adequate protection for most consumers?**

Congress created the CFPB as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, in response to the worst financial crisis this country has experienced since the Great Depression. The consumer financial protection statutes and regulations entrusted to the Bureau by the Dodd-Frank Act provide vital protections to consumers who use financial products and services, and the Dodd-Frank Act itself contained important reforms to those statutes and regulations, particularly with regard to the mortgage market. Since opening our doors in July 2011, the Bureau has been committed to implementing those reforms effectively, and we are working diligently to implement the Act. As you know, the many rulemakings required by the Act raise a number of important and complex issues, and our work on many of the implementing rules is not yet complete. The Bureau is carefully monitoring the markets as they continue to change, and is committed to using the authorities granted by Congress to fulfill the mission Congress gave us. We have thus far been able to work to appropriately implement the Act without legislative adjustments.

7. **As types of credit options become more limited, many underserved consumers are being driven to borrow from costly off-shore Internet lenders who do not comply with our consumer protection laws. Does the CFPB have jurisdiction over or have the authority to stop these operators?**

The Bureau has authority over payday lenders and is in the process of looking at a wide range of issues involving payday lending, including issues related to lenders originating and servicing loans off-shore.

8. **Do you believe that the CFPB has the responsibility to consider whether its enforcement actions are detrimental to underserved consumers' access to credit? If so, how does the CFPB assure that its actions intended to protect underserved consumers do not have a detrimental effect on access to credit for those same consumers?**

The CFPB has a responsibility to enforce the laws that Congress charged us with administering in order to protect consumers and honest businesses that play by the rules. We craft our enforcement actions to maximize both deterrence to wrongdoers and benefits to consumers, one of which may be consumers' access to credit. We do so using the Bureau's informed understanding of the industries we regulate when we take enforcement actions.

9. **The makeup of CFPB boards seems to lack expertise from various sections of the financial services industry. Please explaiu in detail the process for searching for, recruiting and selecting members of CFPB's advisory boards.**

On September 12, 2012, the Bureau announced the appointment of 25 consumer experts from outside the federal government to its newly-formed Consumer Advisory Board which will provide advice to CFPB leadership on a broad range of consumer financial issues and emerging market trends. Of the 25 advisory board members, six members were nominated by the Federal Reserve Board in accordance with Section 1014(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act; nine are representatives from the financial services industry, four are academics, and the remaining six are consumer advocates. Financial services industry representatives therefore make up a significant portion of the Consumer Advisory Board. Specifically, the current Consumer Advisory Board includes representatives from:

- Two credit unions
- Two banks
- One credit card company
- One Personal Finance Software company
- Two Asset and Credit Building Loan companies
- Real Estate Broker professional association
- Financial Services Compliance and Risk Advisors
- Credit Counseling and Debt Management

Section 1014 (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides that, "in appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation." Following the guidelines provided in the statute, the CFPB published in the Federal

Register a notice outlining the functions of the Board and soliciting nominations for members to serve on the Board. In response to this call for nominations, the Bureau received over 1100 unique nominations for persons applying for membership to the advisory board. As a result, the Consumer Advisory Board is a multi-disciplinary external stakeholder board of experts on consumer protection, consumer financial products or services, community development, fair lending, civil rights, underserved communities, and communities that have been significantly impacted by higher priced mortgage loans.

As outlined in Section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB's Consumer Advisory Board (the "Board") will "advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws" and "provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information." The first meeting of the Consumer Advisory Board took place Sept. 27 and 28, 2012 in St. Louis, MO.

In addition, the Bureau created a Community Bank Advisory Council and a Credit Union Advisory Council consisting of representatives of those entities to provide information, analysis, and recommendations to the Bureau and inform the CFPB's policy development, rulemaking, and engagement functions.

10. **I'm afraid that the three day requirement to receive your closing forms in the CFPB's RESPA/TILA rule could wind up causing delays in closing a mortgage loan that would put consumers in a situation of higher costs, higher fees, losing their deposits or earnest money, and losing their rate lock. In situations where the consumer is going to be hurt financially or otherwise harmed and where the listed exceptions would not apply, is there a way that the consumer may waive this requirement and protect his or her loan provisions, or does the consumer have to live with the adverse consequences?**

There is long-standing support for providing consumers with important loan information in advance of closing. The Bureau's proposed rule does, however, permit a consumer to waive the timing requirement in the event of a bona fide personal financial emergency. This exception serves an important purpose: consumers should be able to waive the protection afforded by the waiting period if faced with a financial emergency. The Bureau specifically sought comment on the nature of waivers based on bona fide personal financial emergencies in the proposal. The Bureau will analyze the comments on this issue and determine whether modifications to this waiver are appropriate.

11. **CFPB did extensive testing on the mortgage disclosure form. Can you explain that testing process? What did the testing tell the bureau about how the forms would help consumers to shop for mortgage loans and settlement services? The testing report that accompanied the proposed rule indicates on page 23 that 92 consumers were tested on these new forms. How many of those 92 consumers demonstrated a change in behavior? Will CFPB be willing to commit to conducting more quantitative testing before finalizing the rule so that we can be sure that consumers will see these benefits before businesses spend millions of dollars on implementation?**

Before the proposal, the Bureau conducted qualitative usability testing over ten rounds in nine different sites across the country. This type of testing is widely used by both industry and government (including the Federal Reserve, the FTC, and HUD). In total, we tested with 92 consumer participants and 22 industry representatives. We recruited participants to reflect the general population in terms of demographic measures, such as age, ethnic diversity, education, income, gender, and marital status. We also accounted for varying degrees of experience with the home buying and loan refinancing process, recruiting consumers who have bought or refinanced recently and consumers who have no such experience. The 22 industry representatives included lenders, mortgage brokers, and settlement agents, many of whom worked for or owned a small business. We wanted to ensure that the forms work for the businesses that will use them every day.

The Bureau's qualitative testing indicated that the information currently provided on the separate TILA and RESPA disclosures can be combined and reorganized into forms that enable consumers to make meaningful comparisons of different loans and choose the loan that best fits their needs. In particular, qualitative testing indicated that the proposed forms helped consumer participants understand the trade offs between different loans, such as the choice between a loan with higher upfront costs and a loan with a higher monthly payment or an interest rate that can increase over time. In addition, industry participants consistently reported that our forms would be easier to use than the current forms. Before issuing a final rule, the Bureau plans to conduct limited additional qualitative and larger scale quantitative testing to validate its qualitative testing results.

**"Holding the CFPB Accountable: Review of Semi-annual Report to Congress"**
**September 13, 2012**

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Johanns:</u>**

1) **Mister Cordray, I first want to offer thanks and an acknowledgement of a bit of work well done that many bankers in Nebraska very much appreciated. Acting in response to a question from one of my bankers, your Assistant Director David Silberman made the trek to Gothenburg, Nebraska—not a terribly couvenient place to get to, mind you—and spent an entire day walking through the practices and procedures of a small community bank, speaking with account managers, loan officers, and customers to get a better feel for how a bank of that size operates.**

   **I think that was an above-and-beyond show of humility and good faith, and the bankers in Nebraska wanted me to extend my thanks to you aud Mr. Silberman. With yesterday's announcement of your Community Bank Advisory Council, I hope that more and more of this occurs, so that when rules are written by the Bureau, the operational differeuces between the biggest banks and the community banks are fnlly appreciated and accounted for. As I hope the visit to Gothenburg made clear, a one-size-fits-all approach to banking rulemaking just does not work.**

   The Bureau is always pleased to meet with community bankers, and we have held dozens of such meetings and roundtables with community bankers around the country to hear directly from them.

2) **I bave concerns about the governauce and quality control procedures that the Bureau has in place. Let me give you an example:**

   **I spoke with a community hanker from Alma, Nebraska over the August recess. He relayed to me at least three occasions in the last six months where his hank received complaints from the Bureau that should have been directed to other iustitutions. Two were intended for Texas banks and another to the First State Bank of St. Clair Shores, Michigan, some 979 miles from Alma.**

   **Even though these complains were erroneous, they still require time and resonrces to identify, investigate and respond to. Now, on their own, none of these are egregions, and none of them too time-consuming for the banker on the other end, but when the mistakes begin to add up, now we're wasting resources that will otherwise be used serving small Nebraska communities.**

   **As we all know, you are growiug quite rapidly and paying your employees quite a bit more than the typical government employee. With so many people getting paid great sums of money, where are the basic quality controls? What procedures are in place to make sure that a tiny institution like the First State Bank in Alma,**

**Nebraska doesn't continue to get bogged down in paperwork from erroneous complaints?**

**Is there a process in place to ensure that a complaint is legitimate, and then that the legitimate complaints are actually forwarded to the correct institutions?**

The Bureau maintains significant controls to authenticate complaints. Each complaint is checked to ensure that it is submitted by the identified consumer or from his or her specifically authorized representative. Each submission is also reviewed to determine if it is a complaint, an inquiry, or feedback. (Submissions in the latter two categories are not forwarded to companies for handling as complaints.) Further, each complaint is checked to identify duplicate submissions by a consumer who has already filed with the Bureau a complaint on the same issue. Finally, complaints are only routed to companies when they contain all the required fields, including the complaint narrative, the consumer's narrative statement of his or her suggested resolution, and the consumer's contact information.

Companies view and respond to consumers using their secure web portals, which they also use to notify the Bureau if a complaint has been routed incorrectly. As we work to continually improve our complaint routing accuracy, such notifications from companies are key to routing complaints to the correct companies and increasing routing accuracy over time.

We regret the inconvenience caused by three complaints being misdirected to First State Bank in Nebraska instead of companies with the same name in Texas and Michigan. Once notified by First State Bank in Nebraska that complaints had been misrouted, the CFPB rerouted the complaints to the correct First State Bank. We are committed to redoubling our efforts in this regard as we strive to make our complaint resolution process work for both consumers and companies.

3) **In June of this year, Bureau officials testified before the House Financial Services Committee on the implementation of the "ability to pay" rules for credit card lending that were mandated under the CARD Act.**

**As you know, mandating that a credit card issuer only take into account the applicant's individual income and not that of a spouse or the entire household when evaluating ability to pay can have many unintended negative consequences on folks like military spouses or stay-at-home moms and dads.**

**While I understand that the original rules were written by the Fed, they were part of the package transferred to the Bureau. In that appearance, Associate Director Hillebrand testified that the Bureau hoped to announce next steps in reforming these harmful rules by the end of summer. I was hoping you could shed some light on the progress you're making on this front?**

The Bureau recently issued a Notice of Proposed Rulemaking in which it seeks to make it easier for spouses and partners who do not work outside the home to qualify for credit cards and establish their own credit histories. The comment period for the proposal will end 60 days after the notice is published in the Federal Register.

The proposal would generally eliminate the independent ability-to-pay requirement for consumers and applicants age 21 or older and instead permit credit card issuers to consider income and assets to which the consumer or applicant has a reasonable expectation of access. For spouses and partners under the age of 21 (including military spouses), the proposal seeks comment on whether to make adjustments to the existing rule in light of the statutory requirement that underage consumers without a cosigner, guarantor, or joint applicant demonstrate an independent ability to pay.

4) **The Bureau's RESPA/TILA rule creates substantial uncertainty regarding who prepares and delivers the final disclosure information to the consumer. The proposed rule, by permitting the lender to deliver the final disclosure, removes the independent, third-party closing agent from the settlement process. The independent agent deals with many different lenders, giving them a glimpse of the best practices employed by a broad cross-section of the industry.**

   **What was the intent behind removing this informed and independent check at the closing table? Is it your opinion that this will ultimately benefit the consumer?**

   Settlement agents provide crucial services, and we have no desire to exclude them from the closing process. Real estate closings are very complicated, and involve much more than just completing a disclosure and watching the buyer sign documents. There is a reason why an entire profession, which is over a century old, exists to perform closings. Our proposal only addresses who provides the disclosures. It will not regulate the other important functions performed by settlement agents.

   The Dodd-Frank Act requires us to combine disclosures that are currently provided by lenders with disclosures that are currently provided by settlement agents. Much of the information on the combined disclosure relates to the terms of the loan and is therefore in the possession of the lender. In addition, the Dodd-Frank Act amends TILA to make the lender responsible for much of the information. For that reason, the proposal contains one alternative which makes the lender responsible for providing the combined disclosure. The proposal includes another alternative, which would allow settlement agents to provide the combined disclosure. The proposal solicited comment on other methods of dividing responsibility between creditors and settlement agents, provided that such other methods ensure that consumers are provided with prompt, accurate, and reliable disclosures.

**Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Ranking Member Shelby:**

1. **Mr. Cordray, during the hearing I stated that the Bureau has proposed eliminating the Dodd-Frank requirement that creditors disclose the "Total Interest Percentage" on mortgage disclosures. In its proposed rule the Bureau states that it is using its "exception and modification authority under TILA Section 105(a) and (f) and Dodd-Frank Section 1032(a)" to eliminate this requirement. Section 1032(a) does not, however, contain the "exception and modification" language that appears in TILA Section 105(a) and (f). I asked whether you believe that the Bureau has exception and modification authority under Section 1032(a) independent of TILA Section 105(a) and (f). You responded yes to my question.**
    a. **Please provide a legal analysis explaining the basis for your belief that the Bureau has exception and modification authority under Section 1032(a) of Dodd-Frank, independent of any other statute, including TILA.**

Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are "fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." Thus, section 1032(a) authorizes the Bureau to prescribe rules to ensure the overall effectiveness of disclosures regarding a product or service, which may result in rules that alter, perhaps significantly, specific statutory provisions.

In the TILA-RESPA integrated mortgage proposal, the Bureau relied on a number of statutory grants of authority, including section 1032(a), to support the proposed requirements, including some that would have the effect of modifying statutory requirements. The authority granted to the Bureau under section 1032(a) is consistent with the goals of the TILA-RESPA proposal, which combines two different mortgage disclosure regimes into a single set of disclosures that fully, accurately, and effectively inform consumers of the nature and costs of mortgage loans in a manner that permits them to understand the associated costs, benefits, and risks. Of course, when prescribing rules under section 1032(a), the Bureau will consider the available, relevant evidence (such as consumer testing) about consumer awareness, understanding of, and responses to disclosures or communications.

2. **Mr. Cordray, recently Lt. Governor of California Gavin Newsom asked the U.S. Department of Justice to investigate and prosecute groups representing Wall Street investors and the mortgage industry for making statements that mortgage lending may become costlier in parts of the country where municipalities are weighing eminent domain proposals.**
    a. **Do you believe that a company that refuses to make or buy loans that are secured by properties in jurisdictions that repudiate mortgage contracts has**

**engaged in an abnsive, unfair or deceptive practice or otherwise violated any of the "Federal Consumer Financial Laws"?**

Whether the refusal of a lender to make loans in a particular jurisdiction violates any Federal consumer financial law (including the prohibition on acts or practices which are unfair, deceptive, or abusive) depends on a careful and thorough assessment of all the relevant facts and circumstances as well as legal precedents.

3. **Mr. Cordray, in the remittance transfers rule the Bureau stated that it expects some businesses may stop offering this service as a result of this rule. Unfortunately, it appears that the Bureau's prediction will come to fruition. The ICBA recently stated that the rule will "force many community banks to no longer offer remittance services to customers."**
    a. **Can you explain how a costly regulation that forces small banks ont of this market and concentrates market share in larger financial institutions is good for consumers?**
    b. **Will you consider phasing in the final rule to ensure that the industry has time to provide meaningful information to those consumers who would like to send remittances?**

The Bureau is aware of concerns that the rule could lead some remittance transfer providers to choose to exit the business or significantly reduce their product offerings to consumers. That is why we continue to take steps to alleviate these concerns while maintaining the rule's valuable new consumer protections. The Bureau addressed many institutions' concerns through the authorization for estimates contained in the original rule, as well as by the normal course of business safe harbor adopted by the Bureau in August. Additional compliance and implementation concerns were raised by industry in requests for guidance and other communications after the rule was finalized earlier this year. As a result, the Bureau expects to issue a proposal next month to refine three narrowly targeted elements of the rule. The proposal is expected to address the following three topics:

- *Situations in which a sender provides an incorrect account number to a remittance transfer provider.* As the Bureau announced during the Bureau's webinar on the remittance rule on October 16, 2012, the CFPB plans to propose revisions to the rule's error resolution provisions. Specifically, the proposal will address the way the rule applies to situations in which a sender provides an incorrect account number to a remittance transfer provider and that information results in a remittance transfer being deposited into the wrong account. The CFPB intends to propose that where the provider can demonstrate that the consumer provided the incorrect information, the provider would be required to attempt to recover the funds but would not be liable for the funds if those efforts are unsuccessful.

- *Disclosure of third party fees and foreign taxes.* The CFPB plans to propose revisions to the rule's disclosure provisions concerning foreign taxes and fees assessed by the financial institution receiving the transfer. The proposal would provide additional flexibility around these requirements, including by permitting providers to base fee disclosures on published bank fee schedules and by providing further guidance on foreign tax disclosures where certain variables may affect tax rates.

- *Disclosure of regional and local taxes assessed in foreign countries.* The CFPB also plans to propose that the obligation for providers to disclose foreign taxes imposed on remittance transfers is limited to taxes imposed at the national level, and does not encompass taxes that may be imposed by foreign, sub-national jurisdictions.

The Bureau expects to issue a notice of proposed rulemaking next month to explain the changes in detail and to seek public comment. After considering the public comments, the Bureau will issue a final rule as quickly as possible. The Bureau anticipates proposing to extend the effective date on the original rule until 90 days after the supplemental rule is issued. Based on current expectations, this would mean that the proposed effective date for the remittances rule will be during the spring.

The Bureau will continue to work with industry and others to facilitate preparations for implementation during the intervening period. The Bureau expects to move quickly once the proposal is issued to ensure that the new consumer protections afforded by the rule can be effectively implemented and delivered to consumers as soon as possible.

4. **Mr. Cordray, in the remittance transfers rule the Bureau requires the disclosure of foreign taxes, despite the fact that this is not required by the Dodd-Frank Act.**
    a. **What will be the cost to a community bank to figure out all the foreigu tax laws that might apply for every country around the world?**

As the Bureau stated in adopting the final rule, EFTA section 919(a)(2)(A)(i) requires a remittance transfer provider covered by the rule to disclose the amount to be received by the designated recipient. Thus, the final remittance rule requires providers to disclose all fees and taxes specifically related to the remittance transfer, regardless of the entity that charges them, as these elements have a direct impact on the amount made available to the designated recipient. Many community banks -- those that perform fewer than 100 such transfers per year -- will qualify for the normal course of business safe harbor and will therefore not need to provide this information. For those that do not qualify for the safe harbor, the Bureau understands that some remittance transfer providers, including community banks, may face difficulties in disclosing fees assessed by a recipient's financial institution and foreign taxes applicable to a transfer. Therefore, the Bureau plans to propose revisions to the rule's disclosure provisions concerning foreign taxes and recipient institution fees. The proposal would provide additional flexibility around these requirements, including by permitting providers to base fee disclosures on published bank fee schedules and by providing further guidance on foreign tax disclosures where certain variables may affect tax rates. Under the proposal, disclosure of foreign taxes imposed on remittance transfers would be limited to taxes imposed at the national level, and would not encompass taxes that may be imposed by foreign, sub-national jurisdictions.

5. **Mr. Cordray, a recent rule by the Bureau would mandate that loan officers offer a plain vanilla mortgage with no-points and no-fees, unless "cousumers are unlikely to qualify for such a loan."**
   a. **How will loan officers determine whether a consumer is likely to qualify for a plain vanilla mortgage at the time of the offer?**
   b. **What are the penalties and legal liabilities for entities that fail to offer the plain vauilla mortgage?**

The Dodd-Frank Act contains a provision that would generally prohibit the imposition of any upfront discount points, origination points, or fees on consumers for mortgage loans in which a creditor or loan originator organization (*i.e.*, mortgage brokerage firm) pays a loan originator a transaction-specific commission. As an alternative to this complete prohibition, the Bureau proposed in August 2012, pursuant to authority granted by the Dodd-Frank Act, to allow loans that include such points and fees if the creditor also makes available to the consumer a comparable, alternative loan that does not include those points and fees. The purpose is to allow the consumer to compare two similar mortgage options -- i.e., one with points and fees, and one without but with a higher interest rate -- to see and understand the different ways to pay for the same mortgage product.

To be comparable, the alternative loan would generally have the same terms and conditions as the loan that includes points and fees; however, the alternative loan would not necessarily be "plain vanilla" because no restrictions would be imposed on, for example, the loan term, the amount of the interest rate, whether the rate is fixed or adjustable, or whether the payments are fully amortizing.

As noted, the proposal provides that the creditor would not need to make available the alternative loan if a consumer is unlikely to qualify for that loan. Under the proposal, the creditor would need to have a good faith belief that the consumer is unlikely to qualify based on its own current pricing and underwriting policy. In making this determination, the creditor could rely on information provided by the consumer, even if that information is subsequently determined to be inaccurate. We specifically sought comment on how this aspect of the proposal might be improved, and are in the process of considering and evaluating the feedback received as we develop the final rule.

If a creditor or loan originator were to fail to comply with the applicable requirements of the final rule, liability and penalties would be determined under sections 108 and 130 of TILA, 15 U.S.C. 1607, 1640.

6. **Mr. Cordray, last month the Bureau released a mortgage servicing rule that includes new rules on loss mitigation, even though RESPA, the underlying statute, does not cover loss mitigation. Instead, the Bureau relied upon a Dodd Frank Act**

**amendment to RESPA, which allows the Bureau to write rules "appropriate to carry out the consumer protection purposes of this Act."**

a. **Given the hroad language of that amendment to RESPA, what are the limits of your authority under RESPA?**
b. **Would the Bureau ever need Congress to amend RESPA in the future, or can you exercise this new anthority to make any changes you deem necessary?**
c.

RESPA imposes obligations upon servicers when servicing federally related mortgage loans that are intended to protect borrowers. As amended by the Dodd-Frank Act, this includes a prohibition against failing to take timely action to respond to borrowers' requests to correct errors relating to "avoiding foreclosure, or other standard servicer's duties." RESPA section 6(k)(1)(E) also states that a servicer of a federally related mortgage shall not fail to comply with any obligation found by the Bureau, by regulation, to be appropriate to carry out the consumer protection purposes of RESPA.

Each of the provisions proposed in the mortgage servicing rulemaking, including the loss mitigation procedures, addresses the consumer protection purposes of RESPA as described in the Notice of Proposed Rulemaking. The Bureau is limited to issuing regulations consistent with the authorities granted by Congress. The Legal Authority section to the Notice of Proposed Rulemaking more fully describes the scope of the Bureau's legal authority to amend RESPA.

7. **Mr. Cordray, the mortgage servicing rule released hy the Bureau last month expanded the obligations required for mortgage servicers by amending RESPA. Since RESPA has a private right of action, consnmers will now have a federal private right of action against a servicer for any alleged failure to engage in proper loss mitigation.**
    a. **Do you have any concerns that exposing servicers to more lawsuits will make banks less willing to lend, especially to riskier consumers?**
    b. **Did you conduct any economic analysis on how much this rule will increase the cost of mortgages hy exposing banks to more lawsuits?**

One of the clear lessons of the mortgage crisis has been that good loss mitigation practices provide better outcomes for consumers and mortgage investors. Despite this, many servicers, who stand in between those parties, have not undertaken the work necessary to implement good loss mitigation practices to achieve those better outcomes.

To correct this problem, the Bureau proposed to establish loss mitigation procedures, which are designed to ensure that borrowers receive information about loss mitigation options available to them and the process for applying for those options. Under the proposed rule, borrowers would be evaluated for all options for which they may be eligible, have an opportunity to appeal decisions by the servicer regarding loan modification options, and be protected from foreclosure until the process of evaluating the borrower's complete loss mitigation application has ended. Further, servicers would be required to produce a record of decisions and, in the case of loss mitigation, the reasons for denial. The Bureau's proposed mortgage servicing rules would create reasonable, common-sense, and transparent procedures that would be used to hold servicers accountable. Under the proposal, a private right of action would exist for failure to follow these procedures.

The Bureau carefully considered the benefits, costs, and impacts of each significant provision of the proposed rule, including the loss mitigation procedures. As stated in the proposed rule, absent rules governing the loss mitigation process, investors and guarantors may structure loss mitigation efforts as vague discretionary activities, eliminate loss mitigation efforts altogether, or worse, significantly reduce mortgage market activity, potentially curtailing general access to credit. The Bureau recognized the benefits, costs, and impacts of the private right of action associated with the proposed loss mitigation procedures and with certain other proposed amendments to Regulation X. The Bureau notes that the regulatory analyses in the proposal generally assume that firms comply with a proposed rule and therefore incur the costs associated with compliance. Any other approach would require the Bureau to reduce the costs of compliance by a specified factor. In other words, the costs of civil liability would require the Bureau to determine the probability that a firm in compliance with the proposed rule would face additional lawsuits based on a violation of the loss mitigation procedures. This probability would have to reflect both any increase in lawsuits asserting violation of the proposed loss mitigation procedures and any reduction in lawsuits asserting violations of existing legal requirements to the extent that such reduction were to result from compliance with the proposed loss mitigation provisions.

For example, compliance with the proposed reasonable information management procedures may reduce lawsuits asserting that servicers have failed to comply with applicable law with respect to sworn affidavits and notarized documents in connection with foreclosure proceedings. Similarly, compliance with the proposed loss mitigation procedures may reduce lawsuits asserting claims based on a servicer conducting a foreclosure sale when a borrower has accepted an offer of a loss mitigation option and is performing pursuant to such option. The Bureau lacked data with which to estimate this probability at the time of the proposal, but specifically sought comment and data on issues effecting its consideration of benefits and costs and will evaluate the information received and continue its own internal analyses in preparing the final rule.

8. **Mr. Cordray, the recent settlement with Capital One resulted in the Bureau and the OCC collecting civil money penalties of $25 million and $35 million, respectively. By law, the OCC must give its entire penalty to Treasury. In contrast, the Bureau's civil money penalty will go to its own slush fund. The Bureau will then have unilateral authority to decide how to allocate the $25 million.**

    a. **Will any portion of the $25 million obtained by the Bureau go to Treasury?**

In the Dodd-Frank Act, Congress authorized the Bureau to use civil penalties only for payments to victims, and, in certain circumstances, consumer education and financial literacy programs. In particular, § 1017(d)(2) provides:

> *Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties*

*have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.*

b. **Please provide a hreak-down of how the Bnrean will distribute these funds and the procedures the Bureau used to decide how to allocate these funds.**

The Bureau has made available on its website an overview of the Civil Penalty Fund: http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_factsheet.pdf. As that document notes, the Bureau has created a Civil Penalty Fund Governance Board, which is responsible for ensuring that the Civil Penalty Fund is administered in a manner that is consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act. In addition, the Civil Penalty Fund Governance Board is responsible for developing policies and procedures, including appropriate internal controls, to ensure that money deposited in the Civil Penalty Fund is distributed in a manner that:

• Supports the Bureau's mission, responsibilities, policies, and priorities;
• Complies with the Dodd-Frank Act and all other applicable laws and regulations, as well as internal CFPB policies and procedures and legal opinions of the CFPB's Office of General Counsel;
• Protects against waste, fraud, and abuse;
• Provides appropriate transparency regarding the use of CPF monies, including the manner of distribution, any associated administrative expenses, and, where applicable, the mechanism for identifying individual victims;
• Ensures appropriate and robust oversight of contractors; and
• Enhances program efficiency through regular operational analyses and development of appropriate performance metrics.

The Bureau has also posted the criteria it will use in making available Civil Penalty Fund monies for Consumer Education and Financial Literacy programs: http://files.consumerfinance.gov/f/201207_cfpb_civil_penalty_fund_criteria.pdf. The Bureau will use the federal procurement process for these programs.

9. **Mr. Cordray, in past Cougressional testimony you were asked whether the CFPB is considering how several mortgage rules are going to work together and the steps you are taking to analyze and mitigate the cumulative impact of these rules on the affected small businesses. In response you stated that you have solicited for comment the potential impact of these proposed rules aud have asked for data illustrating the impact on small business. Your response indicates that you believe that small businesses will have the ability to respond to each of these rulemakings. The TILA/RESPA rule alone, however, is 1100 pages in length and contains 155 requests for comment or additional data.**
    a. **Do you expect that small and medium size banks will have the ability to read and respond to all of these requests?**
    b. **What will you iufer if you do not receive a response to one of these requests?**

c. **What additional data are you obtaining on your own during the comment periods of each of these rules?**

We recognized the challenge in responding to so many mortgage rulemakings at one time, and developed summaries of each proposal released this summer that were specifically designed to help small-and medium-sized businesses identify and respond to the most critical elements of each proposal. We believe these were a useful complement to the longer documents, which as required by law provide general background, a detailed discussion of each element of the proposal, and our analyses of its impacts on covered persons and consumers, in addition to the proposed regulation text and commentary.

The Bureau received hundreds of comments in response to the proposed rules that were issued over the summer, including comments from small-and-medium-sized banks and their trade associations. The Bureau will base its final rules on a careful evaluation of all available information.

In all of the proposals, the Bureau explicitly requested data to support analyses regarding the impacts of the rules and of specific provisions. Some commenters have provided quantitative and qualitative information, although we have received limited firm or transaction-specific data in response to these requests. In addition, the Bureau described its own efforts to gather additional data germane to several of the rules: loan-level data from other federal agencies; data about closings from selected institutions; and data from a new national database. We have received some of this data and, where appropriate, the Bureau is using it to supplement other existing sources as we continue to analyze the impacts of the rules.

10. **Mr. Cordray, in conjunction with the Capital One settlement you issued a compliance bulletin ou the marketing of credit card add-on products.**
    a. **Why did the Bureau decide to issue a bulletin on the marketing of credit card add-on products instead of issuing a proposed rule?**
    b. **Going forward, how will yon determine whether to issue guidauce (whether throngh a bulletin or other announcement) or a proposed rule?**

The Capital One action was based on the conduct of that institution. However, complaints received by the Bureau indicate – and the Bureau's supervisory experience confirms – that consumers have been misled by the marketing and sales practices associated with credit card add-on products offered by other institutions. Such practices violate current law. Consequently, the Bureau issued a compliance bulletin as a means of highlighting existing compliance requirements for the industry and providing insight into Bureau supervisory expectations. Notably, the bulletin does not impose any new requirements. Going forward, the

Bureau will continue to use the rulemaking process for adopting new requirements, while providing guidance through bulletins and other methods regarding compliance with existing requirements.

11. **Mr. Cordray, the Bureau stated in a procedural rule that the Bureau will supervise a nonbank company if the Bureau determines that the company is engaging, or has engaged, in conduct that poses a risk to consumers with regard to the offering or provision of consumer financial products or services.**
    a. **What conduct do you believe would constitute a "risk to consumers" that would warrant supervision by the Bureau?**
    b. **What particular systems, policies or metrics have you developed to determine whether a "risk to consumers" has occurred and what are the metrics you have created to assess such risks?**

As an initial matter, we note that the Bureau has published a *proposed* rule to establish procedures to implement section 1024(a)(1)(C) of the Dodd-Frank Act; the Bureau has not yet published a final rule establishing these procedures. Under section 1024(a)(1)(C), Congress authorized the Bureau to supervise a nonbank covered person when:

> the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

The Bureau is authorized to require reports from, and conduct examinations of, nonbank covered persons subject to supervision under section 1024.

Next, as you mentioned, the proposed rule is procedural; it is not a substantive rule. The proposed procedures relate to, *inter alia*, issuing the notice required by section 1024(a)(1)(C), providing a covered person with a reasonable opportunity to respond, and establishing a framework for the Bureau's consideration of any response. Congress did not define "risk to consumers" in the Dodd-Frank Act, thus, the Bureau set forth, by statutory guidance, the factors it employs in making 1024(a)(1)(C) determinations. This guidance includes, for example, the Bureau's key objectives under the Dodd-Frank Act, such as protecting consumers from unfair, deceptive or abusive acts or practices; ensuring consistent enforcement of Federal consumer financial law; and ensuring that markets for consumer financial products and services are fair, transparent, and competitive.[1] Thus the Bureau may consider, among other factors, whether a nonbank covered person has engaged in conduct that would pose risk to consumers because it involves unfair, deceptive, or abusive acts or practices, or because the conduct otherwise violates Federal consumer financial law.

[1] 12 U.S.C. § 5511(b).

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Corker:</u>**

1. **Dodd-Frank made a change, as you are likely aware, to the definition of "high cost loan." Under Dodd Frank's new rules, a high cost loan is any loan where the APR exceeds the average prime rate by 6.5% for loans greater than $50,000 in size, of 8.5% for loans under $50,000. Unfortunately for many in the manufactured housing industry, the nature of how these loans work means that the lenders are bumping up against the triggers quickly. For example, many lenders will help a borrower roll the upfront closing costs and document costs into the underlying loan, but since these costs are fixed and the loans are for low dollar amounts, it makes the APR high and so these loans can't be made. As you know, the Bureau has significant authority to raise the HOEPA APR and the points and fees triggers. Is this something the Bureau is actively considering? What steps do you anticipate the Bureau taking to ensure that access to small balance loans, such as those needed to purchase affordable and manufactured housing, is not diminished? Are you concerned that these high cost loan triggers are problematic for loans that are low balance? Should Congress do something about this if it is a problem from a statutory perspective?**

   We are carefully analyzing all of these questions as we work on the final rule. Our proposal sought comment and data on whether any adjustments should be made to the APR triggers for HOEPA coverage generally. We also sought comment specifically on whether adjustments should be made to the 8.5% APR trigger or $50,000 size threshold for first-lien transactions that are secured by a dwelling that is personal property, such as certain manufactured housing loans. We note that the Bureau generally has the authority to make adjustments to the definition of "high-cost mortgage." Additionally, the Bureau has the authority to adjust the percentage points for the APR triggers if such adjustments are consistent with the statutory consumer protections for high-cost mortgages and are warranted by the need for credit. The Bureau also has the authority to adjust the definition of points and fees for the purposes of determining whether a loan meets the points and fees threshold.

   Before finalizing our proposal, we will consider the impact of the proposed triggers on various types of loans, including manufactured housing loans and small balance loans generally. We are currently reviewing all of the comments, we are aware of the concerns surrounding loans for manufactured housing and small balances, and will closely review all available data to determine whether any adjustments to the HOEPA triggers should be made.

2. **RESPA/TILA was a subject of conversation at the hearing. As Senator Shelby pointed out, the draft rule designed to simplify these disclosures is 1,000 pages long. Are you concerned that complying with a complex rule such as this will prove challenging for community banks? In addition, if the APR calculation is not helpful to consumers – and the CFPB has indicated it might not be - should it be eliminated as a requirement in disclosure?**

   We are confident that the final TILA-RESPA integrated disclosure rule will ease compliance burdens for community banks by eliminating duplicative forms and resolving long-standing uncertainties that led the Department of Housing and Urban Development (HUD) to issue hundreds of responses to frequently asked questions. In fact, much of the proposal's length results from the Bureau's provision of extensive guidance on how to comply, including samples of completed forms for a variety of different types of mortgage loans. Industry repeatedly requested this guidance during our outreach and the Small Business Review Panel process because knowing exactly what they need to do can save time, energy, and costs. Once the rule is finalized, we plan to publish a compliance guide and to reach out to the banks and their service providers to help them come into compliance.

   The Annual Percentage Rate (APR) is intended to show consumers the total cost of credit spread out over the entire life of the loan and expressed as a percentage. Consistent with prior research by the Federal Reserve Board and HUD, however, the Bureau's qualitative testing indicates that the APR may not be a helpful disclosure for many consumers because it is difficult for consumers to understand and use effectively when comparing loans. Nevertheless, the Bureau did not propose to eliminate the APR disclosure, which is critical to determining whether loans are subject to certain additional protections under federal and state law. Further, because we know consumers face difficulties in using the APR disclosures to compare mortgages, in part because not all charges are currently required in these disclosures, the Bureau is proposing a more inclusive definition of the finance charge, which would make the APR a more accurate reflection the overall cost of credit. For example, the APR would now include title insurance, which is the largest charge for many consumers. The Bureau's intent in including all charges in an APR is to enhance consumer understanding and shopping with improved disclosures.

3. **I asked you about the complaints posted on the CFPB website, which also contain information on the financial institution that a customer is upset with. You said you verify that there is a relationship between the customer and the financial institution. Is this the only piece of information you confirm? Or do you go any deeper in terms of due diligence before posting these complaints online?**

The Bureau maintains significant controls to authenticate complaints. Each complaint is checked to ensure that it is submitted by the identified consumer or from his or her specifically authorized representative. Each submission is also reviewed to determine if it is a complaint, an inquiry, or feedback. (Submissions in the latter two categories are not forwarded to companies for handling as complaints.) Further, each complaint is checked to identify duplicate submissions by a consumer who has already filed with the Bureau a complaint on the same issue. Finally, complaints are only routed to companies when they contain all the required fields, including the complaint narrative, the consumer's narrative statement of his or her fair resolution, and the consumer's contact information. Companies view and respond to complaints using their secure web portals, which they also use to notify the Bureau if a complaint has been routed incorrectly, if they suspect manipulation, etc. Companies have 15 days to provide a response.

Complaints are only posted to the Consumer Complaint Database after companies provide a response which confirms a relationship with the consumer or after they have had 15 days to review the complaint, whichever comes first.

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Menendez:</u>**

1. **Director Cordray, I have long advocated national standards for banks that collect homeowners' mortgage payments, including chairing a hearing on that issue about two years ago.**
   a. **Will the national standards include requiring early in-person outreach to delinquent borrowers to try to help save their homes?**

As discussed in the proposed mortgage servicing rules, the Bureau agrees that early contact with delinquent borrowers is crucial to helping those borrowers understand options that may be available to retain their homes, as well as the ramifications of the foreclosure process.

The proposed rules would require servicers to provide delinquent borrowers with two notices. First, under the proposed rules, servicers would be required to notify or make good faith efforts to notify a borrower orally that the borrower's payment is late and that loss mitigation options may be available, if applicable. Servicers would be required to take this action within 30 days after the payment due date, unless the borrower satisfies the payment during that period. Second, servicers would be required to provide a written notice with information about the foreclosure process, housing counselors and the borrower's State housing finance authority, and, if applicable, information about loss mitigation options that may be available to the borrower not later than 40 days after the payment due date, unless the borrower satisfies the payment during that period. Servicers could incorporate in-person outreach procedures to comply with these proposed requirements. The Bureau continues to evaluate the proposed timing and content of these notices in light of the numerous comments it has received on the proposed rules.

The proposed notices were designed primarily to encourage delinquent borrowers to work with their servicer to identify their options for avoiding foreclosure. The Bureau recognizes that not all delinquent borrowers who were to receive such notices would respond to the servicer and pursue available loss mitigation options. However, the Bureau believes that the notices would ensure, at a minimum, that all borrowers have an opportunity to do so at the early stages of a delinquency. We believe it is generally more useful to borrowers to begin discussions with servicers early, in order to identify which options may be best for their families.

   b. **The CFPB's draft loan origination rule includes provisions that it claims would "help level the playing field" between bank and non-bank mortgage origination employees. However, the SAFE Act requires non-bank mortgage originators to take pre-licensing and continuing education courses and a licensing exam - whereas the proposed rule includes none of these requirements for people who work at banks. Why didn't the CFPB establish pre-licensing course requirements and an exam for individuals that lack at least a few years of direct experience in mortgage loan origination,**

**particularly for individuals doing substantive loan origination work? Why didn't the CFPB require all mortgage loan origination employees complete at least the 3 bonrs in continuing educatiou courses in federal laws and regulations and the 2 hours in continuing education ethics courses that are required of all non-bank employees covered under the SAFE Act?**

The proposed rule would require banks as well as other entities that would be subject to this portion of the rule to provide periodic training to ensure that each of its loan originators has the necessary knowledge of State and Federal legal requirements that apply to the loans that the individual loan originator will originate. The training would have to cover the particular responsibilities of the loan originator and the nature and complexity of the loans that the particular loan originator originates.

The intention of the proposed rule was to accomplish the same goals as the pre-licensing and continuing education that the SAFE Act imposes for State-licensed loan originators, which are to ensure that that loan originators have adequate knowledge to perform loan origination activities, and that they continue to update and refresh that knowledge. However, it was also meant to reflect limitations in the Bureau's authority and to respond to concerns of other Federal regulators that the Bureau should not impose training requirements that are duplicative of requirements the regulators already impose for loan originators such as banks and credit unions. Accordingly, under the proposed rule continuing education classes approved for State-licensed loan originators are sufficient to meet the proposed standard, but the proposed rule also permits other training courses and methods that are tailored to the particular loan origination activities of the bank loan originator.

The proposed rule does not include a requirement for loan originators employed by banks to pass the standardized test that applicants for State licenses must pass. As the proposal discussed, the Bureau has been seeking evidence to show whether or not existing bank practices, as well as the proposed training requirements, are adequate to ensure that the knowledge of bank loan originators is comparable to that of loan originators who pass the standardized test. This is an issue the Bureau is considering as it develops the final rule.

**Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Reed:**

1) **A recent U.S. PIRG report highlighted some troubling practices with pre-paid debit cards and other third party distribution arrangements for student financial aid. Do you have plans to look at such practices in more detail? Has the CFPB received consumer complaints in this area?**

   The Bureau has been engaged actively in this issue on multiple fronts by working closely with other agencies, accepting consumer complaints, and producing information for consumers.

   The Bureau works closely with other banking regulators and provided input to the Federal Deposit Insurance Corporation (FDIC) about their oversight activities in the student lending industry. In August, the FDIC reached a settlement with a provider of third party distributors of student financial aid.

   To coincide with the announcement of the settlement, the Bureau issued a consumer advisory to all students expecting to receive scholarship and student loan proceeds onto – what appears to be – a school-endorsed debit card. For back-to-school season, the Bureau released a "Student Banking 101" guide to help newly enrolling students make smarter banking choices.

   The Bureau also works closely with the Department of Education, who administers loan programs under Title IV of the Higher Education Act, on ways to enhance compliance and protect consumers The Bureau will continue to provide technical assistance on consumer financial markets for private student lending to the Department of Education as necessary.

   The Bureau receives complaints on deposit products, including student checking accounts, through our consumer response portal and we will continue to monitor these complaints to identify risks in the marketplace.

2) **We continue to see student loan debt rise and borrowers struggling with delinquency and default. How many borrowers have sought assistance from the CFPB's Student Loan Ombudsman? What have been the major problems for borrowers? How have they been resolved?**

   A few weeks ago, the Bureau released the Annual Report of the CFPB Student Loan Ombudsman detailing the problems reported by private student loan borrowers. Since March 2012, the Bureau has received approximately 2,900 complaints on private student loans. With 95 percent of the complaints about servicing, the report notes a strong resemblance to issues reported in the mortgage servicing market. A breakdown of the complaints:

- 65 percent relate to servicing, including complaints about fees, billing, deferment, forbearance, fraud, and credit reporting.
- 30 percent are about problems consumers face when they are unable to pay, including complaints about default, debt collection, and bankruptcy practices.
- 5 percent concern getting a loan, including problems with origination, marketing, and borrower confusion about loan terms and conditions.

The median amount of monetary relief awarded, for those cases in which a consumer received monetary relief, was $1,572.

**3) The CFPB recently introduced the second version of its Financial Aid Comparison Shopper. What sort of feedback has the CFPB received about this tool? Have families been able to take advantage of the Shopping Sheet for this school year? If not, when will it be fully functional?**

In July, Education Secretary Arne Duncan and CFPB Director Richard Cordray announced the final version of a "Financial Aid Shopping Sheet," which assists families when making comparisons between college financial aid offers. The final version reflects the Bureau's close collaboration with the Department of Education, as well as broad input provided directly by consumers on the proposed form.
To help facilitate better decision-making on student loans, the Bureau developed a beta tool for testing that would allow students and families to use their Shopping Sheets to estimate their future debt burdens and other information. During the beta test, the Bureau received a substantial amount of constructive feedback from users. For example, a survey conducted by an association representing college admissions counselors found that over 80% of their members said the tool was "useful" and that nearly half would recommend the tool to students/families without any modifications.

Now that the final version of the Financial Aid Shopping Sheet has been released, the Bureau plans to modify the beta version of the tool to be compatible with the Shopping Sheet. The Bureau hopes to produce a new version of this tool after gathering further input from consumers and schools in the upcoming year.

**4) The CFPB has been working with the prudential regulators to address mortgage servicer practices that may pose risks to military homeowners who receive Permanent Change of Station (PCS) orders. Could you please provide an update on the PCS issue? Has the Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with PCS Orders released on June 21, 2012, had any effect so far? Please explain.**

As a result of effective interagency work, the Bureau, along with other federal regulators, issued joint guidance that addressed mortgage servicer practices that may pose risks to military homeowners. The guidance helps ensure compliance with consumer laws and regulations covering military homeowners who have received Permanent Change of

Station (PCS) orders. Holly Petraeus and her staff in the CFPB's Office of Servicemember Affairs also worked with the Department of Treasury to provide more opportunities for mortgage assistance to military homeowners under the Home Affordable Modification Program (HAMP) and with the Federal Housing Finance Authority (FHFA) in connection with Fannie Mae's and Freddie Mac's announcements that Permanent Change of Station orders could be classified as a qualifying hardship for mortgage loan modification or other assistance. Additionally, the Bureau worked with the FHFA in connection with Fannie Mae's and Freddie Mac's new short sale guidelines for servicemembers with PCS orders. This policy, which went into effect on November 1, 2012, allows servicemembers who are being relocated due to PCS orders to be automatically eligible for short sales, even if they are current on their existing mortgages, and they will be under no obligation to contribute funds to cover the shortfall between the outstanding loan balance and the sale price of their primary residences, if the property was purchased on or before June 30, 2012.

Since the release of the Bureau's PCS guidance, we have seen an increase in the volume of servicemember-related mortgage complaints, possibly due to the publicity generated as a result of the release. Upon investigating these complaints, we have observed mixed results from mortgage servicers. Although most servicers initially appeared uninformed regarding this issue, once contact was made by the Bureau and the guidance was provided to them, many became much more responsive to this subset of consumers. We found that some servicers created executive-level review boards dedicated to assisting these consumers, manned by representatives who quickly became familiar with the guidance. On the other hand, some servicers continue to struggle to comply with the guidance even upon subsequent re-contact with the Bureau. As the guidance notes, if the Bureau were to "determine that a servicer has engaged in any acts or practices that are unfair, deceptive, or abusive, or that otherwise violate Federal consumer financial laws and regulations, the [Bureau] will take appropriate supervisory and enforcement actions to address violations that harm consumers and seek all appropriate corrective actions, including requiring the mortgage servicer to strengthen its programs and processes."

The Bureau will continue to monitor these complaints and determine what additional steps can be taken to assist military homeowners who receive PCS orders.

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Chairman Johnson:</u>**

1. **Director Cordray, the Committee is interested in your work relating to prepaid cards. On your agency's website, it states that "With very few exceptions, most prepaid card providers who claim to offer a way to build your credit history report your activities only to a lesser-used credit reporting agency, not one of the three major credit reporting agencies used by most lenders." Can you inform the Committee specifically who are these exceptions and are they beneficial to consumers in building their credit?**

In the Advance Notice of Proposed Rulemaking (ANPR) published in May 2012, the Bureau sought public input and data concerning the efficacy of credit reporting features on prepaid cards. In the same ANPR, the Bureau also expressed an interest in understanding how such services are marketed to consumers.

In reviewing the responses to the ANPR and through meetings with industry participants, the Bureau has found no evidence of effective credit building through transactional use of a prepaid card. None of the information we reviewed points to demonstrable consumer success in building credit by transacting on a prepaid card. Issuers that had been making such claims have stopped marketing this feature completely, or caveat that the use of transactional data for credit building is a test program in pilot phase with one of the credit bureaus.

The language on our website reflects the non-exhaustive nature of our market review and there may be providers that we have not yet identified. However, in our analysis and review of the prepaid market to date, the Bureau has major concerns about the "credit building" service, and we remain unaware of any effective solution that enables prepaid card customers to build credit by using their prepaid card to transact in the marketplace.

Questions Submitted by Senator Wyden for Mr. Humphrey

1. **Along with having the living facilities help identify exploitation after the fact, have you looked at initiatives to have them help prevent it in the first place by better controlling who has access to their resident populations?**

   Answer:

   In our manual for operators of congregate living facilities, we will provide guidance on prevention and deterrence of elder financial exploitation—not just addressing it after the fact. For example, the manual will provide suggested agendas for staff training as well as resident and family council meetings that raise awareness of elder financial abuse and provide prevention tips. It will suggest protocols for safeguarding resident funds (such as procedures for releasing funds from a resident's personal needs account and documenting the identity of agents under power of attorney and other fiduciaries). These suggested practices will help limit access to residents and their assets.

2. **We've also heard that online exploitation of seniors is on the rise, and internet scams are becoming more complex and harder to detect. Is your office working on anything specifically targeted towards educating seniors about online threats?**

   Answer:

   Yes, we plan to include specific information about internet scams and tips for avoiding them in our Money Smart for Older Americans consumer education program (in collaboration with another federal regulator, the Federal Deposit Insurance Corporation). We address these issues in meetings with federal and state government partners, non-profit organizations, and the public.

**<u>Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Warner:</u>**

1) I am concerned that in Virginia we have a number of low-density areas that may not qualify for the rural or underserved category within Qualified Mortgages based on their Urban Influence Codes, lenders' volume, or other reasons. However, these areas may still have high-acreage properties and non-standard loans that will have a hard time refinancing in the short-term and finding new originators in the long-term. Can you address these concerns, describe why the CFPB chose to use UICs, and respond to whether the Bureau would consider using borrower profiles in addition to geographical classifications?

*Response:*

The Bureau followed the structure of the Federal Reserve Board's proposal to use a county-based metric based on the Department of Agriculture's "urban influence codes" which place every county in the United States into a category based upon size and proximity to a metropolitan or micropolitan area. This county-based definition was chosen in part because implementing it should be fairly straightforward; by contrast, we received some input indicating that definitions that split counties to isolate rural areas can create greater compliance burdens for small banks. The Bureau has expanded the list of eligible codes to include counties in which about 9% of the nation's population lives, up from about 3% as originally proposed. We expect that the vast majority of community banks and credit unions operating predominantly in those areas meet the definition of small creditor – approximately 2,700 institutions in total.

The Bureau wants to preserve access to credit for small creditors operating responsibly in rural and underserved areas. So under the Ability-to-Repay rule, we extended Qualified Mortgage status to certain balloon loans held in portfolio by small creditors operating predominantly in rural or underserved areas. We also proposed amendments to the Ability-to-Repay rule to accommodate mortgage lending by smaller institutions, including those operating outside of what are designated as rural and underserved areas. Our proposal would treat loans made by smaller lenders and held in portfolio at certain small institutions as Qualified Mortgages even if the loans exceed 43% debt-to-income ratio, as long as the lender considered debt-to-income or residual income before making the loan, and as long as the loans meet the product feature and other requirements for Qualified Mortgages. This proposed exemption would cover institutions that hold less than $2 billion in assets and, with affiliates, extend 500 or fewer first lien mortgages per year. The Bureau estimates that approximately 9,200 community banks and credit unions would be affected by the proposed exemption. Under the proposal, these portfolio loans made by small creditors that are Qualified Mortgages would have a safe harbor from Ability-to-Repay liability if the interest rate is within 3.5% over the average prime offer rate. The Bureau also proposed to extend the same increase in the safe harbor threshold for Qualified Mortgage balloon loans made by small institutions predominantly serving rural and underserved areas. The comment period for our proposal recently ended, and we are now assessing the comments we received before finalizing this measure.

***Wall Street Reform: Oversight of Financial Stability and Consumer and Investor Protections***

February 14, 2013

**Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Seuator Heitkamp:**

1) Director Cordray: As the President stated in the State of the Union address, overlapping regulations of our mortgage markets have the potential to constrain credit and cause otherwise worthy borrowers from qualifying for mortgages. I'm especially concerned about the impact that these new rules will have on smaller institutions that serve states like North Dakota. What will the Bureau be doing to ensure those institutions have clear, written guidance to clarify these new regulations and to make sure lenders have the time to comply with them?

*Response:*

The Bureau recognizes that the model of relationship lending and customer service for which small lenders such as community banks and credit unions are known was not a driver of the excesses in the mortgage market leading up to the financial crisis. And we want to preserve access to credit for small creditors operating responsibly in rural and underserved areas. So under the Ability-to-Repay rule, we extended Qualified Mortgage status to certain balloon loans held in portfolio by small creditors operating predominantly in rural or underserved areas.

The Bureau also proposed amendments to the Ability-to-Repay rule to accommodate mortgage lending by smaller institutions -- particularly for portfolio loans made by small lenders – including those operating outside of what are designated as rural or underserved areas. Our proposal would treat these as Qualified Mortgages even if the loans exceed 43% debt-to-income ratio, as long as the lender considered debt-to-income or residual income before making the loan, and as long as the loans meet the product feature and other requirements for Qualified Mortgages. This proposed exemption would cover institutions that hold less than $2 billion in assets and, with affiliates, extend 500 or fewer first lien mortgages per year. The Bureau estimates that approximately 9,200 community banks and credit unions would be affected by the proposed exemption. Under the proposal, loans made by small creditors that are Qualified Mortgages would have a safe harbor from Ability-to-Repay liability if the interest rate is within 3.5% over the average prime offer rate. The comment period for our proposal recently ended, and we are now assessing the comments we received before finalizing this measure.

In addition, our escrow rule includes an exemption for small creditors in rural or underserved areas that have less than $2 billion in assets and that, with affiliates, originate 500 or fewer mortgages a year. Small creditors that meet these criteria and do not generally have escrow accounts for their current mortgage customers will be exempt from the escrow requirements with regard to loans that are not subject to a forward commitment at origination.

Likewise, for the servicing rules, we recognize that smaller servicers typically operate according to a business model that is based on high-touch customer service, and that they typically make extensive efforts to avoid foreclosures. So smaller institutions that service 5,000 or fewer mortgage loans originated or owned by the servicer itself, or its affiliates, are exempted from large pieces of our servicing rules. This exempts many small servicers from, among other provisions, the periodic statement requirement, the general servicing policies and procedures, and most of the loss mitigation provisions.

We are committed to doing everything we can to help achieve effective, efficient, and comprehensive implementation by engaging with industry stakeholders in the coming year. To this end, we have announced an implementation plan to prepare mortgage businesses for the new rules. We will publish plain-English rule summaries, which should be especially helpful to smaller institutions. Over the course of the year, we will address questions, as appropriate, about the rules which are raised by industry, consumer groups, or other agencies. Any inquiries from your constituents in North Dakota about the meaning or intent of these regulations may be directed to CFPB_reginquiries@cfpb.gov or 202-435-7700. We will also publish readiness guides to give industry a broad checklist of things to do to prepare for the rules taking effect – like updating policies and procedures and providing training for staff. And we are working with our fellow regulators to help ensure consistency in our examinations of mortgage lenders under the new rules and to clarify issues as needed.

***Responses to QFRs - Nominations Hearing***
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bnreau, from Ranking Member Crapo:</u>**

1. For most of the rulemakings that the CFPB proposed since its inception, it claimed not to have sufficient data to conduct a thorough cost-benefit analysis. Is the CFPB spending enough money on its research and market analysis? If so, what else can the CFPB do to ensure that it has sufficient information to conduct a thorough cost-benefit analysis, as required by law?

*Response*

As specifically required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the CFPB has conducted analyses of the henefits, costs, and particular impacts of its rulemakings with the information that has been reasonably available to the CFPB. These analyses have been thorough and generally have been published for public comment before being finalized so that interested parties could submit additional information to the CFPB to enhance the analyses. When members of the public have submitted additional information, the Bureau has considered that information on the record in finalizing its analysis.

The CFPB would prefer to have more data as opposed to less when analyzing regulatory impacts, but there are significant constraints on data availability. Where feasihle and appropriate the CFPB has acquired data from third parties tbat have already collected and compiled the data. But often data are not available for acquisition, and undertaking a new data collection could impose costs on private parties. The CFPB determines on a case-by-case basis whether the potential costs of a collection are likely to be justified by the potential benefits. The CFPB also has to consider whether the data can be acquired or collected in time to meet statutory deadlines, which is an important constraint. Certain collections cannot even be commenced (let alone completed) until after a months-long process to obtain approval for the collection under the Paperwork Reduction Act. Nevertheless, the Bureau will continue to work to ensure that it has sufficient information to conduct the analyses required by law.

2. CFPB's mortgage servicing rule amended RESPA to expanded mortgage servicers' obligations. Since RESPA has a private right of action, consumers will now have a federal private right of action against a servicer for any alleged failure to engage in proper loss mitigation. Did the CFPB conduct an economic analysis regarding whether and if so, how much, this rule will increase the cost of mortgages by exposing banks to more lawsuits?

*Response*

Tbe Bureau considered the advantages and disadvantages of the private right of action associated with the loss mitigation procedures and with certain other amendments to Regulation X in preparing the final rule. In that regard, the Bureau has multiple authorities under RESPA, some of which are subject to private causes of action and some of which are not, and the Bureau carefully calibrated the RESPA servicing rule with this in mind. Accordingly, with respect to loss mitigation, private causes of action exist only for specified provisions of the final rule, generally involving violations of specified procedural requirements and timelines relating to loss mitigation. Broader requirements for servicers to maintain certain policies and procedures relating to loss mitigation are not privately enforceable. Thus, once the final rule is effective, servicers will be subject to a private right of action under RESPA for failure to comply with certain procedural requirements with respect to evaluations for loss mitigation options – for instance, failing to evaluate a complete loss mitigation application within the timelines specified by the rule. However, servicers will not be subject to a private right of action under RESPA for failure to comply with investor guidelines to achieve loss mitigation results. The Bureau was concerned that such an approach might cause investors to stop offering loss mitigation options altogether for fear of litigation and delays in foreclosure timelines. Requirements that servicers maintain reasonable policies and procedures to evaluate loss mitigation options pursuant to investor guidelines are subject to enforcement by the appropriate regulator.

Regulatory analyses generally assume that firms comply fully with a proposed rule and therefore incur costs associated with such compliance. Any other approach would require the Bureau to reduce the costs of compliance by a specified factor. In addition, assessing the potential costs of civil liability would require the Bureau to determine the probability that firms would under-comply with the loss mitigation provisions in questions and face resulting lawsuits, as well as the probability that firms would fully comply but nevertheless face non-meritorious litigation. The analysis would involve further complexity given that compliance with the provisions of the final rule could also benefit firms by reducing other types of lawsuits asserting violations of existing legal requirements. For example, compliance with the general servicing policies, procedures, and requirements may reduce lawsuits asserting that servicers have failed to comply with applicable law with respect to sworn affidavits and notarized documents in connection with foreclosure proceedings. Similarly, compliance with the loss mitigation procedures may reduce lawsuits asserting claims based on a servicer conducting a foreclosure sale when a borrower has accepted an offer of a loss mitigation option and is performing pursuant to such option. Data that would permit the estimation of these various probabilities was not reasonably available to the Bureau. The Bureau intends to monitor the implementation of the servicing rules and to ensure that the rules achieve the intended consequences of guaranteeing borrowers an evaluation for a loss mitigation option where appropriate.

3. Currently, the CFPB is collecting account-level data from payment card issuers. It is my understanding that the request covers millions of individuals' credit card accounts and that the information must be supplied to the CFPB on a monthly basis. The CFPB is requesting that the information be sent to the agency with personally identifying information about consumers. Please answer the following questions with regard to this collection of individual consumer transactions:

    - What is the purpose of this data collection?

*Response*

The CFPB is not collecting any personally identifiable information about any consumers as part of its credit card data collection effort. The data we are collecting as part of our ongoing supervisory activities will help the CFPB to assess and examine compliance with federal consumer financial protection laws and risk to consumers in the credit card marketplace.

- How many accounts has the CFPB followed and how many is it currently following? Does it change the consumer accounts it maintains records for after a certain period of time or track certain account records continuously?

*Response*

The CFPB is obtaining information from a number of credit card issuers on a monthly basis on those issuers' accounts. Information about the number of accounts on which the CFPB receives data is confidential supervisory information.

- Why is it necessary to demand all consumer account data instead of an anonymous representative sample?

*Response*

The data are anonymous and cannot be used to identify any individual consumer. Identifying a sample that would be representative of an issuer's portfolio would be burdensome for the issuer, which would need to pull that sample each month and then go through further procedures and analyses to compare those accounts to its overall portfolio to assure that the sample was representative.

- What does the CFPB intend to do with it?

*Response*

The CFPB uses the data to inform its supervisory processes and to monitor risks to consumers. These data help the CFPB to analyze and benchmark credit card issuers across our supervision work. The CFPB also uses the data to assess and examine compliance with Federal consumer financial protection laws.

- Has the agency set a time period for retaining this data, and will the individual consumer transaction information be purged from all federal records after this retention period?

*Response*

The data exclude personally identifiable information about individual consumers. There is no set time period for retention of the data.

- Does the CFPB share this information with any outside third parties? Are these outside third parties under contract with the CFPB? With whom does the CFPB intend to share it in the future?

*Response*

The CFPB has retained a data services vendor that manages the data on the CFPB's behalf, and that vendor is under contract with the CFPB and is subject to all Federal data protection rules and requirements. The CFPB does not otherwise share this information with any non-governmental outside third parties.

- Does the CFPB provide this data – in whole, part, or summary – to any other federal agency or entity? If so, please describe how this data is requested and how it is shared.

*Response*

The Bureau generally shares data with prudential regulators in accordance with the Supervisory Data Sharing Memorandum of Understanding between the CFPB and the prudential regulators. Any sharing of these loan-level data would comply with those agreements.

- How much does the agency spend annually on this data collection

*Response*

The Bureau spends approximately $3 million per year on this data collection.

- With respect to the Paperwork Reduction Act and other laws, OMB has set forth certain parameters for surveys and data collection. Please submit the OMB approval document for this data collection effort.

*Response*

This data collection is not subject to PRA requirements.

- Do individuals and their families have the opportunity to opt out of this federal agency data collection?

*Response*

Individuals and families are not identified in this data collection, and individual consumers and their families are not participants in this data collection. Title X of the Dodd-Frank Act authorizes the Bureau to supervise certain consumer financial services companies to protect consumers. Some of the consumer financial services companies under CFPB supervision are the participants in this data collection, and they may not opt out of supervision activities.

- Do you anticipate that the CFPB will engage in rulemaking as a result of the data collection?

*Response*

The CFPB uses the data to inform CFPB analysis of risks to consumers in the credit card marketplace and risks to the market. Analysis of the data may lead the CFPB to identify areas where appropriate regulations could improve the functioning of the market, and may support the CFPB's efforts to reduce outdated, unnecessary, or unduly burdensome regulations. Thus, this information may be used to inform future rulemaking activities as appropriate.

- I understand that this account-level data is comprehensive of each payment card issuer that furnishes data. How is the CFPB ensuring that the consumer information it collects is kept secure; to date, has the CFPB suffered any breaches of data, and has any data breach reached consumer information?

*Response*

The data that the Bureau solicits and collects from issuers exclude personally identifiable information about the individual consumers to whom the data pertains. Accordingly, no breach of personally identifiable information by the CFPB is possible. For example, the names of individual consumers or their contact information, Social Security numbers, and credit card account numbers are not included in the data. Because the data is not personally identifiable, it also does not constitute a system of records that is subject to the requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Nevertheless, all such data are subject to the protections given to information that the CFPB obtains through its supervisory authorities.[1] The data are managed according to IT security requirements that comply with Federal laws, policies, and procedures.

1 These include protections set forth in the Act; the Bureau's confidentiality regulations at 12 C.F.R. § 1070.40 et seq.; Exemption 8 of the Freedom of Information Act, 5 U.S.C. § 552(b)(8); and CFPB Bulletin 12-01, which is viewable online at *http://www.consumerfinance.gov/wp-content/uploads/2012/01/GC_bulletin_12-01.pdf.*

## *Responses to QFRs - Nominations Hearing*
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Menendez:</u>**

1. I have long been focusing my attention on the inability of New Jerseyans and tens of millions of Americans to gain access to capital and begin to build their credit worthiness. At last month's Consumer Advisory Board meeting, you spent a good portion of your time discussing this challenge. In fact, you said, "*There is an obvious demand for short-term credit products, which can be helpful for consumers who use them responsibly and which are structured to facilitate repayment. We want to make sure that consumers can get the credit they need without jeopardizing or undermining their finances. Debt traps should not be part of their financial futures.*" Based on your comments, and due to the fact that under Title 12 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB is mandated to consider resources and foster financial innovation, what initiatives do you think your agency should pursue to increase access to credit for the millions of Americans who are currently unable to receive emergency loans? I think it is important to strike a balance between extending credit to consumers, while also implementing important consumer protections. There is certainly a demand for these products, but the American people need better options and protections. Are there ways the CFPB could regulate this industry while still keeping a product that's "helpful for consumers who use them responsibly?"

*Response*

While the CFPB is committed to understanding what, if any, risks of consumer harms are present in the small-dollar credit market and using available tools to mitigate those harms, we agree that it is important to balance the sometimes competing considerations of access and consumer protections in the provision of small dollar credit. In fact, the Dodd-Frank Act requires that when the CFPB considers rulemaking that we "consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services" that may result.

The CFPB also recognizes the need to learn about the potential for innovation in financial products and services. We have formalized our efforts with an initiative called Project Catalyst, which was launched at an event in Silicon Valley last November. This event included a roundtable that specifically focused on innovations in small dollar lending. Following that launch, we have established ongoing outreach and formal structures in which we will both learn from innovators and facilitate testing of certain innovations in the marketplace. The findings from these activities may help further inform any future policymaking on small-dollar lending.

2. The lack of access to capital largely affects minorities and chronically underserved communities. There is a study on this issue by the CFPB that I am waiting to be completed, and I look forward to reading once it is completed. As I have worked on payday lending legislation over the years, one question continuously comes up but is

never answered is: if payday lending is further curtailed, what products will take their place in communities where people have not built strong credit backgrounds, but need short-term credit? Is this something the CFPB is reviewing in its study? What are the Bureau's recommendations on this issue?

*Response*

The CFPB recognizes that there is demand by consumers for credit that is available in small increments, including those consumers who may not qualify for products such as credit cards or signature loans. The CFPB is currently undertaking data-driven analysis to determine the patterns of use undertaken by consumers using payday loans offered by non-banks and deposit advances offered by certain depository institutions, and the outcomes of differing patterns of use. We are particularly concerned with loans intended for short-term, occasional use being used in a sustained, long-term way, particularly by households that are not using these products to deal with a specific financial emergency, but are instead turning to payday loans because their expenses regularly outstrip their income.

As part of this analysis we are looking at a variety of models by which small-dollar credit is currently offered to otherwise credit-constrained households. This includes determining which product structures and features may curtail sustained use and negative outcomes, as well as the feasibility of implementation. Part of this analysis can include looking at the different methods states have employed to curtail sustained use of payday loan products, as well as the variety of safety features that depository institutions currently impose on deposit advances.

3. The CFPB adopted new rules related to mortgage servicing standards in January 2013. I have long advocated for increasing consumer protections on borrowers before foreclosures, encouraging loan modifications, eliminating dual tracking, placing limits on foreclosure fees, and creating an appeals process for those denied loan modifications as well as a mediation program. Can you give an update on these rules and when we expect them to go into effect? Are lenders currently working to implement these standards now? What actions have mortgage servicers taken since the rules were issued in January 2013?

*Response*

The Bureau's January 2013 servicing rules take effect on January 10, 2014. The rules address a number of the issues that you reference. For instance, they generally require servicers to make good-faith efforts to contact borrowers who are experiencing serious trouble with their loans and to provide information regarding foreclosure alternatives. Servicers generally are required to review applications for loan modifications or other loss mitigation options received by specified deadlines promptly for completeness, and to work with borrowers to obtain any missing information. For applications received by specified deadlines, the rules set certain deadlines for servicers to respond, require notification to borrowers of the results, and provide an opportunity to appeal denials. The final rule also prohibits a servicer from making the first notice or filing required for a foreclosure process until a mortgage loan account is more than 120 days delinquent, and if a borrower submits a complete application for a loss mitigation option before a servicer has made the first filing required for a foreclosure process, a servicer may not start the foreclosure process unless certain requirements are met. Finally, servicers are required to maintain policies and procedures concerning various loss mitigation processes, including communications with both consumers and loan owners/investors of the loans and proper evaluation of applications according to the criteria established by owners/investors. We believe that the combined rules will help to reduce avoidable foreclosures and help to address concerns about "dual tracking."

Based on requests for guidance received from servicers, the Bureau is aware that servicers are already working on plans to implement the new requirements. The Bureau has a multi-faceted regulatory implementation initiative underway to assist industry in implementing these and the other new mortgage rules that the Bureau issued to implement title XIV of the Dodd-Frank Act. The Bureau's initiative includes plans for several updates to the regulatory text and official interpretations over the coming year, the first of which will be issued this spring. It also includes publication of small business compliance guides (with companion video versions) for the new rules, updated examination procedures, and compliance "readiness" guides for the new rules. In addition, the Bureau will be working with other regulatory agencies, trade associations, industry service providers, and some individual lending and servicing organizations to track industry implementation efforts. Through this engagement, the Bureau expects to learn more about implementation challenges and provide support to help companies implement the new requirements more efficiently. Further, the Bureau issued a supervisory bulletin regarding mortgage servicing transfers on February 11, 2013 (CFPB Bulletin 2013-01). Among other things, that bulletin advises servicers about existing consumer protection requirements and provisions in the mortgage servicing rules that specifically relate to mortgage servicing transfers... Notably, the Bureau's new mortgage servicing rules are backed by supervision and enforcement authority that encompass both large banks and non-banks that service mortgage loans.

4. Consumers' use of prepaid cards has exploded in the past few years, especially among underbanked consumers. Since credit cards, debit cards, and gift cards have all been regulated to some degree, prepaid cards remain one of the few largely unregulated products out there. Some fees on these cards are undisclosed and others are unreasonable, and they don't always come with FDIC insurance or protection against theft or loss for the consumer. What progress has the CFPB made in analyzing this issue, and when do you anticipate moving forward on it?

*Response*

The CFPB issued an Advance Notice of Proposed Rulemaking ("ANPR") on General Purpose Reloadable ("GPR") prepaid cards in May 2012. The ANPR reflects the Bureau's interest in learning more about this product, including its costs, benefits, and risks to consumers, and expressed the Bureau's intention to take regulatory action to extend the Regulation E protections to GPR cards. Our focus is on safety and transparency. Our ANPR generated approximately 250 comments, and we have combed through that feedback. We are currently in the process of using all the information we received to determine the scope of our rulemaking in this market. We do not yet have firm timeframes for rulemaking in the GPR market, though activity will be under way later this year.

5. The CFPB's Office of Minority and Women Inclusion (OMWI) is now up and running. The reason for creating these offices was that there just is not enough minority representation within our financial regulators. What will you do to increase the number of minorities and women, especially in management positions and as contractors, at the CFPB?

*Response*

I agree that one of the primary roles of OMWI is to enhance diversity at the Bureau. As a newly formed agency, we've been able to build diversity into our work early on. While our employment of minorities and women at the Bureau exceeds the average for other FIRREA agencies, we believe we can further enhance diversity at the Bureau at all levels of the organization, including senior leadership positions. We have and will continue to do this by doing the following:

- Collaborating with the Office of Human Capital on building and continually enhancing a comprehensive workforce planning and development strategy that includes training and developmental opportunities, mentorship programs, rotations, lateral moves, and detail opportunities that enhance the skills and key competencies necessary for advancement and success at the CFPB.

- Conducting training for employees and supervisors in an effort to expand awareness, knowledge, and cultural competencies that aid in the understanding and management of a diverse workforce and its value to the CFPB mission.

- Collaborating with division heads to promote policies, practices and procedures to ensure that all employees, including women and minorities, are being developed to attain their maximum potential.

- Supporting the development of and facilitating a framework for a diversity council to report to management and discuss issues and concerns regarding diversity and inclusion.
- Increasing outreach to and recruitment/hiring of minority and women candidates by recruiting at minority-serving institutions and women's colleges and universities (e.g. Historically Black Colleges and Universities and Hispanic-Serving Institutions).

- Utilizing the networks of current employees to promote the mission of the Bureau and advertise upcoming positions.

- Participating in targeted internship programs, including the one operated by the Hispanic Association of Colleges and Universities.

- Conducting specific diversity and inclusion training for all personnel engaging in the hiring process.

- Evaluating and assessing the diversity of the candidate pool at various decision points and providing feedback to hiring authorities.

- Partnering with divisions to develop diversity initiatives associated with the work of the CFPB.

6. What role does your OMWI play at the CFPB? Is it a part of the decision-making process when hiring employees and contractors? How often do you meet with Stuart Ishimaru (head of CFPB OMWI)? Does the CFPB's procurement office meet with the CFPB's OMWI?

*Response*

The OMWI plays a central role in the operations of the Bureau. The Director of the OMWI participates in meetings of the Operations Advisory Committee and the Policy Committee, two of the primary governance mechanisms for the Bureau, addressing the full breadth of the Bureau's activities. The OMWI plays a consultative role in the hiring process, providing advice and counsel to hiring managers and the Office of Human Capital.

I meet regularly with Stuart Ishimaru and he has direct access to me whenever he needs to speak with me. In addition, Stuart meets weekly with the Chief Operations Officer of the Bureau. The OMWI is housed in the Operations Division, which also houses the Office of Human Capital and the Procurement Office, both key partners of the OMWI under Section 342 of the Dodd-Frank Act. This placement facilitates cooperation and collaboration between these offices. The Procurement Office and the OMWI meet regularly, and are currently planning a number of joint activities to support our work with minority and women-owned small businesses.

7. Your OMWI has had a director for almost a year now, so can you provide a progress report? How many Hispanics, African Americans, women, and/or minorities are working at the CFPB? How about in mid-level to senior-level management positions?

*Response*

Attached is a chart providing responses to the questions and data on employees at the higher pay bands at the Bureau as of February 23, 2013.

| | Overall | | Supervisors* | | CN-60+** | | Executives*** | |
|---|---|---|---|---|---|---|---|---|
| Total | 1131 | | 187 | | 454 | | 46 | |
| Women | 545 | 48% | 72 | 39% | 208 | 46% | 14 | 30% |
| African-American | 182 | 16% | 26 | 14% | 44 | 10% | 3 | 7% |
| Hispanic/Latino | 54 | 5% | 7 | 4% | 15 | 3% | 2 | 4% |
| Asian-American | 98 | 9% | 12 | 6% | 32 | 7% | 5 | 11% |
| Minority Total | 372 | 33% | 48 | 26% | 101 | 22% | 10 | 22% |
| Women/ Minority | 698 | 62% | 101 | 54% | 257 | 57% | 20 | 43% |

* employees in a position description designated as supervisory
** regardless of supervisory status (equivalent to GS 14 and above)
*** CN-81+ (equivalent to Senior Executive Service)

Of the nine most senior positions (Director, Deputy Director, Chief of Staff, and six Associate Directors) at the Bureau in 2012, three minorities served in three positions and three women served in four positions (the General Counsel was previously Chief of Staff). At the next highest level, roughly half of the Assistant Directors are minorities and/or women. Minorities and women are represented in all six Divisions of the Bureau, and together lead roughly half of the offices in the Divisions.

8. You've said your OMWI will develop standards for equal employment opportunity and standards for the racial, ethnic, and gender diversity of the workforce and senior management of the agency. Can you provide an update on the creation of those standards? What are the standards and how were they formulated?

*Response*

The OMWI is required under Section 342 of the Dodd-Frank Act to create these standards, and is in the process of doing so. Recently, the Bureau created a separate Office of Equal Employment Opportunity to carry out the counseling, investigative, and enforcement functions required by various civil rights laws. The OMWI is working with the EEO Office and with the Office of Human Capital to develop standards for equal employment opportunity and for racial, ethnic and gender diversity.

The Bureau has established workforce planning processes and organizational structures allowing for more precise identification of position needs and successful performance attributes. We have identified and intend to utilize a variety of broad recruiting methods to capture a diverse pool of qualified candidates to be considered for employment at the Bureau.

## *Responses to QFRs - Nominations Hearing*
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Vitter:</u>**

1. The CFPB can write rules and enforce against unfair, deceptive, and abusive acts or practices. The Federal Trade Commission (FTC) has spent decades documenting and defining "unfair" and "deceptive" through policy statements and guidance, so companies have an idea of what the standards mean. This is important because honest businesses want to treat their customers fairly and they build compliance programs based with these standards in mind to ensure they understand and abide by the rules of the road. "Abusive" is defined only in a cursory way by the Dodd-Frank Act, and the CFPB has not taken any steps to help companies understand what the standard means, and in particular, how it relates to unfairness and deception. In fact, the Bureau has said that abusive will be defined through enforcement action rather through regulation, guidance, or some other transparent means. 51 state Attorneys General can also enforce against "abusive" making it all the more important the CFPB take steps to ensure the standard is consistently applied. For these reasons, Dodd Frank contemplated the Bureau would need to undertake a rulemaking to establish a definition for abusive – and perhaps even for unfair and deceptive. Given the uncertainty created by this new term for the business community, and the likelihood that multiple interpretations will develop among the states, will you commit to initiating a transparent process to take public input and define "abusive" before the Bureau brings any kind or enforcement action using this authority?

*Response*

In Section 1031(d) of the Dodd-Frank Act, Congress clearly and expressly limited the meaning of "abusive" acts or practices to those that –

(1) materially interfere with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) take unreasonable advantage of a consumer's:

  (a) lack of understanding of the material risks, costs, or conditions of the product or service;

  (b) inability to protect his or her interests in selecting or using a consumer financial product or service; or

  (c) reasonable reliance on a covered person to act in the consumer's interests.

The Bureau will be vigilant in obeying the law enacted by Congress and in observing and adhering to the limits of its authority under this provision. Its application will depend on specific facts and circumstances. Note also that if the Bureau were to undertake a rulemaking to implement the abusive standard that would allow 51 state Attorneys General to enforce that rule against federally-chartered depository institutions, which cannot be done under the statute itself.

2. The Federal Trade Commission has a widely-admired automated complaint database, but you decided to expend funds to create your own database rather than using the FTC's database architecture. Why did you make that decision and how much has it cost to create your own database?

*Response*

The Dodd-Frank Act instructed the CFPB to "establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services." In preparing to launch its Office of Consumer Response to serve these and other related functions, the CFPB researched and considered the complaint handling models, case management systems, and related databases of the prudential federal regulators and the Federal Trade Commission.

Given the specific complaint-handling requirements laid out in the Dodd-Frank Act, the Bureau was required to adopt an individual-level complaint operating model that required a case management system that is not congruent with the FTC's "complaint database."[2] The Bureau's complaint-handling operational model and case management system allow it to collect, monitor, and respond to complaints for a wide range of consumer financial products and services, to "coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies," to collect responses from companies to complaints, to allow for consumer review of those responses through a secure web portal, to conduct individual investigations of consumer complaints, and to facilitate necessary recordkeeping in order to meet its Congressional reporting requirements. Nonetheless, for greater efficiency and sharing of information, the CFPB's case management system uses an application programming interface to feed consumer complaints directly into the FTC's complaint database (known as "Consumer Sentinel") also, which makes those complaints available to civil and criminal law enforcement authorities.

Creating a case management system that integrates the aforementioned functionality to support the Bureau's complaint-handling model consistent with the requirements of Dodd-Frank has cost approximately $8 million to date, including the database.

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2 According to FTC's Complaint Assistant, *www.ftccomplaintassistant.gov*, "The FTC enters all complaints it receives into Consumer Sentinel, a secure online database that is used by thousands of civil and criminal law enforcement authorities worldwide. The FTC does not resolve individual consumer complaints."

3. The CFPB established a legal safe harbor for certain Qualified Mortgages that creates a strong economic incentive for lenders to write very conservative mortgages. At the same time, however, the CFPB has said it will use disparate impact analysis for Equal Credit Opportunity Act (ECOA) enforcement. I'm concerned that these two policies are inherently in conflict. If a lender follows your ability to repay rule by making a business decision only to make QMs could that lender be found to be in violation of ECOA?

*Response*

The Dodd-Frank Act provides a presumption of compliance with its new ability-to-repay requirements for certain "qualified mortgages." In its recent rules to implement those provisions, the Bureau accorded safe harbor status to certain qualified mortgages and a rebuttable presumption of compliance for others, depending on the annual percentage rate of the loans at issue. In defining the boundaries of qualified mortgages and of the safe harbor, the Bureau recognized that conditions are fragile and investors remain concerned about managing risks in the wake of the financial crisis. At the same time, we did not intend to stigmatize loans that fall outside those boundaries or to signal that responsible lending can or should take place only within the safe harbor space. Quite the contrary, the preamble to the final rule makes clear that the Bureau expects over time to see a robust market develop outside the QM safe harbor and, indeed, outside of QM altogether.

We have received questions from a number of market participants about how decisions about what types of mortgages to offer under the ability to repay rule would be evaluated under ECOA and Regulation B. The Bureau recognizes that, depending on their business model, some creditors may primarily offer loans that are QMs, or non-QMs. The Bureau recognizes that business model decisions are affected by many legitimate considerations, including the ability to sell loans on the secondary market and appetite for repayment risk. We expect that business models will evolve over the next several years as creditors explore different options and as the mortgage markets shift in response to economic conditions and other regulatory initiatives. We are committed to engaging with stakeholders as they implement the new rules. We know creditors are working to make thoughtful decisions about their business models as the market environment evolves, and we are working as expeditiously as possible to develop and provide industry with consistent guidance on how we will approach supervision and enforcement under the QM rule and ECOA.

*Responses to QFRs - Nominations Hearing*
March 12, 2013

**Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Kirk:**

1. At Tuesday's hearing, you stated that the CFPB is applying the Government Performance and Results Act (GPRA) to show how the agency is justifying its spending. Please provide the most recent GPRA report. If no current GPRA report is available, then please provide any interim GPRA report.

*Response*

The Bureau's first draft of its strategic plan under GPRA is publicly available on its website at *http://www.consumerfinance.gov/strategic-plan/*. We anticipate releasing a final version of the strategic plan this spring, along with updated budget and performance documents.

2. The CFPB is required by Dodd-Frank to convene a Small Business Review Panel when issuing a rule that will significantly impact a large number of small entities. In your August 1, 2012 testimony before the House Committee on Small Business, you stated that "[s]mall business review panels are a valuable component of our rulemaking process." Yet, the Bureau did not convene a panel for the ability-to-pay rule because the rule was transferred to the Bureau from the Federal Reserve. Nonetheless, the Bureau did convene a small business review panel for the RESPA TILA mortgage disclosures, even though that rule was also transferred to the Bureau from the Federal Reserve. Can you provide clarity regarding the Bureau's approach to convening small business review panels? Please explain why the CFPB chose to convene a panel for the RESPA TILA rulemaking but not for the ability-to-pay rulemaking.

*Response*

The CFPB conducts Small Business Review Panels in accordance with the requirements of the Regulatory Flexibility Act (RFA). The RFA, as amended, identifies the types of rules for which a Small Business Review Panel is required. Generally, the RFA applies only to rules for which a notice of proposed rulemaking is required by the Administrative Procedure Act, or "any other law." When developing a proposed rule subject to the RFA, the CFPB is required to convene a Small Business Review Panel prior to issuing the proposal unless the CFPB certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities. Accordingly, the CFPB is not required to convene Small Business Review Panels for proposed rules that are not subject to the RFA or for proposed rules that are subject to the RFA but that the Director certifies will not have a significant economic impact on a substantial number of small entities. The CFPB also is not required to convene a Small Business Review Panel where another agency, such as the Federal Reserve Board, issued a rule proposal which was later inherited and finalized by the CFPB, since the statutory timing of the Small Business Review Panel is supposed to occur prior to issuance of the original proposal. This was the case with respect to the ability-to-repay rulemaking.

The proposal to merge the TILA and RESPA mortgage disclosure requirements did not transfer to the CFPB from the Federal Reserve. The CFPB itself issued the proposal to merge the TILA and RESPA mortgage disclosure requirements pursuant to the requirements of the Dodd-Frank Act. The CFPB conducted a Small Business Review Panel before issuing this proposal.

3. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the CFPB is required to give small businesses a preview of new proposals and receive extensive feedback from small businesses before proposing a new rule, including the potential impact of any new rules on the cost of credit for small businesses. Yet, the CFPB published all three of its Small Business Review Panel reports simultaneously with the proposed rules. By comparison, the Occupational Safety and Health Administration issues such reports when the panel is done. Why did the CFPB decide to publish the reports at the same time as the proposed rules and not after the panels were completed? Are there benefits to publishing the report after the panel has convened and before the proposal is issued?

*Response*

The statute requires that the Panel report be made public as part of the rulemaking record, but does not specify when the report should be released to the public. The CFPB released Panel reports with their corresponding proposed rules so that the public could consider them together. Publicly releasing the panel report with the Proposed Rule promotes transparency. As panel reports must be interpreted in the context of the corresponding proposed rule, releasing the Panel report before the proposed rule could cause unnecessary confusion.

4. In your statement, you mention that the CFPB is looking to help older Americans get sound information and advice about their retirement finances. In addition, you gave an interview to Bloomberg in January stating the CFPB is exploring initiatives in the "rollover moment." What is the "rollover moment?" Is the CFPB relying solely on the statutory authority in Section 1013(g) of the Dodd-Frank Act establishing the Office of Financial Protection for Older Americans? Has the CFPB engaged any contractors and/or outside third parties to conduct research or analysis in the retirement savings area? Is the CFPB looking at retirement savings issues that target individuals other than seniors?

*Response*

Some of the most important decisions that consumers make involve saving for retirement and making choices to improve their economic security later in life. Large numbers of Americans are expected to retire over the next decade, so some have referred to it as the "rollover moment." Section 1013(g) of the Dodd-Frank Act directed the CFPB's Office for Older Americans to undertake activities to enhance later-life economic security, including:

- Providing goals for financial literacy programs for older Americans focusing on long-term savings and later-life economic security – and self-protection against unfair, deceptive, or abusive practices;

- Researching best practices and effective strategies to educate older Americans on long-term savings as well as planning for retirement and long-term care;

- Assessing and reporting on problems facing older Americans due to misuse of certifications and designations of financial advisors – and providing Congress and the SEC with policy recommendations; and

- Coordinating consumer protection activities for older Americans with relevant federal agencies and state regulators.

The CFPB has a contract with Ideas42 d/b/a Behavioral Ideas Lab to help the Bureau examine consumers' financial challenges in a range of financial decision-making areas, including the financial challenges that face older Americans. Saving for retirement before reaching retirement age and managing retirement savings accounts after retirement pose challenges to consumers and affect their later-life economic security.

5. Have you or any CFBP staff had conversations with officials and staff of the Departments of Treasury and Labor, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission regarding retirement savings issues? Has any agency request been made with respect to Section 1027 of the Dodd-Frank Act?

*Response*

The Bureau has had conversations with officials and staff of other departments and agencies about retirement savings issues. The Bureau is not aware of any formal request having been made pursuant to Section 1027 of the Dodd-Frank Act.

6. Has the CFPB entered into a contract with Ideas42 to look into the behavior science of auto enrollment and auto escalation features of 401(k) plans? Is this contract looking at seniors' retirement savings decisions or other individuals' retirement savings decisions? Was this contract put out for public bid? Please provide a copy of the contract and a copy of the justification if the contract was done as a sole source contract.

*Response*

The CFPB has a contract with Ideas42 d/b/a as Behavioral Ideas Lab to help the Bureau examine consumers' financial challenges in a range of financial decision-making areas, including the financial challenges that face older Americans. The contract was properly competed for public bid and was not a sole source agreement. A copy of the contract is attached as **Attachment A.**

7. Currently, the CFPB is collecting account-level data from payment card issuers. It is my understanding that the request covers millions of individuals' credit card accounts and that the information must be supplied to the CFPB on a monthly basis. The CFPB is requesting that the information be sent to the agency with personally identifying information about consumers. Please answer the following questions with regard to this collection of individual consumer transactions:

- What is the purpose of this data collection?

*Response*

The CFPB is not collecting any personally identifiable information about any consumers as part of its credit card data collection effort. The data we are collecting as part of our ongoing supervisory activities will help the CFPB to assess and examine compliance with federal consumer financial protection laws and risk to consumers in the credit card marketplace.

- How many accounts has the CFPB followed and how many is it currently following? Does it change the consumer accounts it maintains records for after a certain period of time or track certain account records continuously?

*Response*

The CFPB is obtaining information from a number of credit card issuers on a monthly basis on those issuers' accounts. Information about the number of accounts on which the CFPB receives data is confidential supervisory information.

- Why is it necessary to demand all consumer account data instead of an anonymous representative sample?

*Response*

The data are anonymous and cannot be used to identify any individual consumer. Identifying a sample that would be representative of an issuer's portfolio would be burdensome for the issuer, which would need to pull that sample each month and then go through further procedures and analyses to compare those accounts to its overall portfolio to assure that the sample was representative.

- What does the CFPB intend to do with it?

*Response*

The CFPB uses the data to inform its supervisory processes and to monitor risks to consumers. These data help the CFPB to analyze and benchmark credit card issuers across our supervision work. The CFPB also uses the data to assess and examine compliance with Federal consumer financial protection laws.

- Has the agency set a time period for retaining this data, and will the individual consumer transaction information be purged from all federal records after this retention period?

*Response*

The data exclude personally identifiable information about individual consumers. There is no set time period for retention of the data.

- Does the CFPB share this information with any outside third parties? Are these outside third parties under contract with the CFPB? With whom does the CFPB intend to share it in the future?

*Response*

The CFPB has retained a data services vendor that manages the data on the CFPB's behalf, and that vendor is under contract with the CFPB and is subject to all Federal data protection rules and requirements. The CFPB does not otherwise share this information with any non-governmental outside third parties.

- Does the CFPB provide this data – in whole, part, or summary – to any other federal agency or entity? If so, please describe how this data is requested and how it is shared.

*Response*

The Bureau generally shares data with prudential regulators in accordance with the Supervisory Data Sharing Memorandum of Understanding between the CFPB and the prudential regulators. Any sharing of these loan-level data would comply with those agreements.

- How much does the agency spend annually on this data collection

*Response*

The Bureau spends approximately $3 million per year on this data collection.

- With respect to the Paperwork Reduction Act and other laws, OMB has set forth certain parameters for surveys and data collection. Please submit the OMB approval document for this data collection effort.

*Response*

This data collection is not subject to PRA requirements.

- Do individuals and their families have the opportunity to opt out of this federal agency data collection?

*Response*

Individuals and families are not identified in this data collection, and individual consumers and their families are not participants in this data collection. Title X of the Dodd-Frank Act authorizes the Bureau to supervise certain consumer financial services companies to protect consumers. Some of the consumer financial services companies under CFPB supervision are the participants in this data collection, and they may not opt out of supervision activities.

- Do you anticipate that the CFPB will engage in rulemaking as a result of the data collection?

*Response*

The CFPB uses the data to inform CFPB analysis of risks to consumers in the credit card marketplace and risks to the market. Analysis of the data may lead the CFPB to identify areas where appropriate regulations could improve the functioning of the market, and may support the CFPB's efforts to reduce outdated, unnecessary, or unduly burdensome regulations. Thus, this information may be used to inform future rulemaking activities as appropriate.

- I understand that this account-level data is comprehensive of each payment card issuer that furnishes data. How is the CFPB ensuring that the consumer information it collects is kept secure; to date, has the CFPB suffered any breaches of data, and has any data breach reached consumer information?

*Response*

The data that the Bureau solicits and collects from issuers exclude personally identifiable information about the individual consumers to whom the data pertains. Accordingly, no breach of personally identifiable information by the CFPB is possible. For example, the names of individual consumers or their contact information, Social Security numbers, and credit card account numbers are not included in the data. Because the data is not personally identifiable, it also does not constitute a system of records that is subject to the requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Nevertheless, all such data are subject to the protections given to information that the CFPB obtains through its supervisory authorities.[3] The data are managed according to IT security requirements that comply with Federal laws, policies, and procedures.

3 These include protections set forth in the Act; the Bureau's confidentiality regulations at 12 C.F.R. § 1070.40 et seq.; Exemption 8 of the Freedom of Information Act, 5 U.S.C. § 552(b)(8); and CFPB Bulletin 12-01, which is viewable online at *http://www.consumerfinance.gov/wp-content/uploads/2012/01/GC_bulletin_12-01.pdf.*

*Responses to QFRs - Nominations Hearing*
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Johanus:</u>**

1. To follow up on a question I asked in our hearing, you have often taken the position that the budget of the CFPB is exceptionally transparent, and that transparency extends to your budget simply because you post it online. While I disagree with your refusal to allow Congressional oversight of your budget through the appropriations process, I know that this refusal is absolute. In the name of transparency, however, I need a more clear answer as to whether you are willing to appear before the Appropriations Subcommittee on Financial Services and General Government to walk through your budget documents and answer questions about the spending habits of the Bureau? Although you appear before the House and Senate Financial Services and Banking Committees, respectively, the Financial Services and General Government Subcommittee has the specialization and expertise in these areas and your commitment to working with the subcommittee is vital.

*Response*

Section 1017(a)(2)(C) of the Dodd-Frank Act provides that the Bureau's funds derived from the Federal Reserve System shall not be subject to review by the Committees on Appropriations, and Section 1017(c)(2) provides that funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies. Unlike agencies over which the Appropriations Committee has jurisdiction, the Bureau is an independent bureau within the Federal Reserve System. Nevertheless, the Bureau was pleased to provide over 100 pages of budget information in our annual report to the Appropriations Committees in July of 2012, including copies of fund transfer correspondence with the Federal Reserve Board, information on major expenditures, spending by division/program area, contractual obligations, a description of our budget process, our budget justification, information on our civil penalty fund, and numerous other materials. We also released a draft Strategic Plan for public comment in 2012, which includes goals, outcomes, strategies and performance measures that inform our performance-based budget process. We anticipate releasing the final Strategic Plan in the Spring, along with updated budget and performance documents. The Bureau's annual financial reports, quarterly spending updates, and budget justifications are also available on our website at *www.consumerfinance.gov/budget*. Director Cordray has met with members of the Appropriations Committees on numerous occasions and has discussed various aspects of the Bureau's budget and operations with them. In addition, the Director has welcomed opportunities to testify before committees and subcommittees of both the House and Senate on the Bureau's budget. In fact, the Bureau has now testified 31 times before Congress. The Bureau will be happy to meet with any Member of Congress to walk through its budget documents and answer questions.

2. H.R. 4367, a bill on which I worked very hard here in the Senate, removed the federal requirement for "on the machine" disclosures on ATM machines. This bill was signed into law nearly three months ago, yet a look at Regulation E (CFR 1005.16) still lists the

"on the machine" requirement as something with which our community banks must comply. Why is it that the CFPB has not found the time to update the regulation and remove a requirement that the Congress unanimously agreed was unnecessary and costly?

*Response*

The Bureau agrees that changes in the law to eliminate unnecessary and costly requirements are a high priority and has been working hard on a rule to implement this statutory revision. In fact, we expect to issue the rule this month. Because the rule provides compliance burden relief, and because it merely implements the specific statutory revision, it is structured as a final rule that takes effect immediately on publication.

3. Lenders and service providers in the mortgage lending arena have stressed to the bureau that they will need a significant amount of time to implement new combined RESPA and TILA mortgage disclosures. Does the bureau have an implementation time frame in mind? Do you think 18 months is reasonable to ensure the greatest possible success with implementation?

*Response*

The Bureau has heard and appreciates concerns expressed by the mortgage and real estate settlement industries about the time needed to implement changes under the Bureau's proposal to integrate TILA and RESPA disclosures. While the Bureau understands this concern and intends to remain engaged with affected persons in continuing to develop a final rule, that final rule has not yet been completed for two reasons. First, the Bureau is working carefully to ensure that such a significant undertaking as the integration of TILA and RESPA disclosures is done right, including through additional qualitative and quantitative consumer testing, which takes time. Second, the Bureau also has heard industry's request that the integrated disclosures not be implemented too quickly, as creditors, mortgage servicers, and other affected persons work to comply with the many other regulatory changes under the Bureau's January 2013 final rules implementing numerous new statutory requirements established by title XIV of the Dodd-Frank Act. As a general matter, the Bureau intends to make an informed determination as to the amount of time industry needs to comply with the integrated disclosure requirements and to afford industry adequate time, but the Bureau thus far has refrained from prejudging the question of exactly how much time that means and for now, at least, considers it inappropriate to comment on whether 18 months is too short or too long. When the integrated disclosure rules are being finalized, and the Bureau knows exactly what they require and where the affected industries stand with respect to their implementation of the title XIV rules, the Bureau is confident that it will determine an appropriate implementation period in an informed manner.

4. The Small Business Review panel process informed the bureau about how it can reduce or eliminate added costs to implement new combined RESPA and TILA mortgage

disclosures. One Small Business Review panel recommendation was to maintain the current line numbering to reduce software programming costs and industry confusion. Why did the bureau ignore this recommendation in its proposed rule to combine RESPA and TILA mortgage disclosures?

*Response*

One of the difficulties with the current HUD-1 that consumers receive at closing is that the line numbers for charges do not match the Good Faith Estimate that consumers receive three days after application. In addition, the three- and four-digit line numbering system has proved difficult for consumers to understand. The Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. Consumer participants at the Bureau's testing appeared overwhelmed by the three- and four-digit line numbers on the prototypes that were designed similarly to the current RESPA settlement statement. They performed worse in terms of understanding the pertinent information with prototypes containing that system. The Bureau also tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants at the Bureau's testing, with some industry participants at the Bureau's testing preferring it over the system of the current RESPA settlement statement.

*Responses to QFRs - Nominations Hearing*
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Moran:</u>**

1. What combined effect do you expect the final rule on Qualified Mortgages and new servicing rules to have on the cost and availability of mortgage credit in the near future?

*Response*

In the *Federal Register* notices setting forth the final Ability-to-Repay/Qualified Mortgage (QM) rules and servicing rules, the CFPB shared its assessment of the potential effects of these rules on the cost and availability of mortgage credit. The CFPB stated its belief that the QM rule will not lead to a significant reduction in consumers' access to mortgage credit or a material impact on cost. The CFPB also laid out in detail the basis for this belief. Among other reasons, the CFPB noted that underwriting practices and standards have tightened significantly since the financial crisis, so that implementation of the rule will not require a major change in current practices. The Bureau also noted that it had carefully structured the rules defining qualified mortgages to provide broad coverage for Qualified Mortgages, including a transition period, and through a variety of provisions to help encourage responsible loans to creditworthy borrowers as the market adjusts to the new regulatory regime, including further provisions that are currently under consideration in the concurrent proposal.

As for the servicing rules, the CFPB stated that the cost of these rules is likely to be small. Regarding the amendments to Regulation Z, the Bureau exempted small servicers from the periodic statement requirement and found that the costs were extremely small for the variable-rate periodic adjustment notice, the new initial interest rate adjustment notice, the prompt crediting requirement, and the payoff statement requirement. Regarding the amendments to Regulation X, the CFPB explained that over 80 percent of outstanding mortgages are guaranteed by Fannie Mae, Freddie Mac, FHA, or the VA and that many of the requirements of the final rule are similar or identical to requirements already imposed on servicers of such mortgages. Small servicers have been exempted from many of these requirements as well.

2. What kind of analysis and coordination is the CFPB undertaking to understand the aggregate impact of the Qualified Mortgages and Qualified Residential Mortgages (QRM) on the cost and availability of mortgage credit? Is the CFPB also taking into account how the proposed risk-weighting of mortgages and servicing rights in the Basel III proposals by the Federal Reserve, FDIC and OCC will affect the mortgage market before finalizing its QRM rulemaking?

*Response*

As stated above, the Bureau analyzed the potential impact of the QM rule on the cost and availability of mortgage credit. Under the statute, the Bureau is not an agency that will be finalizing or issuing either the QRM or the Basel III proposals. Therefore, conducting such analyses in the context of the QRM rulemaking and the risk-weighting of mortgages and servicing rights in the Basel III proposals by the Federal Reserve, the FDIC, and OCC are within the purviews of those other regulators rather than the CFPB.

3. In its first annual report, the CFPB Ombudsman recommended that the CFPB review and clarify what the enforcement attorney's role during the supervisory examination is since it may be causing institutions to be less willing to share information. When do you expect the CFPB to act on this recommendation?

*Response*

The CFPB is currently reviewing its implementation of this policy, as recommended by the Ombudsman's report.

*Responses to QFRs - Nominations Hearing*
March 12, 2013

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Senator Coburn:</u>**

1. Currently, Federal Reserve provides for CFPB's operating costs from the "combined earnings" of the Federal Reserve System pursuant to Section 1017 of Dodd-Frank Wall Street Reform and Consumer Protection Act. In his February 14th testimony before the Senate Banking Committee, Chairman Bernanke stated that a recent Federal Reserve analysis estimated that the Federal Reserve might record losses of $40 billion and suspend contributions to the Treasury for four years beginning in 2017 if interest rates rise to 3.8 percent later this decade. If rates rise by another percentage point, the losses would triple, according to the study. As a result, the CFPB would have to seek funds from Congress at that time. If the CFPB does not intend to seek funds from Congress at that time, please explain how you plan to fund CFPB's operations at that time? If the CFPB plans to seek funds from Congress at that time, why is it not appropriate to subject the CFPB to congressional appropriations process now?

*Response*

The Dodd-Frank Act authorizes the CFPB to receive funding from the Federal Reserve in amounts determined by the Director to be reasonably necessary to carry out the authorities of the Bureau, up to capped annual funding levels. The caps on the Bureau's funding levels are expressed as a percentage of the total operating expenses of the Federal Reserve System as reported in its 2009 annual report and are thus fixed in amount at this time and going forward, without being affected by any ongoing fluctuations in earnings by the Federal Reserve. Estimates by the Congressional Budget Office show the CFPB as having spending authority derived from transfers from the Federal Reserve through the budget horizon. The Bureau is also authorized to seek up to $200 million annually in additional appropriated funds from Congress if deemed necessary, but the Bureau has no plans to seek any such appropriated funds at this time. However, the Bureau will continue to submit an annual report to the House and Senate Committees on Appropriations, as it did in July of 2012, and is happy to meet with any Members of Congress to discuss the Bureau's budget.

2. At the hearing, you stated that the CFPB is applying the Government Performance and Results Act (GPRA) to show how the agency is justifying its spending. Please provide the most recent GPRA report. If no current GPRA report is available, then please provide any interim GPRA report.

*Response*

The Bureau's draft strategic plan under GPRA is publicly available on its website at *http://www.consumerfinance.gov/strategic-plan/*. We anticipate releasing a final version of the strategic plan this Spring, along with updated budget and performance documents.

3. A November 2012 audit of the CFPB by the Government Accountability Office (GAO) revealed that of CFPB's approximately $300 million in obligations, $151 million was spent on Contracts & Support Services, $134.2 million on Salary & Benefits, and $14.6 million on other obligations. Moreover, total CFPB net costs for FY2012 for its three strategic missions are as follows: $150.2 million for Supervision, Enforcement, Fair Lending and Equal Opportunity; $56.7 million for Consumer Education and Engagement; and $39.3 million for Research, Markets and Regulations. Do you consider these breakdowns to be appropriate and adequate? How do you anticipate them changing over time?

*Response*

Yes, the display of Fiscal Year 2012 obligations in the Financial Report of the CFPB for Fiscal Year 2012 is a fair and accurate representation of spending by major program area.
The CFPB also published quarterly updates on Fiscal Year 2012 spending, which are available on the Bureau's website (*http://www.consumerfinance.gov/budget/*). The additional detail includes an accounting of spending by major budget category (object class) and division, as well as a listing of major investments for Fiscal Year 2012. In addition, as you inquired at the hearing, all CFPB-awarded contractual obligations over the threshold of $3,000 are publicly available at *www.usaspending.gov.*

The proportional breakdown of the Bureau's spending is evolving over time. At the outset, most funds were expended on contractual services (including significant payments to the Treasury Department, which had initial statutory authority to stand up the new Bureau), as the Bureau began with small numbers of personnel and has gradually grown in staff and developed more fulsome structures. Accordingly, the amount of contract services will diminish over time. The proportion of funds expended on different functions of the Bureau will continue to evolve over time, though it is likely that Supervision, Enforcement, Fair Lending and Equal Opportunity will always require the largest share of resources to be devoted to their work.

The CFPB received an unqualified "clean" opinion from the GAO on its Fiscal Year 2012 financial statements. GAO also provided an unqualified opinion on the Bureau's Fiscal Year 2011 financial statements. These opinions confirm that the CFPB has implemented effective internal controls over the efficiency of operations, compliance with laws and regulation, and financial reporting.

4. The GAO audit also revealed that in Fiscal Year 2012 the CFPB expended $39.3 million on "Research, Markets & Regulation." Yet, the audit did not provide a breakdown of spending in each of these categories. What portion of that budget was spent on research and what percentage on rule writing? Do you believe that the CFPB is spending adequate amounts on research and market analysis?

*Response*

Of the $39.3 million obligated to support Research, Markets and Regulations, approximately 19 percent supported Research activities while about 33 percent covered Regulation activities. The Bureau is building its Office of Research and has and will continue to make investments in these core functions to achieve the statutory purposes that Congress established and assure that its policy making is backed by rigorous, data-driven analysis.

5. Note 4 in the GAO audit states that "[a]mounts in the Civil Penalty Fund are immediately available to CFPB and under the control of the Director, and shall remain available until expended, for payments to victims of activities for which civil penalties have been imposed. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purposes of consumer education and financial literacy programs." The audit report also notes that "[d]uring fiscal year 2012, the CFPB negotiated $340 million in redress payments made directly to harmed victims. Additionally, the CFPB received $32 million from civil penalty settlements." Please provide detailed accounting for the amount contributed to and distributed from the Civil Penalty Fund since its inception, including a detailed breakdown of how much money was expended from the Fund to victims (as a lump sum) and how much money was distributed for purposes of consumer education and financial literacy programs, including a detailed list and amount for each such programs. Does the Bureau intend to use the funds from the Civil Penalty Fund to pay for existing consumer education and financial literacy programs or to create new programs?

*Response*

The CFPB received $32 million in civil penalties during Fiscal Year 2012. The CFPB received an additional $14.1 million in penalties shortly after fiscal year 2012 closed. These amounts were reported in the Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2012 (Notes 16 and 17), available at http://www.consumerfinance.gov/reports/financial-report-of-the-cfpb-fiscal-year-2012/. Subsequent to the publication of the Financial Report, the CFPB collected an additional $5,001 in civil penalties in fiscal year 2013. No distributions have been made from the Civil Penalty Fund to date. The Bureau has been carefully proceeding to develop an initial rule governing the process of distributing funds from the Civil Penalty Fund. The Bureau will publish that rule soon and will also request public comment.

6. In this report, the CFPB highlights that it spent $151 million on contracts and support services for FY 2012. At the hearing, you stated that most of this cost is due to start-up costs and most of the contracts were with Treasury and other federal agencies. The report lists some but not all of the expenditures. In addition, USAspending.gov only lists $58 million in contracts by the CFPB. Please provide a complete list of contracts the CFPB has entered into for FY 2012 and FY 2013, including the amount of the contract and whether the contract was

a "sole source" contract or done through a public request for bid. For the contracts identified as sole source, please submit all justifications and contract amounts.

Lists of the contracts that the CFPB has entered into for Fiscal Year 2012 and Fiscal Year 2013, including the amounts, are attached as **Attachments B** and **C**. **Attachment D** identifies the contracts listed in Attachments B and C that were sole source, and the justification for each.

7. The report shows that the CFPB grew from 214 employees in the third quarter of FY 2011 to nearly 1000 employees by the end of the FY 2012. There has been some criticism that the CFPB is paying some employees very high salaries. How many people are employed currently by the CFPB? Please provide the number of employees who earn more than $125,000, $150,000 and $200,000 respectively.

*Response*

The Dodd-Frank Act requires the CFPB's pay and benefit programs to be comparable to those of the Federal Reserve Board and other federal financial regulators. In compliance with the law, and following accepted salary administration practices, pay for CFPB employees is based on the skills, experience, and qualifications of the individual being hired, the position for which they are being hired, and the relevant pay band. As of February 23, 2013, the CFPB had 1,131 employees on board. Of these, 484 (43 percent) earned more than $125,000; 300 (27 percent) earned more than $150,000; and 59 (5 percent) earned more than $200,000 per year.

8. How many economists does the CFPB hire? How many economists work on economic analyses pursuant to rulemakings undertaken by the agency?

*Response*

The CFPB has 20 PhD economists in its Office of Research at present. The number of economists working on analyses for rulemakings varies over time and depends on the number of rulemakings in process.

9. The report states that the CFPB has spent $150 million on Supervision, Enforcement, Fair Lending and Equal Opportunity. Please provide a detailed breakdown of how the monies are being allocated. Are any of these monies being used for data collection? Are any of these monies used to hire contractors, and if so, please list the contracts and amounts?

*Response*

The $150 million in costs allocated to Supervision, Enforcement, Fair Lending and Equal Opportunity represent both direct costs of that division as well as indirect costs. The indirect or centralized costs include certain administrative and operational services provided centrally to other Divisions (e.g., building space, utilities, and IT-related equipment and services).

Direct costs for the Supervision, Enforcement, Fair Lending and Equal Opportunity division were approximately $77 million. Of this amount, approximately $60 million was spent on personnel and approximately $9 million on travel and transportation. The remaining $8 million was spent on other contractual services. In order to fulfill the CFPB's statutory purposes and objectives, including its obligations to assess compliance with Federal consumer financial protection laws and to monitor consumer financial markets, it is necessary for the Bureau to acquire and analyze qualitative and quantitative information and data pertaining to consumer financial product and service markets and companies. For your information, we have attached as **Attachment B** a detailed listing of all contracts and interagency agreements that the CFPB entered into in Fiscal Year 2012, including for goods and services supporting the Supervision, Enforcement and Fair Lending and Equal Opportunity function. Detailed information about each contract, including the vendor, description of service, and value of the contract, is also available at usaspending.gov.

1. I appreciate your response to my previous QFR on the definition of rural in the QM rule. My ongoing concern is related to balloon loans, which are made primarily in rural areas, but it is not necessarily the geography that drives the need for these loans. Instead, the drivers are certain borrower or property characteristics - things such as a lack of comparable appraisals or borrowers with an ability to repay but short credit history. These characteristics make the loans ineligible for securitization and must be held in portfolio. Banks use balloons to extend credit to borrowers who would otherwise not be able to get a loan. Will you consider amending the rule to focus on these characteristics rather than limiting the QM status to only small banks in a narrowly defined rural area?

Response:

In crafting the ability-to-repay rule, the Bureau was very conscious of the role that community-based creditors play in providing credit to consumers who might not otherwise be able to obtain mortgage credit because of characteristics that make such credit ineligible for securitization. The Bureau issued a proposal concurrent with the rule to create a new category of qualified mortgage for certain loans held in portfolio by such creditors. The proposal is not limited by geography, but rather would apply to all creditors with less than $2 billion in assets if, along with their affiliates, they make 500 or fewer first-lien mortgage loans per year. The loans would be subject to certain restrictions on features and the amount of points and fees, but they would not be subject to a hard limit on the consumer's debt-to-income (DTI) ratio so long as the creditor considered DTI or residual income in underwriting the loan, among other underwriting criteria. Eligible loans would generally have to be held in portfolio for three years, subject to certain exemptions.

The Bureau carefully considered whether to make balloon loans by this broader group of small creditors eligible for the proposed new category of qualified mortgages. It is important to note that Congress had specifically addressed how to treat balloon loans in drafting the Dodd-Frank Act. The statute categorically prohibits balloon loans from being qualified mortgages, except to the extent, if adopted by the CFPB, that such loans are made and held in portfolio by creditors operating predominantly in rural or underserved areas that meet origination thresholds and other criteria set by the CFPB. We were also conscious of the fact that balloon loans are potentially more risky for consumers than loans that extend for a 15- or 30-year term. Accordingly, the proposal encompassed adjustable-rate mortgages and fixed-rate mortgages, but not balloon loans by small creditors.

We are in the process of evaluating the comments received in response to the proposal and continuing to research the reasons why small creditors structure particular mortgages as balloon loans rather than adjustable-rate mortgages. We are also evaluating comments received in response to a specific question in the proposal regarding whether there is a need for transition mechanisms for existing balloon loans that may end soon after the new rule takes effect. We cannot prejudge the outcome of the further rulemaking process but do take access-to-credit concerns seriously, as evidenced by the proposal and various parts of the final rule.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**April 23, 2013**

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau from Ranking Member Crapo:</u>**

1. At the hearing, you testified that the CFPB has many different mechanisms for collection of lending and credit data including: 1) purchasing data from vendors, 2) collecting data pursuant to examination and supervisory authority, 3) collecting data from the CFPB's National Mortgage Database, and 4) collecting data from consumers' submissions to the CFPB's Consumer Complaint Database. Are there other ways that the CFPB collects data to compile its Big Data?

*Response*

The phrase "Big Data" is generally used to refer to the vast amounts of personally identifiable information that is available with respect to individual consumers as the result of modern technology. The Bureau is not involved in such "Big Data" collection. To the contrary, except with respect to complaints (where consumers must provide their identity in order to allow the complaint to be investigated), the Bureau generally does not obtain any personally identifiable information. Rather, we secure anonymized data to enable us to assess compliance with Federal consumer financial laws and risks to consumers in consumer financial markets.

To date, the Bureau has received data through each of the channels you mention: purchasing data from vendors, collecting data from supervised entities, and gathering data as part of the consumer complaint process. The Bureau also collects publicly available datasets, such as Census demographics, that are relevant to the Bureau's work.

In some contexts, firms have voluntarily submitted data that the Bureau requested. For example, in connection with the Private Student Loan Report required by section 1077 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act), the Bureau met with major participants in the private student loan industry and offered them the opportunity to provide data on several of the sixteen questions that Congress required the Bureau to answer by July 21, 2011. Nine lenders volunteered to provide their existing datasets to a single vendor that they selected. This vendor combined those data into a single database that did not include the identities of borrowers or lenders. This mechanism was an efficient way for the lenders and the Bureau to develop answers to Congress' questions.

Congress also authorized the Bureau, in Section 1022(c)(4) of the Dodd-Frank Act, to collect information regarding the organization, business conduct, markets, and activities of covered persons and service providers. The Dodd- Frank Act authorizes the Bureau to gather this information from a variety of sources and using various methods including surveys. Information gathered in this way from covered persons would be subject to the protections that the Bureau affords to confidential supervisory information.

2. At the end of the hearing, you stated that you would supply me with the legal analysis about the CPFB's process for Big Data? Please provide any and all legal analyses undertaken by CFPB staff and outside counsel hired by the agency regarding its Big Data collection.

*Response*

As stated above, the Bureau is not engaged in "Big Data" collection. Rather, we are undertaking targeted collections of generally anonymized data to further our statutory purposes.

The Bureau has not retained outside counsel to analyze the issues about which you inquire but, as explained below, the Bureau's staff has determined that we have the authority and indeed the obligation to gather and utilize data in order to do the work that Congress has directed us to perform.

With respect to the market-monitoring activities that I discussed at the hearing, we believe that such information is essential for the Bureau to have a deep and thorough understanding of the markets we regulate. Congress recognized this by explicitly directing the Bureau to "monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services." 12 U.S.C. 5512(c)(1). To carry out this directive, Congress authorized the Bureau to "gather and compile information from a variety of sources" including, without limitation, information obtained in the course of our supervisory work, consumer complaints, surveys of consumers and market participants, and review of available databases. 12 U.S.C. 5512(c)(4)(B)(i). Congress also authorized the Bureau to require covered persons and service providers to provide information "necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress[,]" subject to the limitation that the Bureau may not use this authority "for purposes of gathering or analyzing the personally identifiable financial information of consumers." 12 U.S.C. 5512(c)(4)(B)(ii),(C).

Pursuant to 12 U.S.C. 5512(c)(6), the Bureau has published rules regarding the confidential treatment of information it collects pursuant to its various authorities, including its market-monitoring authorities. Under these rules, "information provided to the [Bureau] by a financial institution to enable the [Bureau] to monitor for risks to consumers in the offering or provision of consumer financial products or services" is included within the definition of "confidential supervisory information." 12 C.F.R. 1070.2(i)(1)(iv). As with all confidential information of the Bureau, the internal dissemination of confidential supervisory information is limited to those employees to whose duties the information is relevant, and the external dissemination is strictly limited to certain specified instances. 12 CFR 1070.41(a). The Bureau's rules permit the disclosure of materials derived from confidential supervisory information (e.g., reports to Congress), but only "to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains." 12 CFR 1070.41(c). The Bureau believes this limitation is consistent with Congress' direction to "take steps to ensure that proprietary, personal, or confidential consumer information" protected from disclosure by law is not made public. 12 U.S.C. 5522(c)(8).

In addition, the Bureau is subject to generally applicable laws governing its collection, use, and dissemination of personally identifiable information, such as the Privacy Act, 5 U.S.C. 552a. Among other things, the Privacy Act requires the Bureau to "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President," and generally prohibits the maintenance of records describing how an individual exercises his or her rights under the First Amendment to the Constitution. 5 U.S.C. 552a(e)(1), (7). Pursuant to the Privacy Act, the Bureau has issued a System of Records Notice (SORN) that governs its collection and treatment of records in support of its market-monitoring function. *See* System of Records Notice for CFPB.022—Market and Consumer Research Records, 77 Fed. Reg. 67802 (Nov. 14, 2012). In this SORN, the Bureau makes clear that "[i]n most cases," the records subject to this SORN "will not contain personal identifiers," and that research and analysis will only be performed on de-identified data. *Id.*

3. Does the CFPB differentiate data it obtains through its supervisory authority from data collected *vis-a-vis* different authority, and if so, how? Are there internal firewalls for storing and using consumer data CFPB collects for supervisory, enforcement, research and regulatory purposes? Can the CFPB use the Big Data it collects for multiple purposes?

*Response*

The Dodd-Frank Act tasks the Bureau with various missions that are distinct and yet interrelated in that information which the Bureau generates or obtains in fulfilling one of its missions, such as responding to consumer complaints, may be relevant to and inform the Bureau's work in fulfilling its other missions, such as supervision and law enforcement. Generally, Bureau employees may use information that the Bureau generates or obtains to the extent that such use is relevant to the performance of their duties. The Bureau manages its data in accordance with the authorities under which it is collected and in compliance with applicable law, including the Bureau's regulations on handling of confidential information, 12 C.F.R. Part 1070.

The Bureau does distinguish between different categories of information that it may generate or obtain. The Dodd-Frank Act and other statutes impose certain restrictions on the Bureau's use of information, and those restrictions may depend on the nature and sources of the information. Furthermore, the Bureau's regulations, at 12 C.F.R. § 1070.40 *et seq.*, restrict the circumstances in which the Bureau may disseminate internally, share with other agencies, or disclose to the public certain categories of confidential information, including confidential supervisory information, confidential investigatory information, and consumer complaint information. To the extent that the Bureau obtains confidential information from other agencies, the Bureau's agreements with such agencies may also restrict the Bureau's use of the information.

4. In your testimony, you mentioned that the CFPB needed to undertake a Big Data collection to help for economic and statistical analyses for rulemakings. Can data collected under CFPB's supervisory authority be used for rulemaking purposes related to the practices of the institutions being examined?

*Response*

The Bureau is authorized to examine and require reports of supervised institutions for several purposes, including assessing risks to consumers in the consumer financial marketplace.

Accordingly, the Bureau utilizes supervisory information both to assess compliance with Federal consumer financial law and, when appropriate, to assist the Bureau in research 12 U.S.C. 5514(b)(1), 5515(b)(1), 5512(c)(4)(B).

5. Does the CFPB inform institutions being examined for supervisory purposes when data are collected for purposes unrelated to the exam?

*Response*

The Bureau has informed industry and the public at large that it does have authority to use its supervisory requests to obtain information to assess compliance with consumer financial laws, about the activities and compliance systems or procedures of supervised entities, and detect and assess risks to consumers and markets for consumer financial products. *See* Dodd-Frank Act §§1024(b)(1) and 1025(b)(1). The Bureau does not collect data that is unrelated to these purposes.

6. How does the CFPB plan to utilize the Big Data it collects in each of the following areas: (i) research and analysis, (ii) supervision, (iii) enforcement, and (iv) regulation?

*Response*

Congress has provided the Bureau with several tools for gathering information, including through examinations, civil investigative demands, publicly available sources, consumer complaints, and through the Section 1022(c)(4) authority discussed above.
Data collected using one of these tools may be relevant to both the function for which it was collected and another related function.

For example, one of the Bureau's primary functions is to collect, investigate, and respond to consumer complaints. Although the Bureau receives complaints in the course of performing this function, the complaints, and the data derived from them, also support other Bureau functions, including, for example, its consumer education function and its supervisory and enforcement functions. Similarly, data the Bureau gathers in examining institutions for purposes of detecting risks to consumers and to consumer financial markets will also often help the Bureau fulfill Congress' directive that it monitor the markets for risks to consumers.

The Bureau utilizes the data it possesses for empirical analyses such as those included in our reports on private student loans (which relied entirely on anonymized data provided voluntarily to the Bureau by a number of lenders) and payday lending and deposit advance (which relied principally on data collected through supervisory exams). These analyses may include descriptive tabulations in addition to more formal econometric modeling, which together, support the Bureau's mission to understand consumer financial markets; to monitor for risks to consumers in the offering or provision of consumer financial products or services; and more generally to follow developments in markets for such products or services. These data and analyses also support policy development, including rulemaking and any related considerations of the benefits, costs and impact of particular rules.

The Bureau utilizes data—including data gathered during examinations, consumer complaints, and publicly available data—to prioritize its supervisory activities and to examine institutions' compliance with Federal consumer financial law, their compliance programs, and the risks their activities pose to consumers. The Bureau also uses information for enforcement purposes, such as assessing possible violations, evaluating the scope of consumer harm from such violations, and determining enforcement strategies.

7. If consumer data is used in future rulemakings, will the CFPB explain in the rule what data it used and how such Big Data improved its analysis and the rulemaking process? Will CFPB provide sufficient information and necessary data in future rulemakings to allow the public to reach the same conclusions as the Bureau through independent analysis?

*Response*

As an evidence-based agency, the Bureau seeks to gather data to inform the rulemaking process. Pursuant to the Administrative Procedure Act, the Bureau generally provides notice to the public regarding such data when it considers using them in notice-and-comment rulemaking. In some cases, confidential data are the best source of information on a given topic. In such cases, CFPB works to provide as much information to the public as possible, consistent with its obligations to maintain confidentiality.

An example of our approach is the rulemaking to implement Dodd-Frank Act requirements concerning assessment of consumers' ability to repay mortgage loans, where the Bureau received additional loan-level data including, debt-to-income ratio information, from the Federal Housing Finance Agency in the course of the rulemaking regarding performance of loans purchased or guaranteed by Freddie Mac and Fannie Mae. The Bureau then reopened the comment period to provide notice to the public of the new data, to seek comment on its use, and to seek additional data particularly regarding performance of loans held in portfolio. In the preamble to the final rule, the Bureau then explained the results of the data analysis and how it impacted the Bureau's thinking about key issues in the rulemaking.

8. Will the Bureau make its consumer Big Data collection available to researchers, consumers or others, as it has with the information in the Consumer Complaint Database? What information regarding its Big Data, if any, will the CFPB make public, and when?

*Response*

The Dodd-Frank Act in some instances requires and in other instances authorizes the Bureau to make information public, to report it to Congress, or to share it with other agencies. Whenever the Bureau makes information public, reports it, or shares it with other agencies, the Bureau takes appropriate steps, consistent with applicable statutes, regulations, policies, and agreements, to protect any confidential information, including personally identifiable information in those rare instances in which the Bureau collects such information, confidential commercial information, supervisory information, law enforcement information, or confidential information that the Bureau has obtained from other agencies.

9. How many financial institutions have been asked to provide consumer data to the CFPB, and how many of them are currently doing so? How many customer accounts is the CFPB following on a monthly basis with respect to Big Data it collects from data purchased from vendors, data collect from supervisory requests and examinations, from the CFPB's National Mortgage Database and from the data furnished by consumers to the CFPB's Consumer Complaint Database?

*Response*

Most of the data that the Bureau has gathered directly from institutions has been as part of the supervisory process. Information about the number of institutions from which the Bureau receives data through the exercise of its supervisory authority is confidential supervisory information. Information about the number of accounts about which the Bureau receives data through exercise of its supervisory authority is also confidential supervisory information. For the Bureau's report on student loans, nine lenders voluntarily submitted data. The Bureau is not tracking individuals' loans.

Regarding ongoing data efforts, the National Mortgage Database is based upon a de-identified sample of five percent of mortgages in the United States. Similarly, the Bureau's purchase of de-identified credit report data includes a sample of roughly four percent of consumers. These data are renewed monthly so changes in the market can be considered for research and policymaking and each update of the data is anonymous.

Regarding data furnished by consumers when submitting complaints to the Bureau, the Bureau received approximately 91,000 consumer complaints between January 1, 2012, and December 31, 2012. In total since beginning to accept complaints on July 21, 2011, the Bureau has received approximately 156,000 consumer complaints. A summary of the Bureau complaint process and related data can be found in the Bureau's most recent Semi-Annual Report to Congress (*available at* http://www.ConsumerFinance.gov/reports/semi-annual-report-2/).

10. At the hearing, you mentioned that the CFPB purchases data from Argus. Please name all of the outside, third party vendors and contractors and their subcontractors used for the collection of Big Data.

*Response*

The Bureau does not purchase data from Argus but rather contracts with Argus to maintain data collected by the Bureau through its supervisory processes.

The following other contractors (and subcontractors) are used for the collection of data by the Bureau:

- Argus Information and Advisory Services LLC (Transunion is a subcontractor)
- Blackbox Logic LLC (no subcontractors)
- Clarity Services Inc (Experian is a subcontractor.)
- Corelogic Information Solutions Inc (no subcontractors)
- Experian (no subcontractors)

11. How many pieces of information (data points) has the CFPB collected to date? How many pieces of information (data points) is the CFPB collecting on a monthly basis?

*Response*

The Bureau has purchased two commercially available datasets, widely used by regulators, investors, and other private entities, regarding mortgage loan performance. Those datasets contain fields that describe some of the basic characteristics of the loan, and on a monthly basis, the performance of the loan. These data do not contain personally identifiable information.

As part of the National Mortgage Database and the credit record procurement, the Bureau is obtaining all of the data elements collected by the credit bureaus with respect to the records in the panel other than elements that reveal PII such as name or address or social security number. Additional data elements will be appended to the NMDB from other data sources such as HMDA; the number of such data elements is still being developed.

For the credit card database collected under our supervisory authority, we are collecting a subset of the data elements maintained by the participating issuers. These data do not contain personally identifiable information.

12. Currently, we are aware that the CFPB is collecting data on mortgages, home equity lines of credit, credit cards, checking accounts, overdrafts, student lending (private), student lending (government), and deposit advances. What other areas does the CFPB collect, or plan to collect, consumer data?

*Response*

As noted, the CFPB collects data on mortgages and credit records; we have done one-time data collection with respect to other products (student loans, payday, and checking accounts). As part of our ongoing supervisory work, we will, in the normal course of examinations, collect data from individual institutions in order to assess compliance with consumer financial laws, obtain information about the activities and compliance systems or procedures, and detect and assess risks to consumers and markets for consumer financial products.

13. Is the data collected in the course of CFPB's supervision duplicative or overlapping with data collected by the institutions' prudential regulators?

*Response*

Sections 1024 and 1025 of the Dodd-Frank Act directs the Bureau to coordinate its supervisory activities with those conducted by the prudential regulators and the State bank regulatory authorities in order to minimize regulatory burden. The Dodd-Frank Act also requires the Bureau to use, to the extent possible, reports that have been provided or required to have been provided to a Federal or State agency and information that has been reported publicly (*see* Section 1024(h); 1025(b)).

The Bureau and the prudential regulators entered into a Memorandum of Understanding on Supervisory Coordination (MOU) on May 16, 2012, in order to facilitate this coordination of supervisory activities (*available at* http://files.ConsumerFinance.gov/f/201206_CFPB_MOU_Supervisory_Coordination.pdf). Section IV of the MOU commits the Bureau and the prudential regulators, as part of the requirement that examination be conducted simultaneously; to sharing with each other any information requests sent to covered institutions relating to covered examinations. Section V reiterates the requirement of Section 1025 of the Dodd-Frank Act that the Bureau will, to the fullest extent possible, use reports pertaining to a covered institution that has been provided or required to have been provided to a Federal or State agency, and information that has been publicly reported.

The CFPB's Supervision and Examination Manual (*available at* http://files.ConsumerFinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf) explains how examiners are to scope examinations. In accordance with the requirements of the Dodd-Frank Act, the Manual directs examiners to gather as much information as possible from within the Bureau, other regulatory agencies, and third-party public sources.

14. Please provide copies of all contracts that the CFPB has with outside, third party vendors and contractors and their subcontractors engaged in or involved in any capacity with the Bureau's Big Data collection of consumer information.

*Response*

**Attached** are contract copies (and modifications) for the prime contractors identified in the response to Question 10. Copies of subcontracts are not available since those agreements are between the prime contractor and their subcontractor.

- Argus Information and Advisory Services LLC (5 attachments)
- Blackbox Logic LLC (7 attachments)
- Clarity Services Inc (4 attachments)
- Corelogic Information Solutions Inc (3 attachments)

- Experian (4 attachments)

Please be aware that the documents provided are contractual documents that may contain trade secrets and/or proprietary or confidential information of private entities. The companies should be consulted before any of this information is released publicly to avoid possible competitive harm to these private parties.

15. Please provide a copy of a representative data request that the CFPB has sent to financial institutions and others involved in the Bureau's consumer data collection efforts.

*Response*

"Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB's supervision of the institution" is "confidential supervisory information". 12 C.F.R. §1070.2 (i)(1). Consequently, specific supervisory requests for information are subject to the prohibition against disclosure of confidential supervisory information set forth in 12 C.F.R. §1071.41.

However, the Bureau uses a number of standard form information requests as part of its examinations. See "Compliance Management System Information Request," **attached**. Examiners modify these requests to customize them to the particular institution. In the information request, examiners are instructed to specify the review period and the information or documentation required, in order to reduce the burden on the institution and avoid receiving data not relevant to the examination. *See* page 6 of the CFPB's Supervision and Examination Manual, Examinations ("Prepare and Send the Information Request") (*available at* http://files.ConsumerFinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf).

The Bureau avoids receiving personally identifiable information whenever possible. The Bureau protects all confidential supervisory information in accordance with the regulation governing the Bureau's handling of confidential information, 12 C.F.R. Part 1070.

16. Has the CFPB conducted any cost-benefit analysis to determine the cost of the data collection requests and production on the institutions? Has the CFPB solicited feedback from any institutions about the cost of these data collection requests and production?

*Response*

The Bureau does not conduct an explicit cost-benefit analysis of supervisory data requests made in support of the examination function, as those requests are tailored to be consistent with the scope of information appropriate to carry out the purposes of supervisory activity. Pursuant to sections 1024(b) and 1025(b) of the Dodd-Frank Act, the Bureau coordinates its examinations with the prudential regulators and the State bank regulatory authorities; and, to the extent possible, the Bureau uses reports provided or required to be provided to Federal or State agencies. Both practices tend to reduce the cost of supervisory activities. The Bureau also routinely discusses its supervisory information requests with supervised entities in advance in order to make the best use of existing data formats and content, decreasing the burden to supervised entities of providing information requested by the Bureau. These interactions provide insight about how to acquire information efficiently.

On occasion, the Bureau has also obtained data outside the supervisory process. The information has all been provided on a voluntary basis, and the Bureau believes the companies that provided this information attempted to do so in an efficient and cost-effective manner. For example, in connection with the Private Student Loan Report required by section 1077 of the Dodd-Frank Act, the Bureau met with major participants in the private student loan industry and offered them the opportunity to provide data on several of the sixteen questions that Congress required the Bureau to answer. Nine lenders volunteered to provide their existing datasets to a single vendor that they selected. This vendor combined those data into a single database that did not include the identities of borrowers or lenders. This mechanism was an efficient way for the lenders and the Bureau to develop answers to Congress' questions. Both the Bureau and the lenders continue to utilize that dataset to provide information to the public, to Congress, and to regulators about that industry.

In some instances, the Bureau has requested financial institutions to provide a random sample of de-identified records rather than a full file. Sampling may add some cost to the financial institution but reduces the cost to the Bureau in handling larger files. In other instances, especially those involving ongoing data collections, the Bureau has determined that it would be more efficient for the financial institution to provide a full, de-identified file to the Bureau rather than requiring that sampling frames be created each time new data is provided.

17. In your testimony, you cite that GAO conducts an annual audit of the agency. Does the GAO specifically audit the Big Data collection undertaken by the CFPB? Does GAO audit the specific contracts of the outside, third party vendors and their contractors hired by the CFPB for the collection of Big Data? Does GAO conduct any peer review of any research done using the Big Data?

*Response*

The GAO has not conducted an audit focused on the specific subject of data collection by the Bureau or Bureau contracts for such collection. However, the GAO's and Inspector General's audits and evaluations of the Bureau's budget, information security, and implementation of the Dodd-Frank Act, among other subjects, address myriad aspects of the Bureau's contracting and information collection, storage and usage activities. The GAO has not conducted any peer review of Bureau research, to the Bureau's knowledge.

18. The CFPB issued a rule with regard to remittances to foreign countries last year, which the Bureau has updated on a couple of occasions since its issuance. The final rule on remittances contains a specific error resolutions procedure for remittance transfers. However, a recent blog posting by the Bureau suggested the CFPB will begin accepting consumer complaints on money

transfers without distinguishing between foreign and domestic transfers. Is the blog posting a change in direction for the Bureau? Does the Bureau consider posting to its blogs as regulatory guidance or just an informational venue? Has the Bureau reached out to the industry to inquire what effect such blog postings have on the industry practices?

*Response*

Section 1073 of the Dodd-Frank Act amends the Electronic Fund Transfer Act to add a new provision governing remittances to foreign countries. One part of that amendment requires remittance transfer providers to resolve certain errors raised by consumers with respect to such remittances. Another part of the amendment requires remittance transfer providers to inform consumers of their rights concerning error resolution and of the Bureau's contact information, including its toll-free consumer complaints number. The Bureau has issued implementing regulations as required by § 1073 (the "Remittance Transfer Rule").

Separately, § 1013(b)(3) of the Dodd-Frank Act establishes within the Bureau "…a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services." Collecting, investigating, and responding to consumer complaints are integral parts of the Bureau's work.

In March 2012, the Bureau began accepting complaints about many types of bank and credit union products and services, including domestic money transfers and money transfers that will qualify as "remittance transfers" under the Remittance Transfer Rule when it takes effect on October 28, 2013, as well as the wide range of other types of products and services that these institutions offer, such as checking accounts and loans. In April 2013, the Bureau launched a money transfer-specific complaint form to accept complaints concerning entities other than banks and credit unions about domestic money transfers, as well as transfers that will qualify as "remittance transfers."

The purpose of the blog posting dated April 4, 2013, and titled "Now accepting money transfer complaints" (*available at* http://www.ConsumerFinance.gov/blog/now-accepting-money-transfer-complaints/), was to announce to consumers that the Bureau was now accepting these types of complaints through a dedicated complaint form. The blog provides consumers with a link to the form and lets them know what information they should have available before submitting a complaint. The blog post does not represent a change in direction for the Bureau; it is consistent with our use of the blog to engage and inform the public about Bureau activities and is not intended as legal guidance.

The Bureau has engaged and will continue to engage with industry regarding its intake of money transfer complaints and welcomes feedback regarding the blog post. Similarly, the Bureau has reached out to industry and will continue to do so regarding the impact of the Remittance Transfer Rule.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**April 23, 2013**

**Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau from Senator Menendez:**

1. I held a hearing this month looking at some of the mortgage servicing abuses and the settlements that resulted. I was pleased to see the CFPB adopted new rules related to mortgage servicing standards in January 2013. I have long advocated for increasing consumer protections on borrowers before foreclosures, encouraging loan modifications, eliminating dual tracking, placing limits on foreclosure fees, and creating an appeals process for those denied loan modifications as well as a mediation program. Can you detail some of the specific requirements as they relate to:

- Mortgage servicers providing information about mortgage loss mitigation options to delinquent borrowers?
- Establishing policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions

*Response*

The mortgage servicing rules issued by the Bureau provide protections that seek to ensure that troubled borrowers receive a fair process to avoid foreclosure wherever possible. Most notably, the mortgage servicing rules include restrictions on the process of "dual tracking"; *i.e.*, the consideration of a borrower for a loss mitigation option while pursuing a foreclosure process. The rules further include requirements for evaluating timely and complete loss mitigation applications for loss mitigation options.

Even before the loss mitigation evaluation occurs, however, the Bureau has adopted requirements that will assist borrowers with the process of understanding and applying for loss mitigation options. First, the mortgage servicing rules include "early intervention" requirements that apply early in the loss mitigation process. The rules require servicers to reach out to borrowers about loss mitigation options early in a delinquency. Specifically, servicers are required to make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of a borrower's delinquency and promptly inform such borrower about the availability of loss mitigation options if appropriate. Further, not later than the 45th day of delinquency, a servicer must provide a written notice to the borrower that includes, among other things, information about any loss mitigation options available to the borrower and how to apply for such options, information about contact personnel assigned to assist the borrower, and information regarding other resources that may be available to assist the borrower with loss mitigation options, such as housing counselors or organizations.

This is designed primarily to encourage delinquent borrowers to work with their servicers to identify their options for avoiding foreclosure. The Bureau recognizes that not all delinquent borrowers who are contacted by their servicer and receive a written notice will respond to the servicers and pursue available loss mitigation options. However, the Bureau believes that the notices will ensure, at a minimum, that all borrowers have an opportunity to do so at the early stages of a delinquency.

That is just the beginning of the process. The Bureau's rules further require that servicers must have policies and procedures in place to provide delinquent borrowers with direct and ongoing access—the term of art is "continuity of contact"—to personnel who are responsible for helping struggling borrowers. Such personnel must be assigned to assist a borrower by the time the early intervention written notice is provided, and in any event, no later than the $45^{th}$ day of a borrower's delinquency. The servicer's policies and procedures must be reasonably designed to ensure that such personnel are able to provide information to the borrower about available loss mitigation options, the application process for such options, the status of any loss mitigation application submitted by a borrower, any applicable loss mitigation deadlines, and when a foreclosure process may begin. Further, the servicer's policies and procedures must be reasonably designed to ensure that such personnel have access to a complete record of the borrower's payment history and information provided by the borrower regarding loss mitigation, that such personnel are able to provide this information to servicer personnel responsible for evaluating a borrower for loss mitigation options, and that such personnel can provide a borrower with information about the procedures for submitting a written notice of error or information request.

2. In June 2012, the CFPB announced that it would be the first federal financial regulator to share with the public individual consumer complaint data. They are accepting consumer complaints in many areas, including checking accounts, savings accounts, CDs, credit cards, credit reporting, money transfers, mortgages, student loans, and consumer loans. How many complaints has the CFPB received from consumers so far about mortgages, credit cards, banks, debt collection, and other financial services? How many of those are being resolved successfully, and in what ways?

*Response*

The Bureau began accepting consumer complaints about credit cards on July 21, 2011. The Bureau now also accepts complaints related to mortgages, bank accounts and services, private student loans, other consumer loans, credit reporting, and money transfers.

From July 21, 2011 through February 28, 2013, the Bureau received approximately 131,300 consumer complaints, including approximately 30,600 credit card complaints, 63,700 mortgage complaints, 19,800 bank accounts and services complaints, 4,600 private student loan complaints, 4,100 consumer loan complaints, and 6,700 credit reporting complaints. The Bureau has received some money transfer complaints through the bank accounts and services intake form. In April 2013, the Bureau introduced a money transfer-specific intake form. Data from those complaints is preliminary. Data are also not available about debt collection or payday complaints because the Bureau does not accept these complaints at this time. The Bureau, however, continues to work toward expanding its complaint handling capacity to include other products and services, such as payday loans and debt collection.

More than 109,200 complaints (83 percent of complaints) received as of February 28, 2013, had been sent by the Bureau to companies for review and response. The remaining complaints had been referred to other regulatory agencies (11 percent), found to be incomplete (3 percent), or were pending with the consumer or the Bureau (3 percent). Companies had already responded to approximately 104,100 complaints or 95 percent of the complaints sent to them for response. Consumers had disputed approximately 19,600 company responses (21 percent) to complaints.

As of February 28, 2013:

- *Credit card complaints:* Approximately 27,700 (84 percent) credit card complaints had been sent by Consumer Response to companies for review and response. The remaining credit card complaints had been referred to other regulatory agencies (10 percent), found to be incomplete (5 percent), or pending with the consumer or the Bureau (one percent). Companies had already responded to approximately 24,800 complaints or 96 percent of the complaints sent to them for response. Since December 2011, companies have had the option of reporting the amount of monetary relief, if any. The median amount of relief reported was approximately $125 with $25 being the most common amount of relief for the approximately 5,300 credit card complaints where companies reported relief. Consumers had disputed approximately 4,200 company responses (18 percent) to credit card complaints.

- *Mortgage complaints:* Approximately 56,800 (89 percent) mortgage complaints had been sent by Consumer Response to companies for review and response. The remaining mortgage complaints had been referred to other regulatory agencies (7 percent), found to be incomplete (1 percent), or pending with the consumer or the Bureau (2 percent). Companies had already responded to approximately 53,900 complaints or 95 percent of the complaints sent to them for response. The median amount of monetary relief reported was approximately $425 for the approximately 1,800 mortgage complaints where companies reported relief. Consumers had disputed approximately 10,500 company responses (23 percent) to mortgage complaints.

- *Bank account and services complaints:* Approximately 16,100 (81 percent) bank account and service complaints had been sent by Consumer Response to companies for review and response. The remaining bank account and service complaints had been referred to other regulatory agencies (14 percent), found to be incomplete (4 percent), or were pending with the consumer or the Bureau (one percent). Companies had already responded to approximately 15,500 complaints or 97 percent of the complaints sent to them for response. The median amount of monetary relief reported was approximately $110 for the approximately 4,000 bank account and service complaints where companies reported relief. Consumers had disputed approximately 3,000 company responses (20 percent) to bank account and service complaints.

- *Private student loan complaints:* Approximately 3,400 (74 percent) private student loan complaints had been sent by Consumer Response to companies for review and response. The remaining private student loan complaints had been referred to other regulatory agencies (20 percent), found to be incomplete (4 percent), or pending with the consumer or the Bureau (2 percent). Companies had already responded to approximately 3,200 complaints or 94 percent of the complaints sent to them for response. The median amount of monetary relief reported was approximately $1,250 for the approximately 225 private student loan complaints. Consumers had disputed approximately 600 company responses (19 percent) to private student loan complaints.

- *Consumer loan complaints:* Approximately 2,600 (63 percent) consumer loan complaints had been sent by Consumer Response to companies for review and response. The remaining consumer loan complaints had been referred to other regulatory agencies (30 percent), found to be incomplete (3 percent), or pending with the consumer or the Bureau (4 percent). Companies had already responded to approximately 2,400 complaints or 95 percent of the complaints sent to them for response. The median amount of monetary relief reported was approximately $195 for the approximately 240 consumer loan complaints. Consumers had disputed approximately 500 company responses (23 percent) to consumer loan complaints.

- *Credit reporting complaints:* Approximately 4,300 (64 percent) credit reporting complaints had been sent by Consumer Response to companies for review and response. The remaining credit reporting complaints had been referred to other regulatory agencies (4 percent), found to be incomplete (3 percent), or is pending with the consumer or the Bureau (28 percent). Companies had already responded to approximately 3,900 complaints or 90 percent of the complaints sent to them for response. Consumers had disputed approximately 600 company responses (19 percent) to credit reporting complaints.

3. At your confirmation hearing this year, I submitted questions for the record having to do with balancing the need for consumer protections and access to short term credit and building credit worthiness. As part of your response, you referenced the need to learn about the potential for innovation in financial products. A question that has not been answered is if non-depository short term lending is curtailed or eliminated, what products will take their place for underserved consumers? Can you update me on your efforts to address this issue and what is the status of the CFPB's analysis of how to solve the growing problem of access to short term credit?

*Response*

The Bureau recognizes that there is a need for access to small dollar credit to handle occasional emergencies. But such loans can be harmful when they are poorly structured. For example, extremely short-term credit—meaning that the loan is structured so that the consumer has to repay the loan in a very short period of time—can be harmful to consumers. Furthermore, most small-dollar, short-term loans available to consumers now do not build credit worthiness.

In light of these concerns, we strongly encourage consumers to explore their full range of options when dealing with a financial shortfall. We encourage consumers to consider less expensive credit options, particularly if they have an account at a bank or credit union or a stable credit history. Credit cards, advances, or emergency credit offered by employers, nonprofit organizations, and community groups are other options. Other options might include negotiating with the creditor or biller about the debt or bill they owe before resorting to a payday or deposit advance loan.

4. You stated in your answers to my questions that the CFPB is "determining which product structures and features may curtail sustained use and negative outcomes." Has the CFPB made any inroads since then on this issue? Assuming the CFPB has or does identify negative outcomes and a product structure or feature that it believes may mitigate negative outcomes, how would the CFPB seek to require that product structure or feature of market participants?

*Response*

This past month, the Bureau released a white paper on payday loans and deposit advance products, which examined patterns of sustained use. We found that the median payday loan borrower engages in ten such transactions per year and is indebted a median of 199 days of the year, while more than half of all deposit advance borrowers end up borrowing more than $3,000 per year in advances and are indebted more than 40 percent of the year. However, we found that these products may be appropriate for some consumers for whom an expense needs to be deferred for a short period of time. The key for the product to work as structured, however, is a sufficient cash flow which can be used to retire the debt within a short period of time.

The data presented in this study suggest some consumers use payday loans and deposit advances at relatively low to moderate levels. Thirteen percent of payday borrowers in our sample took out only 1-2 loans over the 12-month period, and about one-third took out six loans or less. A similar share of deposit advance users (30 percent) took no more than a total of $1,500 in advances over the same period of time. We hypothesize that the lack of underwriting and the single payment structure may be contributing to these patterns of sustained use.

We are currently undertaking additional analyses to see how outcomes vary under various state regulatory approaches, such as limits on maximum loan amounts or efforts to extend the period of the loan. We will evaluate whether these and other approaches may counter the effects of the traditional balloon payment structure that might lead consumers to quickly re-borrow. Our current analysis seeks to determine the drivers of consumer harm, while also accounting for why some consumers are able to use these products in an appropriate way (for example, paying the full amount back when loan is due without having to re-borrow).

5. Has the CFPB considered the implications of providing a federal platform to regulate on-line short term lending in a manner in which some have argued that technology and the market can drive innovative new products for underserved consumers and help them build back their credit worthiness? For example, has the CFPB looked at the pros and cons of a model that provides for partnerships between banks and non-banks to offer OCC or FDIC chartered financial products with CFPB consumer protections?

*Response*

The Bureau has not analyzed all of the proposals to provide federal charters for non-depository financial service companies, and we generally do not comment on proposed legislation. Bureau staff does provide technical advice on specific provisions when requested by Congress. We do note that some of the bills we have reviewed have taken a very strong position in preempting all forms of state consumer protection of small dollar borrowers—moving all authority to regulate both charter issuance and consumer financial protection issues to federal regulators. The states have invested substantial legislative and regulatory energy over many years in crafting protections that they view as appropriate for their consumers, so it would be a significant shift in public policy to sweep those protections aside.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**April 23, 2013**

**<u>Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau from Senator Hagan:</u>**

1. The Nationwide Mortgage Licensing System (NMLS) and Registry provides a single system for the licensing and registration of the nation's mortgage industry. The System allows the states to track mortgage loan originators from state-to-state on a nationwide basis. State regulators have begun using NMLS as the licensing platform for other regulated non-depository financial services providers.

Would you agree that it would be beneficial to extend the privilege and confidentiality protections for mortgage-related information contained in the NMLS and which is shared by state and Federal regulators, to information in the NMLS relating to all other types of nonbanks?

*Response*

The Bureau is committed to establishing and maintaining productive working relationships with State bank and nonbank regulators and understands the importance of protecting the confidentiality of information that may be shared through such coordination efforts. To this end, the Bureau has entered into information-sharing and cooperation MOUs, requiring the safeguarding of confidential information, with most State bank and nonbank regulators. Moreover, the Bureau recently entered into a State Coordination Framework to establish a process for coordinated federal/state consumer protection supervision and enforcement of entities providing consumer products or services that are subject to concurrent jurisdiction of the Bureau and one or more State Regulators.

The Bureau believes that steps to better facilitate the sharing of information among regulators by extending the confidentiality safeguards and privilege protections applicable to information placed in the Nationwide Mortgage Licensing System to additional nonbank activities could potentially be beneficial. We would be pleased to look at any specific proposal and provide technical assistance.

2. According to a Federal Trade Commission Report released in December, at least 5 percent of consumers had errors in their credit scores that could lead them to pay higher rates for loans.

With the CFPB's supervision of credit reporting companies beginning last year, do you believe that the appropriate controls are in place to the reduce the occurrence of errors?

What steps are being taken to reduce the occurrence of these errors and improve the process of error correction?

*Response*

The Bureau's authority to supervise larger consumer reporting agencies became effective in the fall of 2012. Among the Bureau's first priorities has been to understand and evaluate the mechanisms used by consumer reporting agencies to collect consumer data furnished by industry, compile and match that data to individual consumer files, and then deliver that data to users in the form of consumer reports. The Bureau's White Paper on "Key Dimensions and Processes in the U.S. Credit Reporting System" describes the Bureau's initial insights into how the industry handles data. For example, in the report, the Bureau observed the limitations of the existing e-OSCAR dispute handling system, which does not forward the documents consumers attach in their complaints to furnishers.

Through our Supervision program, which is in its early stages, we now have the opportunity to examine the larger consumer reporting agencies to assess their compliance with the Fair Credit Reporting Act and other Federal consumer financial laws. Our reviews will help us to evaluate the question you ask – are the controls in these companies appropriate to reduce errors. This issue is one we are focusing on in our review of consumer reporting agencies.

3. During your testimony you mentioned that the Bureau has addressed the issue of indirect auto lending in a very general way with a legal analysis and that it has not reached a factual conclusion about any particular instance. Can you describe the process through which the CFPB would move from a legal analysis to a factual conclusion? What types of statistical tools and proxies might be available to the Bureau to address data gaps and identify different groups of consumers?

*Response*

These questions about methodology and analysis are critical to the Bureau. As a data-driven organization, we want to be sure that our analysis of the auto finance industry is based on current and solid facts about the industry, its business practices, and its participants. In the past year, Bureau representatives have met with numerous individual lenders, auto lender associations, and dealer associations to learn about the industry and the statistical tools and proxies that industry uses to self-monitor its lending activity for fair lending risk.

The Bureau's ongoing supervision program enables it to examine fair lending compliance by many indirect auto lenders. We have enforcement authority over indirect auto lenders as well. The Bureau uses a variety of methods to identify legal violations and the choice of technique will often depend on the facts and circumstances. In the fair lending context, some violations can be determined by reviewing the text of an entity's policies, while other violations are determined using other additional methods, like comparative file reviews or statistical analyses.

Demographic information, such as race, sex, and ethnicity, are generally not collected by nonmortgage lenders but are vital to assessing fair lending compliance. Thus, federal regulatory and enforcement agencies have long used proxy methods in nonmortgage data analyses. These methods are well accepted by economists and by regulators. Like other agencies, the Bureau also uses proxies for demographic characteristics. We have made clear that we base our proxies on publicly available data. For example, as a proxy for sex we use data on first names published by the Social Security Administration. For race and ethnicity, we use both surname and geographical data published by the Census Bureau. Various proxy techniques are publicly available in academic research, and we encourage indirect auto lenders to select a reasonable method and begin to examine their data, if they have not done so already.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**April 23, 2013**

**Questions for The Honorable Richard Cordray, Director, Consumer Financial Protection Bureau from Senator Moran:**

1. The proposed rule to combine mortgage disclosures required by RESPA and TILA includes a requirement that consumers receive their closing disclosure three days before they actually close on their home. The proposed rule requires a second three-day waiting period if there are any changes within three days of the scheduled closing. The proposed rule has very narrow exceptions for these last minute changes. There are a lot of changes that can happen right before closing, sometimes the day of the closing on a final walk through of the property. Without flexibility in the regulation, re-triggering a second three-day waiting period could cause frustrating, costly and unwanted delays for consumers. A delay could cause higher costs, higher fees, lost deposits or earnest money if the real estate contract requires the deal to close by a certain date and lost interest rate lock. In situations where the consumer is going to be hurt financially or otherwise harmed or perhaps they do not desire a second three-day delay, how can consumers be given more flexibility to avoid these costly delays?

*Response*

Based on what we have heard from consumers, lenders, and settlement agents, everyone is frustrated with the way closings are conducted today. One major source of this frustration is that consumers are first presented with certain critical information about their loans at the closing table. The proposal we are considering would require that consumers receive the final disclosure at least three days before closing, so they have the time to review the disclosure in an unpressured environment. This is intended to ensure that all consumers have time to review, question, and understand their transaction before they have to sign on the dotted line.

We understand, however, that sometimes things will change during the three-day period between disclosure and closing. We also understand that not all changes justify delaying the closing date. Therefore, we proposed several exceptions specifying situations that would not trigger a second three-day waiting period. One of these exceptions is for buyer and seller negotiations. For example, when a home is being purchased, the buyer typically performs a walk-through inspection the day before the closing. If the buyer identifies repairs that need to be made, the buyer and seller may negotiate a change in the transaction to cover the cost of those repairs. Our proposal would not delay the closing for these types of changes. We also proposed an exception for increases in costs up to one hundred dollars. In addition, we proposed to allow consumers to waive the three-day period in situations of personal financial emergencies.

We understand your concern about delayed closings, which was also raised by numerous commenters. This is also a concern of the Bureau. Many of the comments on this issue suggested modifications to the proposed exceptions or the addition of new exceptions. We are reviewing these comments to determine the most appropriate way to provide meaningful consumer disclosure while, at the same time, avoid unnecessary delays in closings.

2. During your testimony to the Senate Banking Committee the following statement was made: "So the issue of indirect auto lending is one that, at this point, we address in a very general way

with… a legal analysis that leads to a legal conclusion. It's not yet a factual conclusion about any particular instance, although there's a lot to be heard about this area as you go around the country and listen to people, both lenders and borrowers both." Please reconcile this remark with, and explain the specific basis for (to include providing any supporting data), the public statements made by the CFPB in the fair lending guidance or the accompanying press release that the Bureau issued on March 21, 2013. If this was simply a legal analysis, why was it released as a guidance and for what reason would lender be compelled to begin complying immediately?

*Response*

The legal analysis that the Bureau has undertaken, and that I referenced in my testimony, has focused on the question of whether and under what circumstances indirect auto lenders are creditors under the Equal Credit Opportunity Act (ECOA) and on the obligation that ECOA places on creditors to monitor the effect of their lending policies on protected classes. The Bulletin that the Bureau issued on March 21, 2013, contained the Bureau's legal analysis and conclusions on those questions. The Bureau published that Bulletin in order to provide transparency to indirect auto lenders with respect to the Bureau's perspective on these issues because that perspective will inform the examinations the Bureau conducts and will provide the legal framework that the Bureau will apply to the facts that the Bureau finds.

These questions about methodology and analysis are critical to the Bureau. As a data-driven organization, we want to be sure that our analysis of the auto finance industry is based on current and solid facts about the industry, its business practices, and its participants. In the past year, Bureau representatives have met with numerous individual lenders, auto lender associations, and dealer associations to learn about the industry and the statistical tools and proxies that the industry uses to self-monitor its lending activity for fair lending risk.

In a compliance bulletin published April 2012, the Bureau made clear that it would adhere to the fair lending principles outlined in Regulation B, the regulation originally promulgated by the Federal Reserve Board under ECOA. In particular, under the legal doctrine of disparate impact, a creditor may be responsible for a facially neutral policy or practice that is applied equally, if that policy or practice has, on a prohibited basis, a disproportionate adverse effect, unless the policy is justified by a "legitimate business need" that cannot reasonably be achieved as well by means that are less disparate in their impact.

There are multiple steps in assessing whether a facially neutral policy or practice violates the law. The first step concerns whether the policy or practice has a disparate impact on a prohibited basis (*i.e.* disproportionately, adversely affects borrowers on the basis of race, sex, national origin, etc.). However, even if a policy has a disparate impact, the policy does not violate the law if there is a legitimate business need for the policy that cannot reasonably be achieved as well by an alternative that has a discriminatory impact. If, however, a creditor has a policy or practice that is not justified by a legitimate business need, or the need could reasonably be met by an alternative with a less disparate impact, then the Bureau can pursue corrective action through the supervisory process or through enforcement action.

The evaluation of whether a facially neutral policy violates ECOA requires multiple steps and shifting burdens. Without applying all the requisite steps of the disparate impact analysis, the Bureau will not draw any conclusions about whether a facially neutral policy with a disparate impact on protected classes violates ECOA, but the Bureau may note the existence of inadequately managed fair lending risk.

3. The guidance issued on March 21st of this year stated the following: "The supervisory experience of the CFPB confirms that some indirect auto lenders have policies that allow auto dealers to mark up lender-established buy rates and that compensate dealers for those markups in the form of reserve.... Because of the incentives these policies create, and the discretion they permit, there is a significant risk that they will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases." Please explain in detail how indirect auto lender policies that allow auto dealers to "mark up" lender-established buy rates create "incentives" that result in a significant risk of disparate impact on a prohibited basis. Please provide any data, studies or other materials that resulted in this conclusion.

*Response*

When a lender offers to pay higher compensation to a dealer if the dealer procures a higher-priced contract from a consumer, an incentive is creating to upcharge consumers. As a general matter, discretion in pricing can increase fair lending risk, as discussed in the Interagency Fair Lending Procedures, which have been adopted by all the federal financial supervisors, including the Bureau. Discretion that is not properly controlled has often been a source of discriminatory disparities, both in auto lending and in other product markets like mortgage. Over the past decade, the Department of Justice has settled a number of cases in which discretionary pricing exercised by loan originators in wholesale transactions resulted in alleged disparities on the basis of race and ethnicity. In addition, evidence submitted in many private lawsuits from the last has revealed consistent disparities in markup that adversely affected African-American and Hispanic borrowers.

The March compliance bulletin provides guidance about compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, for indirect auto lenders that permit dealers to increase consumer interest rates and that compensate dealers with a share of the increased interest revenues. The Bureau published the bulletin in part to provide clarity for indirect auto lenders that may have been operating under the incorrect assumption that they cannot be liable under the ECOA for pricing disparities caused by markup and compensation policies.

4. Mr. Cordray also stated to the Senate Banking Committee that there is a "possibility" that the Bureau would "write regulations" involving disparate impact in indirect auto lending. Please fully explain (i) what specific regulations the Bureau is considering writing, (ii) what specific determinations the Bureau would have to make before deciding to write such regulations, (iii) whether, and to what extent, the Bureau would coordinate with the Board of Governors of the Federal Reserve (FRB) and the Federal Trade Commission (FTC) as part of this process, and (iv) the most likely timetable for initiating this process.

# The Consumer Financial Protection Bureau's Semi-Annual Report to Congress
# April 23, 2013

*Response*

The Bureau is not planning on writing specific regulations on auto lending at this time. However, the Bureau is preserving its option to use rulemaking as one of the regulatory tools to ensure that the market for auto lending provides fair, equitable, and nondiscriminatory access to credit for consumers.

Any decision by the Bureau to write regulations on disparate impact in indirect auto lending would depend on an evaluation of our statutory authority and the Bureau's view on the adequacy of existing regulations or other regulatory tools available to the Bureau to address risks to consumers arising from practices that may create disparate impacts in indirect auto lending. The Bureau would also consider the potential costs and benefits to, and potential impact on, consumers and industry stakeholders that would be covered by any potential regulations.

The Bureau is committed to working closely with the prudential regulators and other Federal agencies, including the Board of Governors of the Federal Reserve (FRB) and the Federal Trade Commission (FTC), in conjunction with any decision to write auto lending regulations. With regard to auto lending in particular, the Bureau's commitment to coordination with other regulators stems from a number of sources: (1) the Bureau's statutory obligation to consult with prudential and other appropriate federal regulators in the process of its rulemakings; (2) the fact that other federal regulators, including the FRB and FTC, have significant regulatory authority over auto lending; and (3) the Bureau's commitment to adopt regulations that both protect consumer interests, inclnding access to credit, and preserve the ability of industry actors to pursue legitimate business objectives.

The Bureau is continuing to review the operations of indirect auto lenders to ensure their compliance with fair lending and other Federal consumer financial laws. The future timetable for any decision to begin developing regulations would depend on the results of that review, our evaluation of all tools available to us to address risks involving disparate impact in auto lending, and our assessment of market dynamics.

**QUESTIONS FOR THE RECORD**
**SENATOR CLAIRE MCCASKILL**
**Subcommittee on Consumer Protection, Product Safety, aud Insurance**
**U.S. Senate Committee on Commerce, Science, and Transportation**
**"Credit Reports: What Accuracy and Errors Mean for Consumers"**
**May 7, 2013**

**For the Federal Trade Commission and the Consumer Financial Protection Bureau**

1. The stories we heard from Ms. Thomas and that of Ms. Campbell were both beyond belief. Both of these women have what to me seem like obvious errors: someone else's information was in their credit files. Yet these women filed dispute after dispute, sending every type of paperwork imaginable, and nothing happened. They both ultimately had to hire lawyers and have spent years dealing with these issues, all the while living with the effects of these errors. Under the Fair Credit Reporting Act (FCRA), consumer reporting agencies are supposed to have "reasonable procedures to assure maximum possible accuracy" and are supposed to "conduct a reasonahle reinvestigation" to determine whether disputed information is accurate. Yet from Ms. Thomas and Ms. Campbell's examples, it does not appear that the measures used by Equifax, Experian, and TransUnion meet such a reasonableness standard.

   **Q: Do the experiences of Ms. Tbomas, Ms. Campbell, and what we saw in the *60 Minutes* report meet the FCRA's legal requirements for accuracy and dispute procedures?**

   **A:** The errors described by Ms. Thomas, Ms. Campbell, and in the *60 Minutes* report raise important concerns about the file matching and dispute procedures at consumer reporting agencies (CRAs). The Consumer Financial Protection Bureau (Bureau) understands the significant harm to consumers that matching errors can cause, especially if dispute procedures do not work as intended. The Bureau recognizes that, as a general matter, matching the right pieces of information to the right consumer can be complex and challenging when information characterizing individuals varies widely and furnisher records may contain errors or incomplete identifying information about an individual. But this challenge only heightens the importance of adequate investigation by the CRA when a consumer disputes a particular trade line as "not mine." The Bureau is intent on using all tools available to it, including its enforcement, research, and supervision programs, to identify the sources of these problems and protect consumers. Further, the Bureau's Office of Consumer Response accepts complaints from individual consumers about consumer reporting agencies and the Bureau encourages consumers to file a complaint if the credit reporting agency dispute process does not result in correcting the inaccuracy.

**Q: How are your agencies ensuring that these credit reporting agencies are living up to the accuracy and dispute obligations under the FCRA?**

**A:** The Bureau has the authority to investigate and take law enforcement actions against CRAs that violate the Fair Credit Reporting Act (FCRA), and the Bureau will use that authority, where appropriate, to protect consumers.

In addition, the Bureau's consumer reporting supervisory program went into effect on October 1, 2012, after promulgation of a rule defining larger participants in the consumer reporting industry. As Director Cordray has noted, three early areas of focus for the supervisory program are the reliability and accuracy of information provided to CRAs by furnishers; the accuracy of information contained in consumer reports; and the difficulties consumers encounter during the dispute process.[1]

Finally, the Bureau is currently pursuing research to better understand the root causes of credit reporting inaccuracies. Improving the accuracy and responsiveness of the credit reporting system for consumers is among the Bureau's top priorities.

2. It was shocking to learn that the consumer reporting agencies have not used consumers' supporting documentation in any meaningful way when it comes to disputes. When the consumer reporting agencies send a consumer's dispute on to a furnisher for investigation, those companies typically do not forward that supporting documentation along to the furnisher as well. During the hearing, Mr. Pratt confirmed that later this year, technology will enable the nationwide consumer reporting agencies to give furnishers the supporting documents submitted by consumers.

   Under the FCRA, consumer reporting agencies are supposed to send the furnisher "all relevant information regarding the dispute that the agency has received from the consumer." However, for some time now, consumers like Judy Thomas have carefully compiled documents demonstrating the inaccuracy of information in their files, and this information has been ignored and replaced by a two- or three-digit code.

   **Q: Do the consumer reporting agencies' practices – specifically, the failure to forward consumers' supporting documentation to furnishers along with their disputes – meet the obligations set forth in the FCRA? Shouldn't "all relevant information regarding the dispute" necessarily include the**

[1] Richard Cordray, Director, Consumer Financial Protection Bureau, Credit Report Field Hearing (July 16, 2012), *available* at http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-on-credit-reporting/.

**supporting documentation that consumers submit to the consumer reporting agencies?**

**A:** As you note, the FCRA requires consumer reporting agencies to forward all relevant information regarding a consumer dispute to the furnisher of the information, and I believe that does mean information in documents that is relevant to the dispute should be forwarded to meet this legal obligation. For the first time, a federal agency responsible for enforcing the FCRA has supervisory authority over larger CRAs and the ability to assess how frequently supporting documentation is submitted by consumers with their disputes, what types of supporting documentation are submitted, and whether supporting documentation not forwarded to furnishers ought to be forwarded or is otherwise being used by the CRAs in resolving disputes. A key goal of the Bureau's supervisory program – already underway – is to examine how larger CRAs are meeting their obligations under the FCRA, which include this important obligation to forward "all relevant information" to furnishers when investigating disputes. The three national credit reporting companies have announced plans to upgrade their shared dispute messaging system to enable dispute documentation supplied by consumers to be forward to furnishers. The Bureau will use its authority to ensure that these changes are implemented in a way that meets these CRAs' legal obligations under the FCRA.

3. Several years ago, advertisers flooded the market with offers of "free credit reports" that were anything but free. These companies signed people up for "credit monitoring services" and other costly products for which they had no interest. The FTC and Congress both acted and, in 2010, the FTC issued a rule requiring any company offering such "free credit reports" to clearly disclose the existence of the federal, truly free website, www.annualcreditreport.com.

However, it appears that these companies are still engaging in questionable advertising and marketing practices while skirting the intent of Congress. Now, advertisements for "free credit scores" and "$1 credit reports" are on the rise. These products appear to have the same flaws as "free credit reports" – consumers who order them also unwittingly sign up for "monitoring services" and other products that they do not want.

**Q: Do the advertising and marketing practices for these "free credit scores" and "$1 credit reports" violate the Rule and/or Section 5 of the FTC Act?**

**A:** As you note, in 2010 the Federal Trade Commission amended its Free Annual File Disclosure Rule to prevent the deceptive marketing of "free" credit reports.[2] The amended rule requires that certain advertisements for "free credit reports" include prominent disclosures designed to prevent consumers from

[2] 16 C.F.R. § 610.4, now superseded by 12 C.F.R. § 1022.138.

confusing such "free" offers with the free annual file disclosures available through the single centralized source, wwww.annualcreditreport.com. The amended rule also requires nationwide CRAs to delay advertisements for products and services available through the centralized source until after consumers receive their free annual file disclosures, and prohibits other practices that may interfere with the free annual file disclosure process.[3]

The Bureau is evaluating market developments in this area and is aware that the advertising and marketing of credit reporting products has evolved since 2010. In general, each advertisement or marketing practice must be evaluated on a case-by-case basis to determine if it violates the Free Annual File Disclosure Rule or the prohibition against unfair, deceptive, or abusive acts or practices (UDAAPs) under the Dodd-Frank Act. Although I cannot comment on whether specific advertisements or marketing practices violate the rule or the prohibition against UDAAPs, the Bureau will take appropriate action, including enforcement action, in cases where it concludes there is a statutory or regulatory violation.

**Q: Is Congressional action needed to stop these deceptive advertisements?**

**A:** As an independent federal regulatory agency, the Bureau's focus is on carrying out, implementing, and complying with the laws enacted by Congress. The Bureau would defer to Congress on questions of when and whether Congressional action is needed. We continue to monitor the marketplace and oversee compliance with the Free Annual File Disclosure Rule and UDAAP standards.

**<u>For FTC, CFPB, Mr. Pratt, Dr. Beales</u>**

1. While access to their credit report is important information for consumers to have, we know the consumer's credit score is an important tool used by creditors in determining a consumer's creditworthiness.

**Q: Should consumers be entitled to receive a free credit score along with their free credit report? Why or why not?**

**A:** Currently, the FCRA requires the disclosure of free credit scores used by certain mortgage lenders and by other lenders in connection with the provision of adverse action and risk-based pricing notices. In other circumstances, the consumer can purchase a credit score. Requiring consumer reporting agencies to provide a consumer with a free credit score along with a free credit report could raise several issues. In addition to those discussed in response to the question

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[3] 16 C.F.R. § 610.2, now superseded by 12 C.F.R. § 1022.136.

below, for example, some CRAs do not generate consumer credit scores themselves.

I note that, while a consumer can get a rough indication of her creditworthiness from a credit score, her access to and review of her free credit report remains of paramount importance. Regardless of the credit scoring model used, inaccurate information in a consumer's credit file can harm the consumer's ability to get credit.

**Q: Should Congress consider legislation that would require companies that generate credit scores to provide a free annual credit score to consumers similar to the requirement in place for free credit reports? Why or why not?**

**A:** As an independent federal regulatory agency, the Bureau's focus is on carrying out, implementing, and complying with the laws enacted by Congress. The Bureau would defer to Congress on questions of when and whether Congressional action is needed.

We note that a requirement that credit scoring companies issue free scores could raise new issues. For example, it is important to note that consumers do not have a single credit score. Multiple companies sell credit scores in the commercial market and the ranks of scoring providers continues to increase. In addition, most scoring providers offer multiple versions of consumer credit scores, including generic scores, industry- and company-specific scores, and educational scores only available to consumers. Media reports indicate that one developer, FICO, offers over 49 different credit scoring models.

Further, not all score providers base the scores they sell on their own data. Many providers would need to gain access to underlying consumer report data from some other entity in order to generate free scores. The Bureau's September 2012 report provides further information on the credit scoring market.[4]

**Q: If there is no single credit score, should consumer reporting agencies be allowed to market and sell consumers "their" credit score? Do those practices violate Section 5?**

**A:** Consumer reporting agencies sell multiple versions of commercial scores as well as educational scores. The Bureau agrees that, as a result, there is a potential for consumer confusion in the marketplace for consumer credit scores.

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[4] Consumer Financial Protection Bureau, *Analysis of Differences between Consumer- and Creditor-Purchased Credit Scores* (Sept. 2012), *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf.

As we noted in the conclusion of our September 2012 report:

> This study finds that for a substantial minority of consumers, the scores that consumers purchase from the nationwide CRAs depict consumers' creditworthiness differently from the scores sold to creditors. It is likely that, unaided, many consumers will not understand this fact or even understand that the score they have obtained is an educational score and not the score that a lender is likely to rely upon. Consumers obtaining educational scores may be confused about the usefulness of the score being sold if sellers of scores do not make it clear to consumers before the consumer purchases the educational score that it is not the score the lender is likely to use.[5]

The Bureau evaluates the marketing of consumer financial products and services by CRAs on a case-by-case basis, and will take appropriate action, which may include enforcement action, in cases where it concludes that such marketing involves an unfair, deceptive or abusive act or practice under the Dodd-Frank Act.

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5 *Id.* at 21.

**Hearing on "Qualified Mortgages: Examining the Impact of the Ability to Repay Rule"**

**Subcommittee on Financial Institutions and Consumer Credit**
**May 21, 2013**

***Questions for the Record Submitted by Representative Melvin L. Watt***

*The Dodd-Frank Wall Street Reform and Consumer Protection Act requires that for residential mortgages, creditors make a determination that a consumer has a reasonable ability to repay the loan. However, the Act presumes compliance with the ability to repay requirements for qualified mortgages. One of the features of the qualified mortgage is a "points and fees" test. Under this test, a loan cannot be a qualified mortgage if the points and fees paid by the consumer exceed three percent (3%) of the total loan amount. Some in the industry have expressed concerns that the current guidelines for calculating "points and fees" (i.e., the inclusion of affiliated title fees, Loan Level Price Adjustments (LLPAs) and loan originator compensation) will make originating loans for some consumers unaffordable for the lender.*

1. *Loan Level Price Adjustments (LLPAs) charged by Fannie Mae and Freddie Mac are currently counted towards the "points and fees" calculation.*
    a. *Can you explain the rationale for their inclusion?*

A: LLPAs are essentially a very sophisticated form of risk-based pricing that existed, first in the subprime market, well before the government-sponsored enterprises (GSEs) began applying them to conforming transactions. Historically, LLPAs may have been imposed by secondary market investors or directly by creditors themselves. With respect to GSEs, LLPAs are transaction-specific pricing adjustments added to the baseline pricing currently available from Fannie Mae or Freddie Mac to reflect risk factors attributable to an individual consumer's credit-risk profile (e.g., credit score) and the specific transaction's characteristics (e.g., loan-to-value ratio). In that sense, LLPAs function no differently from more traditional risk-based pricing and other upward pricing adjustments (whether risk-based or not), which always entail either increasing the interest rate or charging additional discount points. When imposed as discount points, such charges have always been included in both the finance charge and points and fees, and this is true notwithstanding that more traditional discount points, like LLPAs, ultimately may have been "charged" by a secondary market investor. The Bureau sees LLPAs as no different in principle and therefore treats them just as any other component of overall loan pricing. The Bureau does not consider it appropriate to treat LLPAs as a third-party settlement charge, such as an appraisal or credit report fee, because LLPAs are a key component of loan pricing and therefore should be reflected either in the interest rate or in points and fees. Creditors can choose to build LLPAs into the interest rate if that makes it easier to satisfy the points and fees limit for qualified mortgages, as discussed below in the response to the next question.

2. *In your final rule issued on January 10, 2013, you noted that creditors may, but are not required to, increase the interest rate charged to the consumer to offset the impact of the LLPA instead of increasing their upfront costs.*
    a. *If a creditor decides to increase the rate to cover the LLPA, is that cost also included in the points and fees calculation? Why or why not?*
    b. *If not, why the different treatment (upfront payment of costs vs. financing the costs) for what appears to be the same charge?*
    c. *Since industry is concerned about the inclusion of upfront LLPA costs in the points and fees calculation, is recouping the cost via an interest rate increase (if it is not included in the points and fees calculation) a viable and/or a practical alternative to easing the pressure they claim they will feel on points and fees? If yes, please explain.*

A: If LLPAs are imposed as an interest rate increase, rather than as additional discount points, the interest rate increase is not counted toward the points and fees threshold under the Bureau's rule. The statutory definition of points and fees expressly excludes interest. It bears noting that more traditional (less granular) forms of risk-based pricing and other forms of upward pricing adjustment, which also are manifested either as interest rate increases or as discount points, also are counted toward the points and fees threshold only when imposed as discount points. Accordingly, as the Bureau noted in the final rule's preamble, imposing LLPAs in the form of interest rate increases often does offer creditors a means of limiting the impact of LLPAs on points and fees. The Bureau recognizes that interest rate increases result in greater periodic payments for consumers. Therefore, there necessarily is an upper limit on the extent to which creditors can increase consumers' interest rates, whether to cover LLPAs or otherwise: Consumers who already are at or near their maximum permissible debt-to-income ratios, beyond which they cannot qualify for the credit, will have little to no room for the payment of LLPAs (or any other upward pricing adjustments) through increased interest rates. In those cases, the loans may not meet the qualified mortgage requirements, but the Bureau considers it appropriate that such loans be evaluated individually under the general ability-to-repay standards.

3. *Industry participants have objected to the way compensation for mortgage brokers is calculated under the rule. However, others are concerned that altering that calculation may lead to the return of yield spread premiums and steering behaviors by lenders.*
    a. *Can you explain the way mortgage compensation is calculated in points and fees test and why the CFPB chose that structure?*
    b. *Does counting such compensation put mortgage brokers at a competitive disadvantage when compared to their retail lending counterparts? If so, please explain.*
    c. *Given the Federal Reserve Board's 2010 rule, which prohibits lenders from basing compensation on the interest rate or other loan terms (i.e., yield*

*spread premiums) and also prohibits loan originators from receiving compensation from both the consumer and the lender, are there still opportunities within the mortgage brokers and/or lenders' compensation structure that could lead to the return of yield spread premiums and/or steering behavior? If so, please explain.*

A. Section 1431 of the Dodd-Frank Act amended TILA to require that "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction," be included in points and fees. The Bureau implemented this provision by adopting a rule requiring that all compensation paid directly or indirectly by a consumer or creditor to a loan originator that can be attributed to that transaction at the time the interest rate is set is included in points and fees. However, to prevent double counting compensation that already is included in points and fees and to reduce the compliance burden, the Bureau excluded certain types of compensation from points and fees. Thus, under the regulation, points and fees do not include loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the points and fees threshold as part of the finance charge. Points and fees also do not include compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker. Finally, points and fees do not include compensation paid by a creditor to its loan officers. With respect to the last exclusions, the Bureau concluded that there were significant operational challenges to calculating individual employee compensation accurately early in the loan origination process, and that those challenges would lead to anomalous results for consumers. In addition, the Bureau concluded that structural differences between the retail and wholesale channels lessened risks to consumers. The Bureau therefore decided to exclude from points and fees compensation paid by retail creditors to their loan originators when the rule takes effect in January of 2014, although it is still continuing to study the issue. Points and fees do include compensation paid by a creditor to a loan originator other than an employee of a creditor (i.e., a mortgage broker), as well as compensation paid by a consumer (though, as noted above, only once).

Counting in points and fees compensation paid by a creditor or consumer to a mortgage broker may make it more difficult for mortgage brokers (as compared to retail loan officers) to originate loans with up-front charges and still remain under the qualified mortgage points and fees limits and the high-cost mortgage threshold. Nevertheless, even in transactions in which a mortgage broker's compensation is two percentage points of the loan amount---which the Bureau understands to be at the high end of mortgage broker commissions---the creditor would still be able to charge up to one point in up-front charges that would count toward the qualified mortgage points and fees limits, under certain circumstances. Moreover, the creditor may reduce the costs it needs to recover from origination charges or through the interest rate by having the consumer pay the mortgage broker directly. In addition, creditors in the wholesale channel that prefer to originate only qualified mortgages in many cases will have the flexibility to recover more of their origination costs through the interest rate to ensure that their transactions remain below the points and fees limits.

As adopted by the Board, effective in 2010, and as retained by the Bureau in 2013, Regulation Z prohibits a loan originator from influencing a consumer to accept a credit transaction available from a particular creditor, over those available from other creditors, to obtain greater compensation than the loan originator would receive from the other creditors, where doing so is not in the consumer's interest. In general, because this rule contemplates a loan originator "steering" a consumer to transact with one out of two or more prospective creditors, the rule primarily affects mortgage brokers rather than individual loan originators employed by retail creditors. During the Bureau's rulemaking process leading to the January 2013 final rule, consumer advocates nevertheless expressed concern that, particularly in the subprime market, loan originators could specialize in originating transactions with above-market interest rates (from all creditors with which they do business), with the expectation they could arrange to receive above-market compensation for all of their transactions notwithstanding the rule's prohibition on steering to a particular creditor to maximize their compensation. Including compensation paid by creditors to mortgage brokers in points and fees may reduce the potential consumer injury from such practices by limiting the ability of creditors to impose high up-front charges and also pay high loan originator compensation and still remain under the points and fees limits applicable to qualified mortgages.

**Questions for the record from Rep. Keith Ellison**

CFPB Staff: Peter Carroll and Kelly Cochran

May 21, 2013

**Question: Using Unemployment Insurance databases to verify income and employment**

- *How do lenders verify that information such as tax returns and pay stubs that are provided by borrowers are accurate?*

A. Lenders have various options. For example:

- Lenders can use one or more commercial services that are repositories of employment and/or income information. Our understanding is that some of these services receive the data from private sector employers through the national payroll processors. Generally these databases do not cover the full population.
- Lenders can also request a verification of income through the IRS using the Income Verification Service (http://www.irs.gov/Individuals/Income-Verification-Express-Service). The IRS provides return transcript, W-2 transcript and 1099 transcript information.

- *Are there ways to use existing databases to make it easier for borrowers to demonstrate their credit worthiness rather than carrying in a shoebox full of receipts?*

A. There are some ways borrowers may demonstrate their credit worthiness using information not typically reported to the three national credit reporting companies. It is our understanding that utility and telecommunications companies routinely field inquiries from employers, lenders, landlords, and other screening services to verify that a consumer has been paying bills. These companies' responses are often governed by state utility regulators and sometimes require that the consumer also be on the phone to verify that the inquiry is valid.

Many of the largest utility and telecommunications participate in a cooperative data repository called the National Consumer Telecommunications and Utility Exchange (NCTUE). This is a consumer reporting agency owned by its furnishers and that its members use to identify when consumers have not paid bills. It is our understanding that the NCTUE historically only collected negative information, but has recently begun collecting positive payment history from members that could be used to verify when a consumer has an open account in good standing. We do not know at present what services NCTUE is planning to provide with respect to reporting this information to non-member entities such as lenders.

Utilities and telecommunications companies are able to report to the three national credit reporting companies (TransUnion, Equifax, and Experian); however, most do not. This is for a variety of business reasons and, in some cases, state utility regulations may prohibit reporting. Thus there is very limited information on consumers' utility and telecommunications payment histories at the national credit reporting companies at present.

There are a number of rental history databases. We understand that most collect negative information for tenant screening purposes but that a few collect positive rental history as well. Coverage is generally limited to data reported from the largest property management companies. As most landlords are very small businesses, the rental market is quite fragmented and there are no databases that can practically obtain positive rental history from more than a small portion of landlords.

- *Eleven states enacted laws allowing third party consumer reporting agencies access to state Unemployment Insurance databases if requested to do so by the consumer.*
    - *Has this access to the State Workforce Agencies database been discussed within the CFPB and/or as part of the Smart Disclosure Task Force?*

A. We are not aware that the Smart Disclosure Taskforce has discussed this. However, we believe working groups or staff of federal agencies participating in the Smart Disclosure Taskforce may be assessing opportunities to develop databases that could provide real-time income verification using IRS data. The Smart Disclosure Taskforce is an initiative of the White House. The CFPB, along with other independent agencies, has been a participant in some task force-sponsored activities, but we may not be aware of all of the activities the Task Force has undertaken.

- *Would the CFPB be willing to work with Mr. Ellison's office to make sure that states that enact legislation are able to use their Unemployment Insurance databases to help consumers access affordable credit?*

A. We would be pleased to provide technical support on these questions.

**Question: Kickbacks and high payments**

- *One of the reasons for placing a cap on fees for mortgages was the prevalence of kickbacks, high fees and other costs that were harmful to borrowers in many different areas including appraisals, private mortgage insurance and title insurance. Could you briefly detail some of the abuses that the qualified mortgage is intended to prevent? Are you satisfied that the limits within the qualified mortgages will make it easier for borrowers to avoid these high-priced and unnecessary fees?*

A. Section 1412 of the Dodd-Frank Act provides that, in general, a qualified mortgage cannot have points and fees that exceed 3 percent of the total loan amount and directs the Bureau to prescribe different limits for smaller loans. The statute also provides that certain private mortgage insurance premiums and charges paid to affiliates of creditors for items such as appraisals and title insurance are included in points and fees. The final rule implemented these provisions. The Bureau expects that many creditors generally will prefer to make qualified mortgages. Accordingly, the general 3 percent limit on points and fees for qualified mortgages likely will exert some downward pressure on such charges. To the extent that creditors prefer to originate qualified mortgages, the underwriting requirements for qualified mortgages, in conjunction with the limits on points and fees, should help ensure that creditors are appropriately concerned about the long-term sustainability of loans and less able to impose excessive upfront charges as a method of ensuring that their loans are profitable.

**Question: Performance of Manufactured housing loans.**

- *Some have asserted that buyers of manufactured homes should pay higher costs than those of site-built homes. What data do you have that demonstrates the delinquency and foreclosure rates of buyers of manufactured homes? How does that data compare to those of site-built homes by similar borrowers? Why would manufactured home borrowers be entitled to less protection than other home buyers?*

A: Data reported under the Home Mortgage Disclosure Act (HMDA) indicate that loans for manufactured homes are more likely than site-built homes to have relatively high interest rates, even after controlling for differences in loan size, borrower income, and other factors reported in HMDA that may differ systematically between owners of manufactured homes and other homeowners. This difference may reflect other factors that are not captured in the HMDA data, including not only differences in predicted loan performance of manufactured housing loans compared with other loans but also differences in credit scores and collateral value. Data on the performance of manufactured home loans are quite limited. A recent study by the Corporation for Enterprise Development provides suggestive evidence that many manufactured home loans perform similarly to general mortgage portfolios (see http://cfed.org/knowledge_center/resource_directory/cfed_publications/directory/toward_a_sustainable_and_responsible_expansion_of_affordable_mortgages_for_manufactured_homes), but the Bureau has not reviewed that study in depth.

**<u>Questions for Mr. Rohit Chopra, Student Loan Ombudsman, Consumer Financial Protection Bureau, from Chairman Johnson:</u>**

1. School Certification - The CFPB has recommended mandatory school certification as a way to reduce student debt load and expand loan counseling. Does the Truth in Lending Act give the CFPB the regulatory authority to require school certification of private student loans?

*Response*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred the authority to prescribe regulations under the Truth in Lending Act from the Federal Reserve Board of Governors to the Consumer Financial Protection Bureau, including those provisions related to special disclosures for private student loans, which were required by the Higher Education Opportunity Act of 2008 (HEOA).

HEOA required the Department of Education to develop a self-certification form, which private student lenders must obtain before consummating the loan. The Federal Reserve Board of Governors prescribed regulations that detailed requirements for lenders related to the self-certification form.

The self-certification form was intended to spur meaningful conversations between students and school financial aid officials.

In our joint report with the Department of Education on Private Student Loans, the Bureau recommended that Congress require school certification. A number of concerns prompted this recommendation, including how some lenders may be accepting forms that are incomplete or inaccurate. Such incomplete paperwork shows that borrowers may not understand how various loan options have more favorable terms, or whether their loans exceed educational expenses.

The agencies were troubled by the experience of consumers with "direct-to-consumer" private student loans, i.e., loans that had not been "certified" for financial need by the school's financial aid office, were more likely to borrow more than their tuition during the pre-recession boom years. Those loans were also much more likely to end up in default.

Given the recent increase in securitization activity in the private student loan market, the Bureau is monitoring the market closely to determine whether the self-certification process is working as Congress intended. We will continue to consult with members of the public, schools, industry stakeholders, and the Department of Education to determine the appropriate steps to ensure the market is properly functioning.

2. Rural and Economic Impact - Mr. Chopra, the success of rural communities is important to me. Rural areas are facing a serious shortage of qualified professionals in a number of professions, including teaching, medicine, and law. Can you describe the extent to which rising student loan debt could exacerbate existing workforce challenges in rural communities? In your testimony, you also described a "domino" effect of student loans on the economy. Could you

expand upon the impacts you found on the ability of borrowers to purchase homes, start businesses, form households, or any other impacts?

*Response*

We have heard from consumers and industry professionals that growing levels of student debt may have spillover effects that present particular risks for rural communities. In addition to the fact that for many professions, graduates in rural communities earn less than their peers in more populated metropolitan areas, rural communities tend to have more severe shortages of teachers, certain healthcare providers, and other professionals. The financial strain of high student debt has the potential to exacerbate existing workforce shortages that exist due to these other factors present in rural communities.

I recently had the chance to meet with representatives from the North American Meat Association, the American Veterinary Medical Association, the American Association of Bovine Practitioners, the U.S. Cattlemen's Association, the Academy of Rural Veterinarians, and the National Farmers Union to discuss the potential impact of student debt on farmers, ranchers, and rural communities. Many of these representatives expressed significant concern.

In February 2013, the CFPB published a notice in the *Federal Register* soliciting input on potential solutions to offer more affordable repayment options for borrowers with existing private student loans. According to a submission to the Bureau's request for information from the American Medical Association, high debt burdens can impact the career choice of new doctors, leading some to abandon caring for the elderly or children for more lucrative specialties.[1] Aspiring primary care doctors with heavy debt burdens may be unable to secure a mortgage or a loan to start a new practice. This can have a particularly acute impact on rural America, where rental housing is limited and solo practitioners are a key part of the health care system.

Classroom teachers submitted letters to the Bureau detailing the impact of private student loans, which usually don't offer forgiveness programs and income-based repayment options. One school district official wrote to the Bureau noting that programs to make student debt more manageable could lead to higher retention of quality teachers.[2] In the past decade, we've faced a growing shortage of highly-qualified math and science teachers.[3] Rural and urban school districts face particularly severe shortages. And teachers in rural districts generally earn less than their peers—the starting salary for rural teachers is lower than the starting salary for non-rural teachers in 39 states.[4]

Student debt can also impact the availability of other professions critical to the livelihoods of farmers and ranchers in rural communities. According to an annual survey conducted by the American Veterinary Medical Association, 89 percent of veterinary students are graduating with

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[1] See http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0004-0878.
[2] See http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0004-0038.
[3] http://www.nap.edu/catalog.php?record_id=11463.
[4] http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_&ERICExtSearch_SearchValue_0=EJ695458&ERICExtSearch_SearchType_0=no&accno=EJ695458.

debt, averaging $151,672 per borrower.[5] Veterinarians encumbered with high debt burdens may be unable to make ends meet in a dairy medicine or livestock management practice in remote areas.

In effect, young graduates with student debt have less financial flexibility and, consequently, less ability to forgo a better paying job for one in a rural area. The impact of student debt on these communities seems worthy of closer study.

More broadly, we are concerned that student debt may have a "domino effect" on other sectors of the economy. The National Association of Home Builders wrote to the CFPB about the relatively low share of first-time home buyers in the market compared with historical levels, and that student debt can "impair the ability of recent college graduates to qualify for a loan." According to NAHB, high student loan debt has an impact on consumers' debt-to-income (DTI) ratio – an important metric for decisions about creditworthiness in mortgage origination. When monthly student loan payments take up a high portion of a borrower's monthly income, applicants may be less qualified candidates for a mortgage.

The National Association of Realtors noted that first-time home buyers typically rely heavily on savings to fund down payments. When young workers are putting big chunks of their income toward student loan payments, they're less able to save for their first down payment.

We have also heard from a number of young entrepreneurs and innovators working in the technology sector. We asked about the roadblocks they've experienced when trying to build new businesses. For many, student debt has made it much harder to take risks and for these young graduates to bet on themselves and on their ideas. In addition, we've heard that it is challenging to attract talented employees willing to take a risk because they're worried about their debt.

Unfortunately, many recent graduates tell us they've put off their goal of starting a business, and student debt may be playing a role. Since the recession, the share of young graduates' outstanding credit consumed by student loans has jumped by 14 percent. Others have found that young student loan borrowers now have lower credit scores than their peers with no student debt. This may make it more difficult for borrowers to qualify for small business loans.

Other research has demonstrated that three-quarters of the overall shortfall in household formation since the start of the recession can be attributed to reductions in household starts among younger adults ages 18 to 34. In 2011, nearly 2 million more Americans in this age group lived with their parents than in 2007. Moody's Analytics estimates that each new household formed leads to $145,000 of economic impact.

If student debt is holding back just a third of those two million young Americans from living on their own, that adds up to a $100 billion loss or delay in economic activity.

[5] See https://www.avma.org/news/journals/collections/pages/avma-collections-senior-surveys.aspx.

3. Student Loan Servicers - Mr. Chopra, the CFPB recently proposed a rule that would enable it to examine and supervise large student loan servicers. Can you describe why the CFPB proposed this rule and how the agency plans to supervise these servicers?

*Response*

In March of 2013, the Bureau issued a proposed rule defining the larger participants in the student loan servicing market. The proposed rule would establish the Bureau's supervisory authority over certain nonbank covered persons participating in the market for student loan servicing. The comment period for the proposed rule closed on May 28, 2013 and the Bureau is considering the comments received before reaching any final decisions on the Proposed Rule.

Student loan servicers play a critical role in the student loan market. Student loan servicers manage interactions with borrowers on behalf of loan holders of outstanding student loans. Servicers receive scheduled periodic payments from borrowers pursuant to the terms of their loans and apply the payments of principal and interest and other such payments as may be required pursuant to the terms of the loans or of the contracts governing the servicers' work. Typically, student loan servicing also involves sending monthly payment statements, maintaining records of payments and balances, and answering borrowers' questions. When appropriate, servicers may also make borrowers aware of alternative payment arrangements such as consolidation loans or deferments.

Student loan servicers also play a role while students are still in school. A borrower may receive multiple disbursements of a loan over the course of one or more academic years. Repayment of the loan may be deferred until some future point, such as when the student finishes post-secondary education. A student loan servicer will maintain records of the amount lent to the borrower and of any interest that accrues; the servicer may also send statements of such amounts to the borrower.

In addition, student loan servicers may collect payments and send statements after loans enter default. They may also report borrowers' account activity to consumer reporting agencies.

In short, most borrowers, once they have obtained their loans, conduct almost all transactions relating to their loans through student loan servicers. The proposed rule would enable the Bureau to supervise larger participants of an industry that has a tremendous impact on the lives of post-secondary education students and former students, as well as their families.

Under 12 U.S.C. 5514, the Bureau has supervisory authority over all nonbank covered persons offering or providing three enumerated types of consumer financial products or services: (1) origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans. The Bureau also has supervisory authority over "larger participant[s] of a market for other consumer financial products or services," as the Bureau defines by rule. This proposed rule, if adopted, would be the third in a series of rulemakings to define larger participants of markets for other consumer financial products or services for purposes of 12 U.S.C.

5514(a)(1)(B). The Bureau is proposing to establish supervisory authority over certain nonbank covered persons participating in the market for student loan servicing.

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 of the Dodd-Frank Act for purposes of: (1) assessing compliance with Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets. The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.

The Bureau prioritizes supervisory activity at nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the product market in which it is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has on the entity. Such field and market information might include, for example, information from complaints and any other information the Bureau has about risks to consumers.

The Bureau plans to supervise these servicers consistent with the general examination manual describing the Bureau's supervisory approach and procedures. This manual is available on the Bureau's website. As explained in the manual, examinations will be structured to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. On December 17, 2012, the Bureau released procedures specific to education lending and servicing for use in the Bureau's examinations. If this proposed rule is adopted, the Bureau would use those examination procedures in supervising nonbank larger participants of the student loan servicing market.

**Private Student Loans: Regulatory Perspectives**
**June 25, 2013**

**Questions for Mr. Rohit Chopra, Studeut Loan Ombudsman, Consumer Financial Protection Bureau, from Ranking Member Crapo:**

1. Many of the borrower relief options found in the CFPB's May 2013 report appear beneficial to borrowers. However, one credit reporting agency has a section on its website outlining the impact of a loan modification on a borrower's credit report and notes that a modification could negatively impact a credit score.

   a. Has the CFPB done any analysis to determine if there are negative collateral impacts to a borrower who gets a loan modification?

*Response*

As a general matter, credit scores are based on proprietary models developed by private industry. Based on our discussions with servicers and consumer reporting agencies, there are specific codes in the Metro II reporting format that allow for indicators of alternative repayment plans.

The impact on a credit score of a student loan default would certainly be a negative credit scoring event for an individual consumer. Alternative repayment options that allow a consumer to avoid delinquency and default would potentially lead to a better credit score.

However, if a borrower is current on their obligations and pursues an alternative repayment schedule, a proprietary credit scoring model might determine that this is a sign of distress, which may impact a score.

If financial institutions begin to offer more alternative repayment options to borrowers in distress, it will be important for servicers to clearly explain the factors that should be considered when choosing one of these options.

   b. How does the CFPB balance the need for a consumer to receive some immediate payment relief with the long term effects on other parts of a borrower's financial profile?

*Response*

In our consumer engagement efforts, we encourage consumers to think of both the short-term and the long-term. For younger consumers with student loan debt, it is particularly important for borrowers to protect their credit profile. Defaulting on a student loan can make it very difficult to obtain credit in the future, or even pass employment verification checks. We continue to educate consumers on ways to avoid default, such as accumulating emergency savings and pursuing alternative repayment options.

2. The CFPB's sole statutory mandate is to protect consumers. Lenders have noted regulatory confusion as the chief obstacle preventing them from offering more borrower relief options. This obstacle arises from a perceived conflict between the Bureau's borrower relief policies and prudential banking regulators' safety and soundness guidance.

a. Has the Bureau taken steps to ensure that borrower relief options outlined in the May 2013 CFPB report on student loans don't negatively impact the safety and soundness of the private student loan market?

*Response*

As discussed in the hearing, prudential regulators clearly articulated that they would not criticize institutions for restructuring debt in a safe and sound manner. The Bureau has noted that alternative repayment options for private student loan borrowers might increase the net present value of troubled loans. This would be beneficial both to consumers, financial institution, and investors.

b. Did the Bureau work with the prudential banking regulators to address potential regulatory obstacles before publishing the May 2013 report?

*Response*

The Bureau regularly consults prudential regulators on a wide range of matters, including the development of the May 2013 report. As noted in testimony by the prudential regulators at the June $25^{th}$ hearing, financial institutions are not barred from restructuring debt, as long as they accurately reflect the value of these loans in their accounting statements.

3. As a result of prudential banking regulators offering varying levels of guidance for their supervised institutions with regards to private student loans, the financial institutions may in turn offer varying degrees of borrower relief options.

a. How does the CFPB anticipate achieving consistent supervision of private student loans made by financial institutions that have different prudential banking regulators and therefore different guidance?

*Response*

The Bureau does not supervise financial institutions for safety and soundness. The Bureau conducts examinations to assess compliance with Federal consumer financial law. The procedures used in these examinations are available to financial institutions and the public at: http://files.consumerfinance.gov/f/201212_cfpb_educationloanexamprocedures.pdf

**Questions for Mr. Rohit Chopra, Student Loan Ombudsman, Consumer Financial Protection Bureau, from Senator Manchin:**

1. In rural towns across the country, there is a chronic shortage of primary care health professionals. Not just doctors, but nurses and others. According to the American Medical Association, student debt may be a barrier to practicing in underserved communities. This problem extends beyond health professionals. I hear from West Virginians across my state that

the best teachers are retiring and that poorer districts are having a tough time bringing in young people to take their places. So many rural families want their kids to go to college, but they worry about the impacts of high levels of student loan debt? In your opinion, how will rural areas survive without critical professions like doctors, nurses, and teachers? What are you doing to make sure that the burden of student debt isn't disproportionately shouldered by rural areas?

*Response*

As you have observed in West Virginia, we have heard from consumers and the agriculture industry that growing levels of student debt may have spillover effects that present particular risks for rural communities. If critical professions such as doctors, nurses, and teachers are unable to locate in rural areas, this could pose a serious threat to the standard of living for Americans in rural communities.

I recently had the chance to meet with representatives from the North American Meat Association, the American Veterinary Medical Association, the American Association of Bovine Practitioners, the U.S. Cattlemen's Association, the Academy of Rural Veterinarians, and the National Farmers Union to discuss the potential impact of student debt on farmers, ranchers, and rural communities. Many of these representatives expressed significant concern.

In addition to the fact that for many professions, graduates in rural communities earn less than their peers in more populated metropolitan areas, rural communities tend to have more severe shortages of teachers, certain healthcare providers, and other professionals. The financial strain of high student debt has the potential to exacerbate existing workforce shortages that exist due to these other factors present in rural communities.

In February 2013, the CFPB published a notice in the *Federal Register* soliciting input on potential solutions to offer more affordable repayment options for borrowers with existing private student loans. According to a submission to a Bureau request for information from the American Medical Association, high debt burdens can impact the career choice of new doctors, leading some to abandon caring for the elderly or children for more lucrative specialties.[6] Aspiring primary care doctors with heavy debt burdens may be unable to secure a mortgage or a loan to start a new practice. This can have a particularly acute impact on rural America, where rental housing is limited and solo practitioners are a key part of the health care system.

Classroom teachers submitted letters to the Bureau detailing the impact of private student loans, which usually don't offer forgiveness programs and income-based repayment options. One school district official wrote to the Bureau noting that programs to make student debt more manageable could lead to higher retention of quality teachers.[7] In the past decade, we've faced a growing shortage of highly-qualified math and science teachers.[8] Rural and urban school districts face particularly severe shortages. In effect, the communities with the most urgent need for great teachers tend to be the school districts with the fewest. And teachers in rural districts

[6] See http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0004-0878.
[7] See http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0004-0038.
[8] http://www.nap.edu/catalog.php?record_id=11463.

generally earn less than their peers—the starting salary for rural teachers is lower than the starting salary for non-rural teachers in 39 states.[9]

Student debt can also impact the availability of other professions critical to the livelihoods of farmers and ranchers in rural communities. According to an annual survey conducted by the American Veterinary Medical Association (AVMA), 89 percent of veterinary students are graduating with debt, averaging $151,672 per borrower.[10] Veterinarians encumbered with high debt burdens may be unable to make ends meet in dairy medicine or livestock management practices in rural communities.

In effect, young graduates with student debt have less financial flexibility and, consequently, less ability to forgo a better paying job for one in a rural area. The potential impact of student debt on these communities is one that policymakers should closely monitor.

2. It does not make any sense that, under our current system, students are forced to pay high interest rates on federal student loans when everyone else in the economy benefits from low borrowing costs on everything else. And if we don't act by July 1st, every federal loan will have an interest rate of at least 6.8% in 2013, while T-bill rates stay near historic lows. Not only would moving to a market-based rate allow students to benefit from cheaper borrowing when everyone else can, I expect that private student loan lenders would, in order to remain competitive, lower their rates as well. Under the current system, private lenders know that we have created artificial benchmarks for these rates, so private lenders can always keep their rates unnecessarily high. How do you believe that implementing a market-based rate for federal loan programs would affect the private loan market? Wouldn't allowing federal rates to fall during times of cheap borrowing—such as today—force private borrowers to lower their interest rates to remain competitive?

*Response*

As a general matter, the student loan market has not exhibited signs of robust competition – even when private market participants dominated. In the Federal Family Educational Loan Program, financial institutions could receive subsidies and guarantees if loans met certain criteria. Congress set statutory interest rate caps; in theory, the most efficient private actors would attract customers by providing the lowest possible price on a commodity product.

Unfortunately, this was generally not the case. While lenders made limited use of incentives, such as waivers of some origination fees, those who charged the statutory maximum were not competed out of the market. Even when borrowers were offered various advertised incentives, many borrowers would never benefit from those incentives. Instead of offering competitive prices to student loan borrowers, many financial institutions drew scrutiny for business models that provided benefits to schools and financial aid officials, who are able to strongly influence student loan choices by students and families.

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[9]http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_&ERICExtSearch_SearchValue_0=EJ695458&ERICExtSearch_SearchType_0=no&accno=EJ695458.
[10] See https://www.avma.org/news/journals/collections/pages/avma-collections-senior-surveys.aspx.

The Department of Education and the Bureau authored a joint report to Congress on private student loans, which showed that most borrowers would be better off exhausting federal student loan options before choosing private loans. Given that private student loans and federal student loans are not economic substitutes, it would be difficult to determine how federal student loan rates might impact private student loan pricing.

**Private Student Loans: Regulatory Perspectives**
**June 25, 2013**

**<u>Questions for Mr. Rohit Chopra, Student Loan Ombudsman, Consumer Financial Protection Bureau, from Senator Brown:</u>**

1. As a voting member agency of the Financial Stability Oversight Council, I am interested in your views on how you assess whether an entity would meet the criteria to be designated a systemically important financial institutions (SIFI). *Specifically, given its extremely large footprint in servicing Direct, FFELP, and private student loans, what would be the broader impact on consumers and markets if SLM Corp. (Sallie Mae) were to fail?*

*Response*

According to its public filings, SLM Corp. (Sallie Mae) services student loans for over 13 million borrowers of Direct, FFELP, and private student loans. According to the surveys by the Student Loan Servicing Alliance, Sallie Mae is the largest servicer in the market, with a commanding lead over its competitors.

Analysis of the impact of an unexpected failure of Sallie Mae would require assessing a number of factors, including whether there would be financial institutions with excess servicing capacity to bid on Sallie Mae's servicing rights and portfolios given a set of capital market conditions, the ability for the Department of Education to reassign Direct Loan volume to other contracted servicers, and the impact of a potential disruption in payments to holders of FFELP asset-backed securities, among others.

If Sallie Mae's failure led to disruptions in servicing, there might also be an impact on the processing of payments and reporting to credit bureaus for individual customer accounts, if appropriate safeguards are not in place.

2. In October 2012, the Consumer Financial Protection Bureau issued a report about problems servicemembers face when utilizing benefits guaranteed by federal law, even on government-guaranteed student loans. Your agency supervises institutions with FFELP portfolios.

    a. Have you focused on these portfolios in your examinations?

*Response*

Prior to 2010, many insured depository institutions originated student loans guaranteed by the federal government. For insured depository institutions with assets over $10 billion and their affiliates, the authority to supervise such entities for compliance with Federal consumer financial law transferred from prudential regulators to the CFPB on the Dodd-Frank Act transfer date. The Department of Education oversees compliance with Title IV of the Higher Education Act.

Our supervision program to date has covered a range of student lending issues, as well as other lending issues servicemembers are facing. The October 2012 report you reference detailed difficulties many servicemembers face in managing student loan debt, despite a number of federal protections and benefits for servicemembers to help manage their student loan debt.

Under the CFPB's procedures for student lending examinations, examiners assess a variety of issues. The full procedures are available to the public at: http://files.consumerfinance.gov/f/201212_cfpb_educationloanexamprocedures.pdf.

During the course of the examination, examiners may find evidence of violations of – or an absence of compliance policies and procedures with respect to – laws such as the Servicemembers Civil Relief Act. Additionally, examiners assess servicers' policies and procedures for granting deferments consistent with FFELP requirements. The CFPB follows up on any examination findings as appropriate, depending on all of the facts.

b. To what extent have you determined that servicemembers are victims of unfair or deceptive practices as it regards to student loan benefits?

*Response*

An important function of the Bureau's Office of Servicemember Affairs is to "monitor complaints by servicemembers and their families." Over the course of reviewing these complaints, it became clear that servicemembers were experiencing difficulties obtaining and retaining their SCRA rights, as well as other benefits. The complaints submitted by servicemembers and their families regarding their experiences with financial institutions when navigating student loan repayment options were quite distressing. These complaints raise serious questions about the commitment of certain financial institutions to comply with laws that protect military families.

The CFPB articulated these concerns as part of the October 2012 report and will utilize the tools at its disposal to ensure that consumer protections relating to consumer financial products and services are vigorously enforced for servicemembers, veterans, and their families. Former Secretary of Defense Leon Panetta also shared his concern about misleading information given to servicememhers at an announcement discussing the findings of the report.

Some financial institution investors have expressed surprise that senior management would be willing to bear significant reputation risk for a relatively minor level of additional profit on servicemember student loans.

c. Are you confident that your supervised institutions are in compliance with the SCRA?

*Response*

The October report laid out serious concerns over apparent compliance issues as they relate to student lending and the SCRA. The CFPB continues to remain concerned about active-duty servicemembers obtaining and retaining their rights under the SCRA.

d. To what extent have you shared these results with tbe Department of Education and the Department of Justice?

*Response*

The Dodd-Frank Act contemplates that the Office of Servicemember Affairs will coordinate with other federal and state agencies "regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families." The CFPB has worked closely with both the Department of Education and the Department of Justice as it relates to military student loan issues and the significant consumer protection risks documented within the October report.

3. Much of the testimony focused heavily on forbearance as a method of relief for private student loan borrowers. But the volume and terms of private student loans issued in the years leading up to the financial crisis indicate that many of these loans may not be sustainable even after forbearance periods. Your July 2012 report documented a 400 percent increase in the volume of private student loan debt originated between 2001 and 2008 – and 2008 originations surpassed $20 billion. The report also shows that from 2005 to 2008 undergraduate and graduate borrowers of private student loans took on debt that exceeded their estimated tuition and fees, and in some years more than 30 percent of loans were made directly to students with no certification of enrollment from their academic institution. The heavy debt burden that was created in these few years is not just unsustainable by dollar volume, but also in the loans' terms. Loans were often variable rate loans with initial interest rates ranging from 3 percent to more than 16 percent.

    a. Given that these unfavorable loan terms were made to a larger number of borrowers, presumably including more students from limited financial means, do loans originated between 2001 and 2008 comply with your standards for safety and soundness?

*Response*

Many private student loan borrowers wish to repay their loans but are seeking alternative repayment plans when they are unable to earn sufficient income to meet minimum required payments. The joint CFPB-ED Report to Congress on Private Student Loans found that, in 2008, 10 percent of private student loan borrowers devoted more than 25 percent of their income to meet student loan repayment obligations – a figure that may have risen as labor market conditions worsened. Many struggling borrowers end up in delinquency or default, see their credit profile damaged, and may be excluded from full economic participation once they attain adequate employment.

However, the CFPB does not supervise institutions, including private student loan lenders, for safety and soundness standards. This responsibility remains with the prudential regulators, so the CFPB cannot speak to whether loans with poor underwriting met these standards.

    b. How would refinancing the highest-cost loans to reflect borrowers' current characteristics affect the soundness of a regulated institution's balance sheet in the short and long term?

*Response*

The CFPB does not supervise institutions for safety and soundness regulations, so it would be difficult for the CFPB to determine this impact. As a general matter, when pricing is not commensurate with risk profile, this may be a sign of insufficient competition.

4. It has often been noted that the lack of competition in the private student lender market has limited loan refinancing opportunities.

   a. Given the lack of competition in this space, how can we assure that low- and middle-income students have access to affordable loans and loan modification options that reflect the borrower's characteristics and ability and willingness to repay?

*Response*

Borrowers from low- and middle-income families might face high prices on private student loans due to their co-signers' credit profile. Even when these borrowers graduate and find good jobs, many report to the Bureau that they are unable to refinance to lower rates that reflect their reduced credit risk. The current industry structure may not be delivering efficient pricing, and this may warrant further action from policymakers.

   b. Is there an existing public or private mechanism to encourage more sustainable loan terms and refinancing opportunities for student borrowers?

*Response*

As discussed in the hearing, depository institutions are able to offer affordable payment plans to borrowers, as long as they accurately reflect the value of the loans. However, loan restructuring activity is troublingly low.

Policymakers took a number of steps to jumpstart lending and capital markets activity as the financial crisis began to unravel. This might provide valuable lessons for how to ensure a well-functioning student loan market.

   c. Without intervention from Congress or regulators, is there reason to believe that private student lenders will actively work with borrowers to issue more sustainable loans and to modify the terms of loans issues prior to the financial crisis to more accurately reflect the risk profile of the borrower given the current lending environment and their financial status?

*Response*

Lenders who are nimble and seek to maximize shareholder value would likely modify loan terms for distressed borrowers in order to avoid losses from default. However, many financial institutions face significant challenges with legacy accounting, IT, and servicing systems that are complex, inhibiting this activity.

5. Pursuant to Section 1035 of the Dodd-Frank Act, you have regularly executed the mandate to provide "appropriate recommendations" to certain Congressional committees. Congress has been examining the long-term future of the GSE participants in the housing market. Given your expertise in the student loan market and your statutory mandate, would you find it appropriate to provide policymakers with your assessment of Sallie Mae's transition from a GSE to its current corporate form to inform our approach on housing GSE policy? If so, what might be a feasible timeline?

*Response*

As chartered, the mission of the Student Loan Marketing Association (Sallie Mae) was to provide liquidity for government-guaranteed student loans and serve as a national secondary market and warehousing facility. Next year will be the tenth anniversary of the termination of Sallie Mae's government charter. As part of the privatization, the federal government freed the company of many of its requirements as a GSE and permitted the company to maintain the Sallie Mae brand for a fee of $5 million.

While Sallie Mae is now a private company (organized as SLM Corp), its business model is closely tied to government programs. For example, Sallie Mae is a major government contractor where it acts as a servicer and debt collector for Federal Direct Loans. The corporation is a large holder of FFELP loans, where it receives certain subsidies on interest accruals from the federal government. According to its filings, Sallie Mae has relied on government-affiliated financing, including an asset-backed commercial paper facility arranged by the Department of Education and a line of credit with a Federal Home Loan Bank through its insurance subsidiary. The corporation also operates Sallie Mae Bank, whose deposits are insured by the FDIC.

The Department of the Treasury's Office of Sallie Mae Oversight served as the GSE's primary regulator. The Bureau and the Department of Education now maintain significant compliance oversight responsibilities over many of Sallie Mae's business activities (and in some cases, the Department of Education has contractual oversight). The Bureau is involved in frequent dialogue with the Departments of Education and Treasury about the activities of Sallie Mae, given its outsized role in the student loan market.

In upcoming months, I will gather further information from appropriate agencies, as well as former OSMO staff, to provide information to your office and other interested parties about the privatization of the GSE and its impact on the marketplace.

6. A key finding of the Senate HELP Committee report, "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success" is that some for-profit schools are engaged in tactics that appear designed to manipulate rates of students defaulting on loans. This includes schools paying staff based on the number of forbearances or deferments secured, and in at least one instance paying private investigators to get signed forbearance authorizations.

a. Has the CFPB seen similar tactics in the private student loan market?

*Response*

The Bureau is unable to comment on the status or existence of any investigation of for-profit colleges as it relates to tactics used to manipulate default rates.

As a general matter, for-profit colleges do not face consequences under the Higher Education Act for defaults experienced by students on their private student loans. The Higher Education Act specifies that for-profit colleges may not exceed certain cohort default rates on Federal student loans without risking eligibility for accepting Title IV funds.

b. Has the CFPB seen evidence that particular institutions with high levels of student defaults (upwards of 15 percent) are focused on enrolling servicemembers?

*Response*

According to data from the Departments of Veterans Affairs and Education, of the 75 schools with the most recipients of GI Bill beneficiaries, more than half of those institutions have a default rate over 15%.

c. Has the CFPB seen evidence that institutions that enroll a high number of servicemembers also have a large number of students that are taking out private student loans?

*Response*

The Bureau is unable to comment on the status or existence of any investigation of for-profit colleges targeting servicemembers and steering them to private student loans.

However, there is concern that the incentive structure created by the "90-10 rule" encourages for-profit colleges to aggressively market to servicemembers, due to the requirement that for-profit colleges get at least 10 percent of their revenue from sources other than Title IV federal education funds administered by the Department of Education. GI Bill and Military Tuition Assistance benefits are not Title IV funds, so they fall into the 10 percent category that these colleges need to fill – and we have heard of some very aggressive tactics to quickly enroll GI Bill recipients, who also took out private student loans to pay for the amount of tuition and fees not covered by military benefits.

**Shining a Light on the Consumer Debt Industry**
**July 17, 2013**

**<u>Questions for Mr. Corey Stone, Assistant Director, Office of Deposits, Cash, Collections, and Reporting Markets, Consumer Financial Protection Bureau from Senator Toomey:</u>**

1. Director Cordray recently announced that the CFPB will soon be engaging in FDCPA rulemaking. What key areas of the FDCPA will this rulemaking address? Are there any areas of the FDCPA that the CFPB considers off the table? Because the FDCPA is over thirty-five years old, should comprehensive FDCPA reform be left to the Congress rather than the CFPB?

*Response*

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress amended the Fair Debt Collection Practices Act (FDCPA) to give the Consumer Financial Protection Bureau (Bureau) the authority to prescribe rules with respect to the collection of debts by debt collectors to implement that law. The Dodd-Frank Act also empowered the Bureau to issue rules applicable to covered persons and service providers (including debt collectors and creditors collecting their own debts) identifying unlawful unfair, deceptive, and abusive acts and practices 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, including requirements for the purpose of preventing such acts or practices. The Dodd-Frank Act also authorized the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau is in the early stages of a debt collection rulemaking. Specifically, the Bureau is planning to publish an Advance Notice of Proposed Rulemaking (ANPR). The ANPR would elicit information about the nature and extent of consumer protection problems in debt collection as well as the advantages and disadvantages of various solutions to those problems. A broad focus in an ANPR is prudent in light of the many consumer protection concerns that have been raised relating to debt collection and the limited legislative changes and absence of regulation of debt collection practices since the FDCPA was enacted in 1977.

The information that the Bureau receives from consumer groups, industry, and others in response to the ANPR will help identify topics that the Bureau might include in a proposed rule. At this time, the Bureau has not made a determination about which topics to cover in a proposed rule, although improving data integrity in the debt collection system and updating debt collection law to reflect technological advances are among the topics addressed.

2. My office is aware of a number of industry self-regulatory initiatives, such as the certification program established by the Debt Buyers Association earlier this year. Are you aware of these efforts? Have you considered the impact of these industry-based solutions instead of pursuing a government solution through FDCPA rulemaking?

*Response*

## Shining a Light on the Consumer Debt Industry
## July 17, 2013

The Bureau is aware of the Debt Buyers Association's (DBA) certification process, and during its development we provided informal comments on the program jointly with the Federal Trade Commission staff. The Bureau applauds the DBA's efforts.

As we move forward, the Bureau will be taking consideration of the DBA's certification program as it evaluates what rulemaking activity to undertake in this area.

3. What consumer cost-benefit analysis is the CFPB doing with respect to the proposed debt collection rulemaking? When evaluating what is best for consumers, is the CFPB taking into account the costs that will be passed onto the consumers who are current on their obligations in order to benefit late consumer debtors?

*Response*

The Bureau's goal in the debt collection rulemaking will be to develop rules that protect consumers without imposing unnecessary or undue burdens on those who must comply with those rules. The Bureau will consider the costs, benefits, and impacts of any rules it issues on consumers and businesses, including creditors, debt buyers, and debt collectors. As part of that evaluation, the Bureau will assess whether the cost of complying with proposed debt collection rules could ultimately be reflected in higher prices and decreased availability of consumer credit and other consumer financial products and services.

To obtain information about the costs and benefits of proposed rules, the Bureau anticipates requesting public comment on these issues in the ANPR and any Notice of Proposed Rulemaking it may issue.

4. The CFPB has stated that attorneys who collect debts on behalf of their clients can be subject to the CFPB's rulemaking and supervision.

- Does the CFPB intend to examine, supervise or regulate the conduct of attorneys who are litigating matters before a court if they are defined as a "covered person" or "service provider"?

*Response*

As the Bureau explained in its rule defining larger participants in the consumer debt collection market that are subject to the Bureau's supervision, the Bureau has authority "regarding the offering or provision of a consumer financial product or service . . . that is . . . offered or provided by [an] attorney . . . with respect to any consumer who is not receiving legal advice or services from the attorney in connection with that product or service." 12 U.S.C. § 5517(e)(2)(B). Consumer debt collection is a consumer financial service that is provided "with respect to" the consumers who owe, or are claimed to owe, the debts subject to collection. An attorney engaged in consumer debt collection, as defined by the Bureau's larger-participant rule, does not provide "legal advice or services" to those consumers; to the contrary, the attorney represents clients with interests that may be or are likely to be adverse to those consumers. Such an attorney can therefore be properly subject to the Bureau's authority.

As the larger-participant rule further explained, though, not every occasion on which an attorney seeks money from a consumer, including in the course of litigation, constitutes consumer debt collection. Consumer debt collection, under the Bureau's larger-participant rule, includes only the activities of persons whose principal business activity is debt collection or that regularly engage in debt collection.

With respect to rulemaking, the Bureau notes that the Supreme Court has held that an attorney can be a debt collector subject to the FDCPA, and that the FDCPA does regulate to a certain degree the litigation activities of such an attorney. A rulemaking under the FDCPA could properly regulate the debt collection activities of an attorney subject to the FDCPA.

- The CFPB has stated that it "continues to adhere to the position that it can compel privileged information pursuant to its supervisory authority" and has noted that submission of privileged information to the CFPB will not be construed as a waiver of the privilege, even when the CFPB shares, for example, attorney-client privileged information with other federal and state regulators. Does the CFPB have any concern that attorney's clients may have significantly less sense of security when sharing sensitive information with their counsel, knowing that it may be demanded by the CFPB and disclosed to other regulators? Does the CFPB feel that demanding such information may have the effect of limiting advice sought from attorneys relating to compliance questions?

*Response*

The Bureau believes that the submission of privileged information to the Bureau does not constitute a waiver of privilege and will not have any significant adverse impact on supervised entities' willingness to share sensitive information with counsel. Congress has provided for this non-waiver of privilege by statute, see 12 U.S.C. § 1828(x), as it has for other agencies—and other agencies have been mandating the production of privileged information from their supervised entities for decades. The production of privileged information to the Bureau does not change the nature or status of the information shared between an institution and its counsel.

5. The CFPB has issued "Action Letters" designed for use by consumers in responding to collection attempts by collection agencies or attorneys.

- One of the Action Letters may request that the collector provide more information to the consumer than is required by law. If a collector provides only the information that is required by law, and the consumer subsequently files a complaint with the CFPB, because all the information requested was not provided, how will the CFPB respond? what will the CFPB do if the collector still refuses to provide more information than lawfully required?

*Response*

The Bureau has received feedback on this point from one industry association, and has solicited feedback from others, as well as from consumer advocacy groups, and will review these comments to better understand any concerns and take appropriate action if necessary.

It is important to note that in the background to the letter, the Bureau highlights that the debt collector is not legally required to provide all the information that a consumer may request, and that this would not necessarily mean that the collector has violated the law. However, prudent use of the letter may facilitate communication between the collector and the consumer by providing the consumer with information that would allow them to recognize the debt and verify that the balance is correct.

- Another Action Letter allows consumers to demand that the debt collector or collection attorney cease communicating with them. Is the CFPB concerned that the act of providing this letter to consumer may be construed as encouragement to use the letter even though circumstances may not warrant its use?

*Response*

The Bureau has also received feedback on this point, and it is also considering whether to revise this letter. It is important to note that the Bureau does advise consumers of the potential consequences of using this letter, and suggests it may be prudent for them to request more information prior to using it.

6. Can the CFPB state how much of its budget, in dollars and as a percentage, are directed toward consumer debt collection issues?

*Response*

The Bureau's activities related to debt collection involve a variety of personnel and support services across multiple divisions. Bureau staff take complaints from consumers about debt collection issues; examine debt collection firms for compliance with consumer financial protection laws; research trends in the debt collection industry; and help educate consumers about the their rights related to debt collection. While we don't have a specific amount budgeted for debt collection activities, the budget for each of the Bureau's divisions, including staffing levels and key investments, is available on consumerfinance.gov. The Bureau has made and will continue to make investments to support ongoing work related to debt collection.

7. The CFPB opened a portal to accept consumer debt collection complaints. The identity of the companies being complained of, and the nature of the complaints, is publicly available on the CFPB's website.

- Will the CFPB take any reasonable steps to ensure the validity of the complaints before posting the complaint, and the company's identity, on its website?

- If a company can show that a complaint was invalid, will the complaint be removed from the CFPB's website?

*Response*

The Bureau began handling debt collection complaints on July 10, 2013. In addition to debt collection complaints, the Bureau also handles complaints on credit cards, mortgages, bank account and services, private student loans, consumer loans, credit reporting, and money transfers.

Information about consumer complaints is available to the public through the Bureau's public Consumer Complaint Database. The database currently contains consumer complaints on credit cards, mortgages, bank accounts and services, private student loans, consumer loans, credit reporting, and money transfers.

While the Bureau now accepts debt collection complaints, these complaints are not currently posted on the Consumer Complaint Database. When the Bureau accepts complaints about a specific product or service, it first evaluates the initial data about the complaints to consider whether any specific policy changes are warranted regarding what information gets published on complaints about that product or service before beginning to publish those complaints. The Bureau will evaluate debt collection complaint data in anticipation of publishing those complaints accordingly.

The Bureau maintains significant controls to authenticate complaints. Each complaint is checked to ensure that it is submitted by the identified consumer or from his or her specifically authorized representative. Each submission is also reviewed to determine if it is a complaint, an inquiry, or feedback (submissions in the latter two categories are not forwarded to companies for handling). Further, each complaint is checked to identify duplicate submissions by a consumer who has already submitted a complaint on the same issue to the Bureau. Finally, complaints are only routed to companies when they contain all the required fields, including the complaint narrative, the consumer's narrative statement of his or her request, and the consumer's contact information. Companies view and respond to complaints using their secure web portals, which they also use to notify the Bureau if a complaint has been routed incorrectly. As we work to continually improve our complaint routing accuracy, such notifications from companies are key to routing complaints to the correct companies and increasing routing accuracy over time.

Complaints will only be posted on the Consumer Complaint Database after the company responds confirming a commercial relationship with the consumer or after they have had the complaint for 15 calendar days, whichever comes first. Complaints can be removed if they do not meet all publication criteria. Additionally, the database does not include information about consumers' identities.

The Bureau's entire Policy Statement on the Disclosure of Consumer Complaint Data (78 Fed. Reg. 21218 (April 10, 2013)) is available at http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf.

8. States play an active role in regulating the consumer debt industry. The states' licensing system, the Nationwide Mortgage Licensing System (NMLS), allows the states to track licensees of all types from state-to-state on a nationwide basis. State regulators have begun using NMLS as the licensing platform for all types of non-depository financial service providers, including the Pennsylvania Department of Banking and Securities, which uses NMLS for licensing debt management companies.

- I have co-sponsored legislation to enhance confidentiality and privilege for information shared among regulators in this system. Would it be beneficial to extend the privilege and confidentiality protections for mortgage-related information contained in the NMLS and which is shared by state and federal regulators to information in the NMLS relating to all types of nonbanks?

*Response*

The Bureau is committed to establishing and maintaining productive working relationships with state bank and nonbank regulators, and understands the importance of protecting the confidentiality of information that may be shared through such coordination efforts. To this end, the Bureau has entered into information-sharing and cooperation Memorandums of Understanding (MOU), requiring the safeguarding of confidential information, with most state bank and nonbank regulators that participate in the Nationwide Mortgage Licensing System (NMLS). Moreover, the Bureau recently entered into a State Coordination Framework to establish a process for coordinated federal/state consumer protection supervision and enforcement of entities providing consumer financial products or services that are subject to concurrent jurisdiction of the Bureau and one or more state regulators.

The Bureau believes that steps to better facilitate the sharing of information among regulators by extending the confidentiality safeguards and privilege protections applicable to information placed in the NMLS to additional nonbank activities could potentially be beneficial.

9. I understand that the CFPB and the FTC have formed a debt collection working group to coordinate the respective activities between your agencies. Can you tell me more about this working group? Is this group considering how to pursue the bad actors without burdening legitimate businesses with undue regulatory requirements?

*Response*

The Bureau and the Federal Trade Commission (Commission) formed a debt collection working group to pool resources, experiences, and ideas in our efforts to protect consumers in debt collection. The working group convenes periodically to discuss ongoing investigations, recent legal developments, and trends in the debt collection industry. This is part of a sustained effort by the Bureau and the Commission, as partners in consumer protection, to advance a united front against unlawful practices in debt collection.

As stated during the hearing, the Bureau recognizes that debt collectors are an essential part of the credit system. With that in mind, the working group coordinates activities to prevent duplicative and burdensome regulatory action against businesses in the debt collection industry. By working together, the agencies can harmonize their regulatory efforts in a way that is effective for consumers and efficient for businesses.

The coordination between the Bureau and the Commission is in accordance with the January 20, 2012 MOU between the two agencies. A copy of that MOU is available at http://files.consumerfinance.gov/f/2012/01/FTC.MOUwSig.1.20.pdf.

**COMMITTEE ON FINANCIAL SERVICES**
**Subcommittee on Financial Institutions and Consumer Credit**
**Examining the Consumer Financial Protection Bureau's**
**Collection and Use of Consumer Data**
**July 9, 2013**

## QUESTIONS FROM CHAIRMAN SHELLEY MOORE CAPITO AND VICE CHAIRMAN SEAN DUFFY

CAPITO/DUFFY 1.
How many U.S. consumer accounts is the CFPB monitoring as part of its data collection activities?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not monitor the accounts of particular consumers and does not track the financial habits or activities of any individual consumer. Instead, in the normal course of carrying out its statutory mandate to protect consumers, ensure regulatory compliance, and monitor the financial services and products markets for risks to consumers, the Bureau collects information about accounts from consumers who seek the Bureau's help through the consumer response function and from the institution involved in the complaint. The Bureau also collects information from covered persons who are the subject of supervisory examinations or enforcement activity, as well as from whistleblowers and third parties who may have information relevant to an enforcement action.

In addition, the Bureau performs market monitoring activities, which involve the analysis of market trends and risks to consumers based upon aggregating and analyzing account information stripped of direct or personal identifiers. Specifically, the Bureau's market monitoring activities include:

The Bureau has procured from a national credit reporting agency (CRA) credit information, stripped of direct or personal identifiers, with respect to a random and representative sample of consumers with a credit report. For the records comprising this Consumer Credit Panel (CCP), the Bureau receives the information in the CRA's database with respect to all accounts associated with the record. The CCP records cover approximately a 4% sample of credit reporting agency records. The CCP is similar to panels that the Federal Reserve Board of Governors and the Federal Reserve Bank of New York each have maintained for several years.

The Bureau is partnering with the Federal Housing Finance Agency (FHFA) to construct the National Mortgage Database (NMDB). For this database, the FHFA and Bureau have procured from a CRA credit information with respect to a random and representative sample of 5% of mortgages held by consumers. This credit information, like the data in the CCP, does not include direct or personal identifiers for individual consumers. The Bureau receives the information in the CRA's database with respect to all accounts associated with the record. The Bureau cannot directly link data in the CCP with data in the NMDB and thus does not know whether any of the records are common to the two databases. The Bureau also procures commercially-available mortgage data from CoreLogic and BlackBox Logic that, like the CCP and NMDB, does not contain personal identifying information directly linked to individual consumers.

In the exercise of its supervisory authority the Bureau is obtaining data stripped of direct or personal identifiers with respect to all credit card accounts maintained by a number of large card issuers. This data is collected and housed on behalf of the Bureau by Argus Information and Advisory Services, a company that is in the business of obtaining account-level data for credit cards and other financial services from financial services companies. The data being provided to the Bureau are the same type of data that credit card issuers regularly provide to Argus, such as the monthly balance, fees charges, interest charged, and payments received on accounts. The data the Bureau receives does not include transactions, such as purchases. Through a Memorandum of Understanding, the Bureau is also able to access data that is collected by a partner prudential regulator from an additional set of credit card issuers. The combined data represent approximately 85-90% of the outstanding card balances. None of the foregoing credit card data contain information that directly identifies individuals.

CAPITO/DUFFY 2.
How many American citizens hold these accounts?

*Response*
As discussed in the response to question 1, the Consumer Financial Protection Bureau (Bureau) does not monitor the accounts of particular consumers and does not track the financial habits or activities of any individual consumer. Instead, in the normal course of carrying out its statutory mandate to protect consumers, ensure regulatory compliance, and monitor the financial services and products markets for risks to consumers, the Bureau collects information about accounts from consumers who seek the Bureau's help through the consumer response function and from covered persons who are the subject of supervisory examinations or enforcement activity, as well as from whistleblowers and third parties who may have information relevant to an enforcement action. Additionally, the Bureau performs market monitoring activities that involve analysis of account information stripped of direct or personal identifiers. These activities are described in response to question 1. Without direct or personal identifiers, the Bureau cannot link these records to individual consumers. As a result, the Bureau cannot determine the number of citizens with respect to which data is being collected.

CAPITO/DUFFY 3.
How many data fields are the CFPB collecting per account?

*Response*
There is no single system of consolidated data maintained by the Consumer Financial Protection Bureau (Bureau). The data fields contained in any particular database utilized by the Bureau vary depending on the purpose for which the data within it is gathered. As noted in response to question 1, the Consumer Credit Panel contains fields collected by the credit reporting agency from which this data is being purchased, excluding fields that contain information identifying individual consumers (e.g., name, address, or social security number) or individual creditors. The National Mortgage Database (NMDB) will contain those fields, plus additional fields that are obtained by matching the records in the NMDB with other mortgage-related data, such as

data reported pursuant to the Home Mortgage and Disclosure Act. With respect to the credit card database, the fields are listed in the Request for Proposals that the Bureau issued and which can be accessed at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=61f9e255acb3ac044ffeb4ae10c6ec00.

In addition to these databases, the Office of Enforcement has received evidence and information from consumers, financial service providers, third-party entities, and other government agencies. This data is generally provided in unstructured form without searchable data fields. The Bureau is also authorized to gather information from institutions it supervises in order to assess compliance with the requirements of Federal consumer financial law, obtain information about the institutions' activities and compliance systems or procedures, and detect and assess risk to consumers and to consumer financial markets. The type, amount, and format of information requested varies depending on which regulatory requirements are under review.

CAPITO/DUFFY 4.
What types of information do these fields include?

*Response*
Please see the response to question 1.

CAPITO/DUFFY 5.
How many data fields does the CFPB's contract with Argus Information and Advisory Services specify should be collected and retained?

*Response*
Please see the response to question 3.

CAPITO/DUFFY 6.
Will you provide this Committee with each of the complete contracts that the CFPB has entered into with private entities for purposes of data collection, analysis, and storage? If so, please provide these contracts along with your responses to these questions. If not, please explain why the CFPB will not do so.

*Response*
Attached are contract copies (and modifications). Contracts are limited to those that involve the purchase, collection, analysis, and storage of relevant data.

- Argus Information and Advisory Services LLC (5 attachments)
- Blackbox Logic LLC (7 attachments)
- Brattle Group Inc. (5 attachments)
- Clarity Services Inc. (4 attachments)
- CLC Compliance Technologies Inc. (6 attachments)
- CoreLogic Information Solutions Inc. (4 attachments)
- Deloitte Consulting LLP (1 attachment for contract number CFP-12-D-00006)
- Deloitte Consulting LLP (5 attachments for contract number TPD-CFP-12-C-0008)

- Experian (4 attachments)
- Fors Marsh Group LLC (7 attachments)
- PriceWaterhouseCoopers LLP (2 attachments)

Please be aware that the documents provided are contractual documents that may contain trade secrets and/or proprietary or confidential information of private entities. The companies should be consulted before any of this information is released publicly to avoid possible competitive harm to these private parties.

ATTACHMENT: Contract Copies

CAPITO/DUFFY 7.
How many memoranda of understanding (MOUs) has the CFPB signed with federal, state, and local governmental entities regarding the collection and sharing of data?

*Response*
The Consumer Financial Protection Bureau (Bureau) Office of Consumer Response has agreements to share consumer complaint data with 25 state and federal agencies.

In addition, the Bureau has signed MOUs with the Conference of State Bank Supervisors and other signatories from all 50 states plus Puerto Rico and the District of Columbia designed to preserve the confidentiality of any supervisory information shared between the parties or related to the operation of the Nationwide Mortgage Licensing System and the Mortgage Call Report.

The Bureau has also signed approximately 40 other MOUs with federal, state, and local governmental entities regarding the potential sharing of data and/or the treatment of shared data.

CAPITO/DUFFY 8.
Has the CFPB signed MOUs with any federal financial prudential regulators? Which ones?

*Response*
The Consumer Financial Protection Bureau has signed MOUs with each federal financial prudential regulator, including the Board of Governors of the Federal Reserve System, the Federal Deposition Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency.

CAPITO/DUFFY 9.
How many MOUs has the CFPB signed with foreign governmental entities?

*Response*
The Consumer Financial Protection Bureau does not have MOUs with any foreign governmental entities.

CAPITO/DUFFY 10.
How many MOUs has the CFPB signed with foreign non-governmental entities?

*Response*
The Bureau does not have MOUs with any foreign non-governmental entities.

CAPITO/DUFFY 11.
Will you provide this Committee with copies of any and all such MOUs that the CFPB has entered into with any entity regarding the collection and sharing of data? If so, please provide these MOUs along with your responses to these questions. If not, please explain why the CFPB will not do so.

*Response*
The Consumer Financial Protection Bureau (Bureau) will provide the Committee with copies of MOUs that the Bureau has entered into with other governmental entities regarding the collection and/or sharing of data, with the exception of MOUs that contain nonpublic information, such as confidential supervisory information or other sensitive information of other governmental entities.

CD ATTACHMENT.

CAPITO/DUFFY 12.
Has the CFPB issued orders to any company requesting data or other information that has been used by the agency in any way to inform or augment its market monitoring efforts? If so, has it made these orders available to the public?

*Response*
The Consumer Financial Protection Bureau (Bureau) recently issued a number of similar orders pursuant to its authority under section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) seeking standard form consumer credit agreements from a number of covered persons. The information the Bureau will collect is intended to assist the Bureau as it works to complete the study mandated by section 1028(a) of the Dodd-Frank Act. These orders have not been published by the Bureau.

CAPITO/DUFFY 13.
If the CFPB has requested data or other information from companies for its market monitoring efforts, but such requests have constituted an order, in what form have these requests been made?

*Response*
The Consumer Financial Protection Bureau's (Bureau) recent orders seeking standard form consumer credit agreements were in the form of short orders setting forth the purpose of the request, the authority for the request, instructions for complying with the request, and contact information to permit recipients to follow-up with the Bureau with any questions.

CAPITO/DUFFY 14.
From which private companies and governmental agencies has the CFPB requested data? What is the scope of those data requests and how frequently do the entities provide the CFPB with the requested data? Please provide a complete answer for each such company and agency.

*Response*
The Consumer Financial Protection Bureau (Bureau) has purchased commercially available data from Experian that is updated quarterly; data from CoreLogic and BlackBox Logic that is updated monthly, and data, as a one-time purchase, from Clarity. None of these data contain direct or personal identifiers.

As noted in responses to questions 7 and 8, the Bureau has also requested data from other agencies with which it has MOUs. For example, the Bureau received data from the Federal Housing Finance Agency regarding mortgage loans to aid in the Bureau's development of its recent mortgage rules. In each instance, the data requested and received did not contain direct or personal identifiers.

In the course of its supervisory activities and enforcement activities, the Bureau has requested data from companies that are either subject to its supervision or subject to its enforcement jurisdiction. While most of these have been one-time requests, some may recur annually. The Bureau has also sought, one time, standard form consumer credit agreements pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act 1022(c)(4)(B)(ii). Because the supervisory and investigatory processes depend upon confidentiality, the Bureau does not disclose the names of the companies to which it makes supervisory or investigatory requests.

Some companies have voluntarily submitted data to the Bureau under a pledge of confidentiality. The Bureau's ability to obtain data voluntarily would be severely compromised if the Bureau were to breach its confidentiality pledge and reveal the identity of those companies. These have been one-time submissions. In each instance, the data requested and received did not contain direct or personal identifiers.

CAPITO/DUFFY 15.
News reports indicate that the CFPB is collecting consumer financial data on credit cards, credit card add-on products, overdraft fees, payday loans, and mortgages. Are these reports accurate? Are there any other areas in which the CFPB is collecting consumer financial data?

*Response*
The response to question 1 identifies instances in which the Consumer Financial Protection Bureau (Bureau) is obtaining data on an ongoing basis.

In each supervisory examination that the Bureau conducts, it obtains financial data relevant to that exam. For what product the Bureau obtains information would depend on the scope of a particular examination.

In the course of preparing reports to Congress as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau has obtained information on a voluntary basis from a number of student lenders, a credit reporting agency, and a remittance transfer provider. In each case, the data did not contain any direct or personal identifiers.

In the course of investigating potential violations of Federal consumer financial laws, the Office of Enforcement obtains information relating to consumers in various segments of the financial services industry and uses that information to enforce compliance with the law and to obtain restitution and other forms of relief for consumers. For example, the Bureau has obtained consent orders requiring restitution be provided to servicemembers who were misled when taking out loans. The Bureau has also obtained court-ordered restitution for victims of foreclosure relief scams in two separate federal court judgments.

The Bureau's response to consumer complaints also may involve collection of consumer financial information needed to process complaints accurately. The information the Bureau collects to process any consumer complaint would depend upon the nature of the problems experienced by the individual consumer.

CAPITO/DUFFY 16.
News reports indicate that the CFPB is assigning an identifier to each individual and requiring that all data providers use this identifier for each individual when submitting their data. Is this true? Please explain fully how the CFPB is using personal identifiers in its data collection activities.

*Response*
The Consumer Financial Protection Bureau (Bureau) does not assign an identifier and does not require all data providers to use this identifier. The Bureau has published System of Records Notices (SORNs) for any data for which personally identifiable information is retrieved by direct or personal identifiers. With respect to the SORN for Market and Consumer Research Records, the Bureau proactively published a notice that described a range of potential data collections and uses, however none of the data collected by the Bureau to date for market monitoring purposes have in fact contained direct or personal identifiers. The Bureau's SORNs are available at http://www.consumerfinance.gov/privacy-office.

CAPITO/DUFFY 17.
Why does the CFPB need to track the financial habits of an individual consumer?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not track the financial habits of any individual consumer.

In carrying out its congressionally mandated supervisory, enforcement, and regulatory functions, the Bureau relies on rigorous empirical analysis – grounded in data – to evaluate how the markets for consumer financial products and services actually work. Data analysis is also fundamental to fulfilling our mandate to protect consumers. Analysis of data, as the law creating the Bureau contemplated, enables the Bureau not only to better protect and educate consumers, but also to coordinate with other regulators and craft tailored rules based on careful examination of costs and benefits. The Bureau's evaluation of this data also allows it to provide meaningful reports, as required by Congress, and to perform its consumer response function.

CAPITO/DUFFY 18.
Does the CFPB monitor any financial transactions at the individual level?

*Response*
The Consumer Financial Protection Bureau does not monitor any individual's financial transactions.

CAPITO/DUFFY 19.
Are any of the CFPB's databases or IT systems capable of monitoring financial transactions at the individual level? Can any CFPB database retrieve financial information by individual identifier?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not monitor individuals' financial transactions. Please see responses to questions 1 and 3 for explanation of the types of information the Bureau collects and the purposes for that collection, including supervisory and investigatory information and information obtained from financial institutions in the resolution of consumer complaints, some of which contains personally identifiable financial information. The Bureau has published System of Records Notices (SORNs) for any data for which personally identifiable information is retrieved by direct or personal identifiers. With respect to the SORN for Market and Consumer Research Records, the Bureau proactively published a notice that described a range of potential data collections and uses, however none of the data collected by the Bureau to date for market monitoring purposes have in fact contained direct or personal identifiers. The Bureau's SORNs are available at http://www.consumerfinance.gov/privacy-office.

CAPITO/DUFFY 20.
How does the CFPB track or match its records with multiple datasets?

*Response*
There are limited cases where the Consumer Financial Protection Bureau (Bureau) matches records with multiple datasets. The Bureau may obtain updates or supplements to a dataset and, in those circumstances, may use record locators unique to the entity providing the update in order to update or supplement the individual records. For example, with respect to the Consumer Credit Panel and the National Mortgage Database, the credit reporting agency that supplies that data provides a unique record locator with respect to each record that enables the providers to update the database on a quarterly basis. With respect to the credit card database, each individual issuer that supplies data includes a unique record locator with respect to each account that enables the provider to update the database on a monthly basis. These record locators do not enable the Bureau to link these records to the identity of individual consumers or to records supplied to the Bureau by other entities.

With respect to the credit card database, issuers provide data, on a quarterly basis, directly to a national credit reporting agency (CRA) and provide to that CRA an identifier which enables the CRA to append to the record data maintained by the CRA. However, in this case, the Bureau does not do the match, the identifier is not transmitted to the Bureau, and the Bureau does not identify the account holder for any account in the database.

In some other instances, the Bureau may match records based on fields such as geography and without the use of direct or personal identifiers. This was done for example when developing the data needed to inform the Title XIV rulemakings.

CAPITO/DUFFY 21.
How does the CFPB define "personally identifiable financial information?"

*Response*
Pursuant to the Gramm-Leach-Bliley Act, the Consumer Financial Protection Bureau (Bureau) defines "personally identifiable financial information" by regulation as follows:

> (q)(1) *Personally identifiable financial information* means any information:
> (i) A consumer provides to you to obtain a financial product or service from you;
> (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or
> (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.
>
> * * *
>
> (2) *Information not included.* Personally identifiable financial information does not include: . . . .
> (B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

The remainder of the definition provides examples. The complete definition can be found at 12 C.F.R. §1016.3(q), along with interrelated terms.

CAPITO/DUFFY 22.
Will the CFPB commit to writing a rule to define the phrase "personally identifiable financial information?"

*Response*
Please see response to question 21. The Consumer Financial Protection Bureau (Bureau) issued an interim final rule defining the phrase "personally identifiable financial information," pursuant to the Gramm-Leach-Bliley Act privacy provisions, consistent with the definitions of that term that other agencies had used in prior rules. *See* 76 Fed. Reg. 79025, 79032 (December 21, 2011) (promulgating 12 C.F.R. §1016.3(q)). That Bureau definition has been in effect since December 30, 2011.

CAPITO/DUFFY 23.
If not, will the CFPB commit to seeking public input and comment about the meaning of this undefined term?

*Response*
Please see responses to questions 21 and 22. When the Consumer Financial Protection Bureau (Bureau) published its interim final rule defining the phrase "personally identifiable financial information" pursuant to the Gramm-Leach-Bliley Act, it solicited comment. The comment period ended February 21, 2012. The Bureau intends to issue a final rule by the end of 2013.

CAPITO/DUFFY 24.
What kind of personal information constitutes "personally identifiable financial information"? Does a person's name? Does a personal identification number such as an SSN? Does address information? How about a ZIP+4? Telephone numbers? Personal characteristics such as pictures or fingerprints? Information identifying personally owned property? Employment information? Medical information? Credit score?

*Response*
Please see responses to questions 21 and 22. The Consumer Financial Protection Bureau's definition of "personally identifiable financial information" pursuant to the Gramm-Leach-Bliley Act provides examples of information that is and is not included in the definition. The relevant portion of the rule reads as follows:

> (2) *Examples.* (i) *Information included.* Personally identifiable financial information includes:
>
> (A) Information a consumer provides to you on an application to obtain a loan, a credit card, a credit union membership, or other financial product or service;
>
> (B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
>
> (C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;
>
> (D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;
>
> (E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a loan or a credit account;
>
> (F) Any information you collect through an internet ''cookie'' (an information collecting device from a Web server); and
>
> (G) Information from a consumer report.
>
> (ii) *Information not included.* Personally identifiable financial information does not include:
>
> (A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

CAPITO/DUFFY 25.
What kind of financial information constitutes "personally identifiable financial information"? Is any of this information linked or linkable to other information in the CFPB's database?

*Response*
Please see responses to questions 21 and 24. There is no single system of consolidated data maintained by the Consumer Financial Protection Bureau.

CAPITO/DUFFY 26.
Does the CFPB collect any type of "personally identifiable financial information" about any U.S. citizen? If so, what types of information does it collect? In what circumstances? For what purposes?

*Response*
Please see responses to questions 1 and 3 for explanation of the types and purposes of information the Consumer Financial Protection Bureau (Bureau) collects, including supervisory and investigatory information and information obtained from financial institutions and consumers in the resolution of consumer complaints, some of which contains personally identifiable financial information.

CAPITO/DUFFY 27.
Do any CFPB contracts or MOUs with any outside entity provide for the collection of personally identifiable information? If so, which ones? Please identify any such contract and MOU.

*Response*
The Consumer Financial Protection Bureau (Bureau) has MOUs that relate to the sharing of information or the treatment of shared information with federal and state agencies, as discussed in response to question 7.

The Bureau has contracts to accomplish numerous aspects of its statutory mandate to protect consumers. Some of the work done under these contracts involves, as a component of carrying out our work, the collection of personally identifiable information (PII). Those contracts include the following:

- Contact Center Services/Consumer Response System Support – Vendor may obtain information about a particular consumer to help process a consumer's complaint.

- Compliance Analysis Tool, Analytical Services, Support & Training – Vendor receives loan portfolio data to support the Bureau's supervisory function.

- Nationwide Mortgage Licensing System and Registry Services – Vendor is tasked with ongoing operation, maintenance, technical support, and end user support services which involves PII collection.

- Forms Disclosure Testing & Support Services – Vendor collects PII from consumer testing participants. The Bureau does not request nor obtain any of the PII.

- Redress and Civil Penalty Fund 3rd Party Administrator – Vendors may receive and/or collect information about harmed individuals/consumers for the purpose of distributing redress funds to these consumers in case-specific matters.

- Human Resources Support Services – Vendors may be tasked with recruitment support which would entail collecting PII of potential job candidates. Vendors may also collect or have access to the PII of Bureau employees for workforce planning, data analysis, and other related support services.

- Administration of Benefit Programs – Vendors may collect or handle the PII of Bureau employees for purposes of administering benefits, such as flexible spending accounts, dental insurance, vision insurance, and long and short term disability.

- Interpreting Services – Vendor provides interpreting services to Bureau employees and applicants who request ASL for reasonable accommodation. Vendor receives names of those requesting assistance and their physical locations for the event.

- Equal Employment Opportunity Counseling, Mediation, and Investigation Services – Vendors may collect PII through interviews or data collection for use in preparing counseling or investigation reports.

- Consumer Experience Design Services – Vendor collects PII for the screening of individuals to be interviewed. This research data is used solely by the vendor. The Bureau does not receive this information.

- Training Services – Vendor collects trainee information.

- Subscription Services – Vendor collects user information for purposes of establishing accounts/licenses.

CAPITO/DUFFY 28.

What is the CFPB's statutory authority for demanding personally identifiable financial information from companies? On which specific provision of the Dodd-Frank Act does the CFPB rely?

*Response*

A number of provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, among them 12 U.S.C. § 5512(c), 12 U.S.C. § 5514(b), 12 U.S.C. § 5515(b), 12 U.S.C. § 5534, and 12 U.S.C. § 5562, authorize the Consumer Financial Protection Bureau (Bureau) to request information. The Bureau's information-gathering is consistent with these authorities and with limitations regarding personally identifiable financial information.

CAPITO/DUFFY 29.

If the CFPB requires that companies provide personally identifiable financial information as part of its monitoring activities, doesn't the Dodd-Frank Act require it to prescribe the form of its requests by rule or order? Why has the CFPB not issued a rule governing the form of its data requests?

*Response*

Section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act) gives the Consumer Financial Protection Bureau (Bureau) authority to require covered persons and service providers to submit reports and written answers regarding their participation in the markets for consumer financial products and services. As noted above, the Bureau has recently issued orders seeking standard form consumer credit agreements from covered persons pursuant to its authority under 1022(c)(4)(B)(ii) of the Dodd-Frank Act. The information sought by the Bureau does not include personally identifiable financial information.

CAPITO/DUFFY 30.

Does the CFPB's failure to issue a rule expose financial institutions to legal liability under the Gramm-Leach-Bliley Act for unlawfully disclosing non-public information?

*Response*

As explained above in response to question 1, the information that the Consumer Financial Protection Bureau (Bureau) receives directly from credit reporting agencies and other commercially available sources excludes direct or personal identifiers. The Gramm-Leach-Bliley Act and its implementing regulation, Regulation P, define "personally identifiable financial information" to exclude "information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers, such as account numbers, names, or addresses." 12 C.F.R. § 1016.3(q)(2)(ii)(B).

Where the Bureau receives personally identifiable financial information pursuant to its supervisory or enforcement activities or to resolve consumer complaints, these disclosures are exempt under the Gramm-Leach-Bliley Act and Regulation P. The Gramm-Leach-Bliley Act and Regulation P do not restrict financial institutions from disclosing personally identifiable financial information about consumers to "government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law." 15 U.S.C. 6802(e)(8) and 12 C.F.R. § 1016.15(a)(7)(iii).

CAPITO/DUFFY 31.

May a financial institution refuse to provide the CFPB with information on this ground or any other legal ground? Under what circumstances may a financial institution refuse to provide requested information to the CFPB? Would refusing to do so violate the CFPB's recently-released bulletin regarding "responsible business conduct" for supervised entities? What action would the CFPB take in such a case?

*Response*
As explained in response to question 30, restrictions in the Gramm-Leach Bliley Act and its implementing regulations would not be an appropriate reason for declining to provide information to the Consumer Financial Protection Bureau (Bureau) as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Bureau's bulletin regarding responsible conduct describes various forms of conduct that the Bureau will view favorably in assessing a company's violation of law. Like many other law enforcement agencies, the Bureau believes it is appropriate to take account of the steps a company had taken to avoid violating the law and how, once a violation nonetheless occurred, the company responded to it.

CAPITO/DUFFY 32.
Isn't it true that the Dodd-Frank Act prohibits the CFPB from collecting "any personally identifiable information about a consumer from the financial records of the covered person or service provider," except when consumers give their permission? If not, on what legal authority does the CFPB rely for the collection of this information?

*Response*
The question refers to Section 1022(c)(9) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. That provision also allows for the collection of covered information as permitted or required under other legal provisions, consistent with the Right to Financial Privacy Act. The Right to Financial Privacy Act, as amended when Congress established the Consumer Financial Protection Bureau (Bureau), specifically exempts from its restrictions the disclosure of information to the Bureau in the course of supervision.

CAPITO/DUFFY 33.
Is the CFPB subject to the Privacy Act of 1978?

*Response*
The Consumer Financial Protection Bureau is subject to and complies with the Privacy Act of 1974.

CAPITO/DUFFY 34.
The CFPB issued a Statement of Records Notice (SORN) on November 12, 2012, entitled "CFPB.022 – Market and Consumer Research Records." According to the SORN, the purpose of the database is "to enable CFPB to monitor, research, analyze, and report information relevant to the functioning of markets for consumer financial products and services." Is this the database the CFPB is using for its data collection and market monitoring efforts?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not maintain a single database of consolidated information. The Bureau published the System of Records Notice (SORN) for Market and Consumer Research Records (CFPB.022) on November 14, 2012. The SORN set out the types of records that could be collected and the potential uses that could be made of those

records. The Bureau believes that in publishing SORNs for public comment it is appropriate to identify the range of potential data to be collected and potential uses.

The SORN covers records which are retrieved by direct or personal identifiers. As explained in response to question number 1, the data that the Bureau has secured does not contain, and is not retrieved by, direct or personal identifiers. Therefore, these data fall outside the scope of the SORN and no activities have taken place with respect to the SORN.

CAPITO/DUFFY 35.
Why does the CFPB need to use personal identifiers for monitoring and analyzing markets? Why not just select random samples of datasets?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not collect direct or personal identifiers of consumers for the purposes of monitoring and analyzing markets.

As explained in response to question 1, the Bureau's Consumer Credit Panel and National Mortgage Database contain a random sample of records drawn from a credit reporting agency, none of which contain direct or personal identifiers. For the credit card database, credit card issuers provide a full file of accounts to the Bureau's contractor, stripped of direct or personal identifiers, rather than a random sample because this is the same format in which they provide data to the same contractor for benchmarking services that they purchase from the contractor pursuant to private agreements. This reduces costs and burden for the issuers supplying the data as it avoids the need to draw a random sample, to provide data with respect to those accounts on an ongoing basis, and to add to the sample each time the data is provided to assure that the sample remains representative of all accounts, including newly-originated accounts.

CAPITO/DUFFY 36.
Is the CFPB using, or does it intend to use, its database to conduct longitudinal studies about consumer behavior?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not maintain a single database of consolidated information. The Consumer Credit Panel and National Mortgage Database described in response to question 1, in order to capture the period before the financial crisis, contain 10 years of history. The credit card database contains over 5 years of history. The Bureau intends to update these records on a regular basis. These databases may be used to understand trends in the market, including consumers' behavior in the aggregate, but are not used to understand any specific individual's behavior.

CAPITO/DUFFY 37.
Is the CPFB subject to the E-Government Act of 2002?

*Response*
The Consumer Financial Protection Bureau (Bureau) is subject to Section 208 of the E-Government Act of 2002, including its requirements related to privacy impact assessments.

Although the Bureau is not legally obligated to follow OMB-issued guidance, including the guidance promulgated pursuant to Section 208(b), it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

CAPITO/DUFFY 38.
Why hasn't the CFPB issued a "Privacy Impact Assessment," or PIA, for its "Market and Consumer Research Records" database?

*Response*
There is no single "Market and Consumer Research Records" database. The Consumer Financial Protection Bureau (Bureau) published a System of Records Notice (SORN) for Market and Consumer Research Records on November 14, 2012, for public comment. The SORN set out the purposes for which certain information could be collected and the potential uses and disclosures that could be made of those records. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau safeguards privacy by conducting and publishing Privacy Impact Assessments (PIAs) whenever we introduce new technologies or modify existing technologies that contain or work with personally identifiable information, pursuant to the definition established by the Office of Management and Budget in OMB Memorandum 07-16 (M 07-16) "Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007." The Bureau has not published a PIA for any market and consumer research records because no such change has been introduced.

CAPITO/DUFFY 39.
Who is responsible for conducting and approving a PIA at the CFPB? Who is the CFPB's Chief Privacy Officer?

*Response*
In accordance with the Consumer Financial Protection Bureau's (Bureau) regulation on "CFPB Disclosure of Records and Information," the Chief Information Officer (CIO) is responsible for ensuring compliance with federal privacy requirements. 12 C.F.R. part 1070 (2013). The CIO has delegated this authority to the Chief Privacy Officer, Claire Stapleton.

CAPITO/DUFFY 40.
Will the CFPB commit to conducting and publicly releasing a PIA for its "Market and Consumer Research Records" database? If so, by what date? If not, why not?

*Response*
Please see response to question 38.

Capito/Duffy 41.
Has the CFPB calculated the total cost, to date, of its data collection efforts, including, but not limited to, costs incurred in the acquisition, storage, protection and analysis of data?

*Response*
The cost to date of the Consumer Financial Protection Bureau's (Bureau) contracts to obtain data is: FY 2013 - $6,061,900; FY 2012 - $7,129,460. Both fiscal years include contracts with commercial and government vendors.

We are unable to break out the costs of storing and protecting this specific data. Our managed service contract for our technology environment includes costs for hardware, software, labor, facilities, and computing power. These costs are shared across a number of Bureau technology needs, making it very difficult to ascertain the costs for discrete components, e.g. specific data, within that environment.

Capito/Duffy 42.
Has the CFPB ascertained the costs incurred by supervised institutions in complying with its data requests? Has it asked these institutions for an accounting of the costs each incurs? If so, what are the costs?

*Response*
The Consumer Financial Protection Bureau (Bureau), like the federal prudential regulators, must obtain certain information from the institutions it supervises. The Bureau conducts examinations and requires reports to carry out its functions under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act to: (i) assess compliance with the requirements of Federal consumer financial law, (ii) obtain information about the activities and compliance systems or procedures of these persons, and (iii) detect and assess risks to consumers and to markets for consumer financial products and services. 12 U.S.C. §§ 5514(b)(1) and 5515(b)(1). The Bureau recognizes the importance of minimizing burdens on the institutions it supervises. For that reason the Bureau has, for example, worked with institutions that have informed it that particular information requests would be difficult and/or expensive to fulfill and modified requests accordingly.

Capito/Duffy 43.
Has the CFPB solicited feedback from any institutions about the cost of these data requests and production? Have any financial institutions volunteered or shared feedback with the CFPB that information? If so, which ones?

*Response*
Throughout the supervisory process, the Consumer Financial Protection Bureau (Bureau) maintains an open dialogue with the institutions it supervises. The Bureau regularly receives input on a variety of matters, and, as noted in response to question 42, has received input on the difficulty and/or expense of fulfilling an information request. In certain instances, the Bureau has been able to modify its information requests to reduce the burden on the supervised institutions while still accomplishing the purposes of the examination. Under the Bureau's

disclosure rules, it generally may not reveal confidential supervisory information, which would include the identities of institutions and the substance of discussions with them within the context of the supervision process. 12 C.F.R. part 1070.

CAPITO/DUFFY 44.
How does the CFPB plan to utilize the data it collects in each of the following areas: (i) research and analysis, (ii) supervision, (iii) enforcement, and (iv) regulation?

*Response*
The Consumer Financial Protection Bureau (Bureau) has several tools for gathering information, including through examinations, civil investigative demands, publicly available sources, consumer complaints, and through the Section 1022(c)(4) authority discussed above.

Data collected using one of these tools may be relevant to both the function for which it was collected and another related function. For example, one of the Bureau's primary functions is to collect, investigate, and respond to consumer complaints. Although the Bureau receives complaints in the course of performing this function, the complaints, and the data derived from them, also support other Bureau functions, including, for example, its consumer education function and its supervisory and enforcement functions. Similarly, data the Bureau gathers in examining institutions for purposes of detecting risks to consumers and to consumer financial markets will also often help the Bureau fulfill Congress' mandate that it monitor the markets for risks to consumers.

The Bureau utilizes the data it possesses for empirical analyses such as those included in our reports on private student loans (which relied on anonymized data provided voluntarily to the Bureau by a number of lenders) and payday lending and deposit advance products (which relied principally on data collected through supervisory exams). These analyses may include descriptive tabulations in addition to more formal econometric modeling, which together, support the Bureau's mission to understand consumer financial markets; to monitor for risks to consumers in the offering or provision of consumer financial products or services; and more generally, to follow developments in markets for such products or services. These data and analyses also support policy development, including rulemaking and any related considerations of the benefits, costs, and impact of particular rules.

The Bureau utilizes data—including data gathered during examinations, consumer complaints, and publicly available data—to prioritize its supervisory activities and to examine institutions' compliance with Federal consumer financial law, their compliance programs, and the risks their activities pose to consumers.

The Bureau is directed to enforce Federal consumer financial law for the protection of consumers, and is authorized to obtain information where there is reason to believe it may be relevant to a violation of that law. The Office of Enforcement uses such information to uncover wrongdoing by those who violate Federal consumer financial protection laws, to prevent and deter such violations, and to obtain refunds and other relief for consumers who have been harmed. Such information, which may include data that contains individual information, is obtained and maintained in accordance with all applicable laws and protections.

In fifteen enforcement actions resolved since the Bureau's creation in 2011, the Bureau has levied fines of more than $62 million and has obtained orders requiring more than $445 million to be returned to 5.8 million consumers who were harmed by the unlawful practices of credit card companies, foreclosure and debt relief scams, and mortgage referral kickback schemes.

CAPITO/DUFFY 45.
How does the CFPB plan to ensure that personally identifiable information (PII) obtained through the consumer complaint process is not used contrary to gathering limitations on such information under CFPB rulemaking authority?

*Response*
The limitations on the Consumer Financial Protection Bureau's (Bureau) gathering of personally identifiable financial information to which this question refers are contained in Section 1022(c)(4)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which concerns the Bureau's authority to obtain records from regulated entities to perform its market monitoring and reporting obligations. This provision does not relate to the Bureau's consumer complaint functions. The Dodd-Frank Act expressly requires the Bureau to accept and assist in the resolution of consumer complaints. Inherent in such a requirement is authority to collect personally identifiable information from consumers who choose to submit complaints to enable the Bureau to facilitate the complaint resolution process. The Bureau's collection of personally identifiable information during the consumer complaint process thus does not conflict with Section 1022(c)(4)(C) and its limitations in any way.

CAPITO/DUFFY 46.
The CFPB's Privacy Policy released on December 6, 2012 states "Before we collect PII, we tell you what we are collecting, why we are collecting it, and how we are going to use it." Is the CFPB currently living up to its privacy policy? Who is the "you" in this statement and where is this information displayed that tells "you" what, why and how PII is used?

*Response*
The "you" referred to in the Privacy Policy published by the Consumer Financial Protection Bureau (Bureau) on December 6, 2012 is the American consumer. The Bureau is living up to its Privacy Policy. In numerous ways, the Bureau notifies individuals of its intentions to collect personally identifiable information, of its purposes in doing so, and of its uses of such information. For example, the Bureau publishes in the Federal Register Systems of Records Notices, as required by the Privacy Act, which contain such notifications with respect to major categories of the Bureau's information collection activities, including its supervisory, law enforcement, consumer response, and consumer research activities. The Bureau also provides Privacy Act Statements to individual consumers when it collects information from them directly, such as when it accepts consumer complaints. Many Bureau media releases and policy statements also include discussions of the details of its information collection activities. Finally, in many instances, the statutes governing the Bureau's activities provide notice by expressly requiring or authorizing the Bureau to collect certain information, such as consumer complaints, and to use that information for certain purposes. The Bureau's comprehensive Privacy Policy and Legal Notices, available at http://www/consumerfinance.gov, provide further information.

CAPITO/DUFFY 47.
Would forcing financial institutions to disclose this information cause them to violate their legal obligations to protect the privacy of the customers' personal information?

*Response*
The Consumer Financial Protection Bureau does not require financial institutions to disclose information that would violate their legal obligations to protect the privacy of customers' personal information. For information about the application of the Gramm-Leach-Bliley Act and its implementing regulations to the disclosures at issue here, please see the response to question 30.

CAPITO/DUFFY 48.
Is the amount of data and the frequency of the data collection appropriate for the specific stated purpose by CFPB for how the agency intends to use the data?

*Response*
The Consumer Financial Protection Bureau's (Bureau) responses herein, including responses to questions 1, 3, and 44, describe the Bureau's usage of data to fulfill its statutory mandates, including supervision, enforcement, regulation, research and analysis, and consumer response. The Bureau makes every effort to ensure that its data collections are appropriate in frequency and amount to the regulatory functions for which they are to be used. For example, the Consumer Credit Panel and the National Mortgage Databases are updated quarterly. This reduces the cost compared to a monthly update and still provides information in a timely fashion. With respect to the credit card database, the credit card issuers who are clients of Argus already provide information to Argus on a monthly basis. Thus, the credit card database is updated monthly. This assures that as supervisory examinations are planned and conducted, the Bureau is operating on the most current data.

CAPITO/DUFFY 49.
Is it possible for the CFPB, or any third party vendor working on behalf of the CFPB, to reverse engineer raw data to identify individual consumers?

*Response*
The Consumer Financial Protection Bureau (Bureau) is sensitive to the concept and risks of re-identification generally and has been careful to minimize that risk by using de-identified data to perform its market-monitoring function and by keeping each data collection for market monitoring separate from other such collections. The Bureau purposefully reduces the likelihood of data being re-identified by restricting access to data to those whose work requires it, and providing privacy and security training to Bureau personnel on how to handle and protect data appropriately. Neither the Bureau nor its contractors (who are subject to the same security requirements as Bureau employees) attempt to re-identify data that is or has been rendered de-identified.

CAPITO/DUFFY 50.
Has the CFPB set a time period for retaining this data, and will the individual consumer financial information be purged from all federal records after this retention period?

*Response*
The Consumer Financial Protection Bureau (Bureau) will manage all computer and paper files as permanent records until the disposition schedule for these records is approved by the National Archives and Records Administration, at which time, the Bureau will dispose of such files in accordance with the schedule.

CAPITO/DUFFY 51.
Has the CFPB suffered any breaches of data, and has any data breach reached consumer information?

*Response*
To date, the Consumer Financial Protection Bureau (Bureau) has been notified of and responded to a total of 3 incidents that were deemed to be breaches, which is defined as involving the breach, loss, or compromise of personally identifiable information (PII). Each incident involved the PII of one consumer, and each consumer was notified of the incident(s) and provided credit monitoring services/subscriptions for one year. The breaches impacted consumers who had submitted complaints through the Bureau's consumer response system. In each case, the breach resulted from a Bureau employee error. The employees received additional training, the consumer response system was updated to allow only one complaint to be accessed at a time to reduce the chance of human error when attaching documentation, and additional supervisor checks have been established.

CAPITO/DUFFY 52.
Are data sets gathered from the CFPB's market research function merged with data sets from its consumer complaint database? Or are there walls in between this data?

*Response*
The data sets gathered for market research are not merged with consumer complaint data sets.

**Regarding the CFPB's SORN entitled "CFPB.022 – Market and Consumer Records," please answer the following questions fully**:

CAPITO/DUFFY 53.
What data is being collected, used, disseminated, or maintained in the system?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau, nor a single Market and Consumer Records database.

The Market and Consumer Research Records SORN set out the types of records that could be collected and the potential uses that could be made of those records. The Bureau believes that in publishing SORNs for public comment it is appropriate to identify the range of potential data to be collected and potential uses. As documented in the SORN, the records may include: (1) contact information (e.g., names, phone numbers, email addresses, physical addresses, and governmental-issued identification numbers); (2) information collected from consumers as part of surveys, randomized controlled trials, or through other mechanisms; (3) consumer financial transaction data and other information related to consumers' financial statuses; (4) information about the legal relationships between consumers and market participants, such as contracts and dispute records; (5) information about commercial relationships between consumers and other market participants; and (6) information on consumer characteristics collected by market participants or other entities.

No activities have taken place with respect to this SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 54.
Why is the information being collected, used, disseminated, or maintained?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met should any data collection necessitating a SORN be undertaken.

In general, the reason for information being collected, used, disseminated, or maintained is documented in a SORN. In this case, as documented in the SORN, were data to be collected, it would be collected for purposes of monitoring, researching, analyzing, and reporting information relevant to the functioning of markets for consumer financial products and services.

CAPITO/DUFFY 55.
What are the sources of information in the system?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to this SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

Potential sources of information are documented in the SORN for Market and Consumer Research Records, which was published on November 14, 2012. The SORN set out the types of potential sources of information that could be accessed and the potential uses that could be made of records drawn from those sources. The Bureau believes that in publishing SORNs for public comment it is appropriate to identify the range of potential data to be collected and potential uses.

CAPITO/DUFFY 56.
What technologies are being used to collect the data?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau primarily receives data through secure File Transfer Protocol (sFTP) and physical media transfers. Secure File Transfer Protocol is a standard protocol that enables the secure transferring of files from one entity to another. When in-taking data by physical media, the dataset is uploaded into a secure environment and the physical media is delivered to the Records team for retention.

CAPITO/DUFFY 57.
How is the information collected?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 58.
What legal authority and/or agreements allow the information to be collected?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

A number of provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, among them 12 U.S.C. § 5512(c), 12 U.S.C. § 5514(b), 12 U.S.C. § 5515(b), 12 U.S.C. § 5534, and 12 U.S.C. § 5562, authorize the Consumer Financial Protection Bureau to request information.

CAPITO/DUFFY 59.
What information is retained? How long and for what reason is it retained?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau will manage all computer and paper files as permanent records until the disposition schedule for these records is approved by the National Archives and Records Administration, at which time, the Bureau will dispose of such files in accordance with the schedule.

CAPITO/DUFFY 60.
Is there a records retention schedule that has been approved by the National Archives and Records Administration (NARA) for the information system? If so, what is the name of the records retention schedule? If not, why not? If a records retention scheduled has been drafted but not yet approved by the NARA, please provide a copy of the draft schedule.

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The Bureau is currently drafting a retention schedule for the data that may be collected with respect to the SORN for Market and Consumer Research Records.

CAPITO/DUFFY 61.
Are there any forms or surveys that are associated with the collection of the information that would be covered by the Paperwork Reduction Act?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these

privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 62.
Are there any privacy risks for this system that relate to the purpose of the collection? If so, how will the CFPB mitigate these risks?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The general privacy risks associated with all collections of personally identifiable information is that individuals do not understand how information about them is being used, and that the PII is inappropriately used or disclosed. The Bureau takes care to provide individual with notice of the authority under which it is collecting information, and maintains such information in a manner consistent with the Privacy Act of 1974, 5 U.S.C. § 552a, the Federal Information Security Management Act of 2002, 44 U.S.C. § 3541 et seq., and other applicable Federal laws and regulations. The Bureau further mitigates privacy risks by relying on pulling samples or conducting surveys of population segments; by limiting access to information to personnel with a business need for that access; by providing its personnel with privacy and security training as well as job training to ensure the appropriate use and protection of information; and by reducing the risk of misuse of the data by removing direct or personal identifiers, masking, or aggregating the data as appropriate to the use.

CAPITO/DUFFY 63.
Are individuals given notice prior to the collection of personal information about them? If not, why not?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, where the Bureau collects personal information from individuals directly, the Bureau provides individuals with actual notice through a Privacy Act Statement. When the Bureau collects information about individuals indirectly, including when it obtains such information from other agencies, financial institutions, or other third parties, the Bureau provides individuals to whom the information pertains with notice of its collection activities by publishing a SORN in the Federal Register. In addition to these Privacy Act notices, in general, the Bureau also provides notice of its information collection activities through media such as press releases, policy statements, and web postings.

CAPITO/DUFFY 64.
Are individuals given notice prior to their information being shared with any entity outside of the CFPB? If not, why not?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

When the Bureau collects information about individuals indirectly, including when it obtains such information from other agencies, financial institutions, or other third parties, the Bureau provides individuals to whom the information pertains with notice of its collection activities by publishing a SORN in the Federal Register.

CAPITO/DUFFY 65.
Do individuals have the opportunity and right to decline to provide information?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, where the Bureau collects personal information from individuals directly, the Bureau provides individuals with actual notice through a Privacy Act Statement that informs such individuals as to whether their provision of information to the Bureau is mandatory or voluntary and, if mandatory, what the consequences to them are, if any, of their refusals to provide the information to the Bureau. When the Bureau collects information about individuals indirectly, including when it obtains such information from other agencies, financial institutions, or other third parties, the Bureau provides individuals to whom the information pertains with notice of its collection activities by publishing a SORN in the Federal Register. In these instances of indirect collection, the Bureau does not generally provide individuals with an opportunity to refuse to provide the information to the Bureau.

CAPITO/DUFFY 66.
Do individuals have the right to consent to particular uses of the information? If so, how does the individual exercise the right?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, when the Bureau collects personal information directly from individuals, the individuals would be notified regarding applicable opportunities and rights to consent to particular uses of their information to the extent provided under the Privacy Act. They may have the right to decline to provide information or withhold consent at the time the information is collected.

CAPITO/DUFFY 67.
Whose information is included in the system?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records" (CFPB.022). There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to this SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 68.
What Personally Identifiable Information will the system include? Why is the collection and use of Personally Identifiable Information necessary to the project or system?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records" (CFPB.022). There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 69.
Will the system aggregate previously unavailable data about the individual to create new data about the individual? If so, how will this data be maintained and used?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to this SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 70.
What controls exist to protect the consolidated data and prevent unauthorized access?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The Bureau practice is to categorize all of its systems using Federal Information Processing Standard Publication 199, Standards for Security Categorization of Federal Information and Information Systems (FIPS 199). Based on this categorization, the Bureau implements security controls from National Institute of Standards and Technology Special Publication 800-53, Recommended Security Controls for Federal Information Systems and Organizations, to secure its data. Any additional Bureau policies, processes, and procedures, including those related to access, are based on these standard federally-practiced controls, industry best practices, as well as other guidelines and mandates issued for government agencies.

CAPITO/DUFFY 71.
Will the system monitor the public?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

With respect to information collected by the Bureau, please see response to questions 1 and 17.

CAPITO/DUFFY 72.
What kinds of reports can be produced on individuals? Will the data included in the reports produced be anonymized?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The Bureau does not publish reports of data that are directly identifiable to any particular consumer or that it has reason to believe are likely to identify any particular consumer indirectly.

CAPITO/DUFFY 73.
How will the information in this system be used?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

With respect to information collected by the Bureau and its use, please see response to questions 1 and 17.

CAPITO/DUFFY 74.
Is the information in the project limited to only the information that is needed to carry out the purpose of the collection?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau collects information to carry out its statutory mandates with emphasis on promoting efficiency and minimizing burdens on those involved in the collection.

CAPITO/DUFFY 75.
What types of tools are used to analyze data and what type of data may be produced?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau uses standard statistical querying tools such as SAS, Stata, Matlab and Gauss to analyze data. Using these tools, the Bureau is able to produce descriptive analyses and more complex econometric models

CAPITO/DUFFY 76.
If the system uses commercial or publicly available data, how and why is this data used?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

With respect to commercial or publicly available data collected by the Bureau, please see responses to questions 1 and 17.

CAPITO/DUFFY 77.
With which internal organizations is information shared? What information is shared, and for what purpose? How is this information transmitted or disclosed?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 78.
With which external organizations, including federal, state, local, or foreign agencies, or private sector organizations, is information shared? What information is shared, and for what purpose?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 79.
Is the sharing of information outside the CFPB compatible with the original collection? What legal mechanisms, authoritative agreements, documentation, or policies are in place detailing the extent of the sharing and duties of each party?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The SORN covering Market and Consumer Research states that the Bureau may share externally certain information as authorized by law.

CAPITO/DUFFY 80.
Under what legal mechanism is the system allowed to share the information in identifiable form or personally identifiable information outside of the CFPB?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

The Privacy Act of 1974 generally prohibits the disclosure of a record contained in a system of records, except as provided for in the Privacy Act or pursuant to a routine use described in a

SORN. The Market and Consumer Research Records SORN set out the types of records that could be collected and the potential use and disclosures that could be made of those records. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §5512(c)(6), directs the Bureau to "prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law," and to, in certain circumstances, provide access to other agencies to confidential supervisory information. To these ends, the Bureau promulgated regulations, at 12 C.F.R. part 1070, that set forth its rules regarding the appropriate treatment of confidential information. These rules, in limited circumstances, authorize the sharing of confidential information.

CAPITO/DUFFY 81.

How is the data transmitted or disclosed to these entities? What security measures safeguard its transmission?

*Response*

As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN he undertaken.

CAPITO/DUFFY 82

How is the data secured by external recipients?

*Response*

As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 83.

Will the database interact with other systems, whether within the CFPB or outside the CFPB? If so, which databases and how?

*Response*

As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 84.
How is the information collected by the database verified for accuracy and completeness?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records" (CFPB.022)." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 85.
Who has access to data in this project? How many total individuals have been authorized by the CFPB to access the data? What is the authorization process for access to the project? Has every individual with access to the CFPB's database been subjected to – and passed – a full background investigation?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records" (CFPB.022)." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN. The SORN was proactively published; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 86.
Do CFPB contractors and/or agents have access to the system? If so, what controls exist to ensure appropriate access and what Privacy Act clauses have been inserted in their contracts?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to this SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, contractors (including contractor employees and subcontractors) may have access to specific databases, with access limited by several control points provided by the general Cybersecurity and IT Security clauses included in Bureau contracts. These clauses operate to ensure adequate contractor IT processes and contract employee IT security awareness training; contractor compliance with relevant Federal laws, including but not limited to the Federal Information Security Management Act of 2002 (FISMA); Bureau oversight of contractor cybersecurity and pre-screening of contractor personnel; and signed contractor nondisclosure agreements (NDAs), as appropriate.

CAPITO/DUFFY 87.
How many contractors and agents currently have access to the database?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, access to Bureau data is controlled and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

CAPITO/DUFFY 88.
How is access to the data by a user determined? Are procedures documented? Are access logs kept?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 – Market and Consumer Research Records" (CFPB.022). There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, Bureau Technology staff follow a process that generates an approved privileged user access list following an articulated justification as to why access is required for any given database. Access to Bureau data is controlled and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

CAPITO/DUFFY 89.
Has the CFPB completed a system security plan for the information system supporting this project?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

CAPITO/DUFFY 90.
How is the system secured?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau categorizes its systems using Federal Information Processing Standard Publication 199, Standards for Security Categorization of Federal Information and Information Systems (FIPS 199). Based on this categorization, CFPB then utilizes recommended security controls from National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) to secure its systems and data. Bureau policies, processes, and procedures, including those related to access are based on these controls as well as other federally-mandated guidelines and standards.

CAPITO/DUFFY 91.
Are there any mechanisms in place to identify security breaches? If so, what are they?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Consumer Financial Protection Bureau has multiple security controls in place to identify security breaches of CFPB databases and Systems of Record. These controls are derived from National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidance and include audit log monitoring, analysis, and reporting. A "defense in depth" approach is used that includes monitoring at various levels of the system from application, operating system, database to network firewalls and intrusion detection systems (IDS).

CAPITO/DUFFY 92.
What auditing measures/controls and technical safeguards are in place to prevent misuse (e.g., unauthorized browsing) of the data?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's SORN entitled "CFPB.022 – Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, the Bureau's controls are derived from National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidance. Access to data and system resources is limited; technical controls and other safeguards are implemented and monitored to identify potential misuse.

CAPITO/DUFFY 93.
What opportunities are available for individuals to consent to uses, decline to provide information, or opt out of the project? If no opportunities are available to consent, decline or opt out, why not?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, where the Bureau collects information directly from individuals under the Privacy Act, it provides them with Privacy Act Statements that inform such individuals as to whether their provision of information to the Bureau is mandatory or voluntary and, if mandatory, what the consequences to them are, if any, of their refusals to provide the information.

CAPITO/DUFFY 94.
What procedures will allow individuals to access their information?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met and public comment solicited should any relevant data collection necessitating a SORN be undertaken.

In general, where the Bureau collects information that is retrieved by a direct or personal identifier and maintained in a SORN under the Privacy Act, individuals may request access to, amend, and correct records that pertain to them by submitting a request in writing in accordance with instructions appearing in Title 12 part 1070 of the Code of Federal Regulations, "Disclosure of Records and Information."

CAPITO/DUFFY 95.
Can individuals amend information about themselves in the system? If so, how? If not, why not?

*Response*
Please see the response to question 94.

CAPITO/DUFFY 96.
What are the procedures for correcting inaccurate or erroneous information?

*Response*
Please see the response to question 94.

CAPITO/DUFFY 97.
How are individuals notified of the procedures for correcting their information?

*Response*
Please see the response to question 94.

CAPITO/DUFFY 98.
What privacy training is provided to users, either generally or specifically relevant to the project?

*Response*
As requested, this response pertains to the Consumer Financial Protection Bureau's (Bureau) SORN entitled "CFPB.022 - Market and Consumer Research Records." There is no single system of consolidated data maintained by the Bureau. No activities have taken place with respect to that SORN; the Bureau published the SORN proactively with the goal of having these privacy requirements met should any data collection necessitating a SORN be undertaken.

In general, the Bureau provides privacy and security training to all employees of the Bureau, including contractors who handle personally identifiable information on behalf of the Bureau, in accordance with OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007, available at http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf.

## QUESTIONS FROM REP. BLAINE LUETKEMEYER

LUETKEMEYER 1.
According to recent reports, the CFPB has entered into more than $15 million worth of contracts with credit reporting agencies, consultants and data analysis companies for the collection and analysis of consumer data. What is the justification for spending this amount of money and obtaining this type of data?

*Response*
In carrying out its congressionally-mandated supervisory, enforcement, and regulatory functions, the Consumer Financial Protection Bureau (Bureau) relies on rigorous empirical analyses – grounded in data – to understand how the markets for consumer financial products and services actually work. Data analysis is also fundamental to fulfilling the Bureau's mandate to protect consumers. Analysis of data, as the law creating the Bureau contemplated, enables the Bureau not only to better protect and educate consumers, but also to coordinate with other regulators and craft tailored rules based on careful examination of costs and benefits. The Bureau's evaluation of this data also allows it to provide meaningful reports, as required by Congress, and to perform its consumer response function.

LUETKEMEYER 2.
While the CFPB claims to be data driven, two of its recent studies on payday loans and overdraft products had several pages of compelling data yet drew several conclusions that were not supported by the data in either report. Furthermore, the studies did not examine any alternatives to these products. Why did the CFPB spend time studying these products only to draw unsupported conclusions? Given the burden to business and cost to the taxpayers that are associated with the CFPB's current data collection efforts, how will the CFPB ensure that future reports are empirically based, rather than drawing unsupported conclusions?

*Response*
The Consumer Financial Protection Bureau's white papers on payday loans and deposit advance and overdraft programs are based on analytically rigorous and objective analysis of a robust dataset. Both studies draw conclusions that are supported by the data. In each case, the study contained a concluding section which discusses some of the potential policy implications of the empirical findings and identifies areas for future study.

LUETKEMEYER 3.
If detailed consumer information the CFPB receives is "de-identified", how does the agency ensure that the information is not "re-identified"?

*Response*
The Consumer Financial Protection Bureau (Bureau) is sensitive to the concept and risks of re-identification generally and has been careful to minimize that risk by purchasing data without direct or personal identifiers and by securing its credit card database account-level data without direct or personal identifier. The data the Bureau has obtained for its market-monitoring activities is maintained in discrete databases and the Bureau does not have any common identifiers that would allow data to be linked across databases. Bureau personnel are required to

complete privacy training on an annual basis, which includes how to use and protect personal information appropriately. To the extent the Bureau publishes studies analyzing consumer financial markets, it has presented the information in an aggregate form that cannot be used to identify, either directly or indirectly, any particular individual.

LUETKEMEYER 4.
The Right to Financial Privacy Act (RFPA) and Dodd-Frank require federal agencies to provide notice to consumers before obtaining information about the consumers from a "financial institution." Dodd-Frank also provides that CFPB may not obtain personally-identifiable information without first obtaining written permission from the consumer. Specifically, how has the CFPB complied with these regulations? Has the CFPB obtained written permission before obtaining this information from credit bureaus?

*Response*
The Consumer Financial Protection Bureau (Bureau) complies with Right to Financial Privacy Act (RFPA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which contain exceptions to their generally applicable notice provisions for the Bureau and other federal agencies in certain circumstances. Various exceptions to the RFPA, as amended, authorize the Bureau to obtain information from financial institutions about their customers without first providing notice to and obtaining the consent of such customers. Additionally, the restrictions set forth in the RFPA apply only to information that is identifiable to particular customers of financial institutions. Where the Bureau seeks information from financial institutions that excludes direct or personal identifiers, the restrictions of the statute do not apply.

LUETKEMEYER 5.
Has the Bureau complied with provisions of the Privacy Act such as obtaining public comment about the proposed creation of a "system of records"? If not, why not?

*Response*
When required by the Privacy Act, the Consumer Financial Protection Bureau (Bureau) publishes System of Records Notices in the Federal Register for public comment. Also as required by the Privacy Act, the Bureau forwards copies of SORNs to the House of Representatives Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget.

LUETKEMEYER 6.
What steps has the Bureau taken to ensure the security and confidentiality of the information in the loan level database? Where will the information be maintained and by whom?

*Response*
The Consumer Financial Protection Bureau (Bureau) does not maintain a single loan-level database. At present, we have acquired commercially-available mortgage datasets, the credit panel from a credit reporting agency, and are developing the National Mortgage Database. In addition, we have various datasets collected under the Bureau's supervisory or enforcement authority.

The Bureau categorizes all of its datasets using Federal Information Processing Standard Publication 199, Standards for Security Categorization of Federal Information and Information Systems (FIPS 199). Based on this categorization, the Bureau implements security controls from National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations to secure its data. Any subsequent Bureau policies, processes, and procedures, including those related to access, are based on these standard federally-practiced controls, industry best practices, as well as other guidelines and mandates issued for government agencies.

LUETKEMEYER 7.

The Office of Inspector General for the Federal Reserve System recently reported that the CFPB needed to strengthen its security controls around its consumer response system. Given these data security concerns about the CFPB's existing data collection efforts, how does the system that holds all the consumer data differ in terms of data security?

*Response*

The Consumer Financial Protection Bureau (Bureau) appreciates the efforts of the Office of Inspector General (OIG) directed at improving Bureau's operations, and is pleased that the OIG's review of the Bureau's information security procedures did not identify any reportable conditions in the design or implementation of the relevant controls. Based on the Federal Information Processing Standard Publication 199, Standards for Security Categorization of Federal Information and Information Systems (FIPS 199), the consumer response system and other systems hosting data have been categorized as moderate and therefore utilize the associated recommended security controls from National Institute of Standards and Technology (NIST) Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) to secure its systems and data appropriately. The OIG's report noted measures taken by the Bureau to secure data within the system, and the configuration and change control processes that are based on the guidance provided by NIST. The Bureau's Cybersecurity Program has been dedicated to continuous improvement, including implementing recommendations from OIG. At the time of the OIG report's publication, the Bureau had already had begun to take action on its recommendations and to finalize integral policies and procedures that address many of the issues discussed in the report.

LUETKEMEYER 8.

Consumer financial services providers have strict requirements for notifying consumers of when their personal information may have been subject to a data breach. What procedures are in place for the CFPB to notify consumers and businesses subject to its latest collection efforts in the event of a security breach? Will the CFPB plan to offer any kind of redress to financial services market participants who lose proprietary information, and therefore suffer market losses as a result from a breach in data security?

*Response*

The Consumer Financial Protection Bureau (Bureau) continues to rely, in part, on elements of Treasury's network and related IT infrastructure, including Treasury's directives that relate to security and privacy incidents. In anticipation of the Bureau's move to its own network infrastructure, the Bureau has developed new directives related to security and privacy incidents, which it will issue upon network independence. In the interim, the Bureau has developed supplemental incident-reporting materials for managing the breach, loss, or compromise of personally identifiable information (PII). These materials, in conjunction with processes outlined in Treasury's privacy and security incident directives, help the Bureau meet the requirements around the suspected or confirmed breach, loss, or compromise of PII outlined in OMB-issued guidance (i.e. OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007). As part of its supplemental interim procedures, the Bureau would assess the risk significance (or analyze the risk of harm) posed by a breach, loss, or compromise of PII to determine if notification, outreach, or additional mitigation is warranted or necessary. This would include alerting impacted individual consumers when their PII is confirmed breached. When deemed necessary (i.e. risk of harm is deemed high), additional mitigation steps might include, for example, offering impacted individuals credit monitoring subscriptions/services.

LUETKEMEYER 9.
Dodd-Frank authorizes the Bureau to collect data that is "necessary" for it to fulfill its statutory duties. Why is it "necessary" to collect the volume of information that the Bureau plans to compile? Why would not data sampling suffice?

*Response*
The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains a number of separate grants of authority to the Consumer Financial Protection Bureau (Bureau) to collect information, as well as a general authority to enter into contracts to purchase goods and services, including data. Under section 1022(c)(4)(B)(ii) of the Dodd-Frank Act, the Bureau can require covered persons or service providers to provide reports or answers to questions by rule or order as "necessary for the Bureau to fulfill the monitoring, assessment and reporting responsibilities imposed by Congress" including the responsibility to "monitor risks to consumers in the offering or provision of consumer financial products or services" and "developments in markets for such products or services." The Bureau has used this and other information collection authorities in an appropriate fashion. For example, the Bureau's recently-issued orders requiring certain covered persons to provide standard form consumer credit agreements will assist it in completing the study mandated by section 1028(a) of the Dodd-Frank Act.

The Bureau's responses herein, including specifically the response to Capito/Duffy question 1 and 44 above, describe the Bureau's usage of data to fulfill its statutory mandates, including in areas such as supervision, enforcement, regulation, research and analysis, and consumer response. The Bureau makes every effort to ensure that its data collections are appropriate in size, frequency, and number to the regulatory functions for which they are to be used.

The Bureau recognizes the importance of minimizing burdens on the institutions it supervises. The Bureau has collected random samples of data for its consumer credit panel and the Bureau, in collaboration with the Federal Housing Finance Agency is using sampling for the national mortgage database. In certain instances, the Bureau has been able to modify its information requests and demands to reduce the burden on the institutions while still accomplishing the purposes of the examination or enforcement action. For the credit card database, credit card issuers provide a full file of accounts to the Bureau's contractor rather than a random sample because this is the same format in which they provide data to the same contractor for benchmarking services that they purchase from the contractor pursuant to private agreements. This reduces costs and burden for the issuers supplying the data as it avoids the need to draw a random sample, to provide data with respect to those accounts on an ongoing basis, and to add to the sample each time the data is provided to assure that the sample remains representative of all accounts, including newly-originated accounts.

LUETKEMEYER 10.

The Paperwork Reduction Act requires the CFPB to obtain a "control number" from OMB for any collections of information, and to explain how the information limits the burden for businesses and individuals to the minimum necessary. Has the Bureau sought or obtained OMB clearance for these collections of information? If not, why not?

*Response*

The Consumer Financial Protection Bureau has sought and obtained OMB clearances consistent with the Paperwork Reduction Act.

REP. BILL POSEY (FL-8)

During my committee question time, I referenced a December 21, 2012 letter sent to the CFPB containing 19 specific questions. Two months later, on February 21, 2013, I received a three paragraph letter that did not provide to a single specific response to any of the questions from my December letter.

I therefore ask, once again, for you to answer the following 19 questions:

POSEY 1.

What is the CFPB's statutory authority to collect, each month, detailed information on every loan in certain financial institutions' portfolios?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." The Bureau, in the exercise of its supervisory authority, is obtaining data stripped of direct or personal identifiers with respect to all credit card accounts maintained by a number of large card issuers. This data is collected and housed on behalf of the Bureau by Argus Information and Advisory Services, a company that is in the business of obtaining account-level data for credit cards and other financial services from financial services companies. The data being provided to the Bureau are the same type of data that credit card issuers regularly provide to Argus, such as the monthly balance, fees charges, interest charged, and payments received on accounts. The data the Bureau receives does not include transactions, such as purchases.

A number of provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), among them 12 U.S.C. § 5512(c), 12 U.S.C. § 5514(b), 12 U.S.C. § 5515(b), 12 U.S.C. § 5534, and 12 U.S.C. § 5562, authorize the Consumer Financial Protection Bureau to request information. Sections 1024 through 1026 of the Dodd-Frank Act, 12 U.S.C. §§ 5514-5516, authorize and regulate the Bureau's supervisory activity, including the gathering of the information collected and housed by Argus.

POSEY 2.

What provision of law specifically permits or requires the CFPB to collect loan level data?

*Response*

Please see the response to question 1.

POSEY 3.

How many institutions have been asked to furnish data to the Bureau for this project? How many individual consumers' records will be included in the database?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. Fewer than 10 institutions have been asked to furnish credit card data to the Consumer Financial Protection Bureau (Bureau) for purposes of this project. The Bureau is unable to determine the number of individual consumers' records covered as the records are provided on a de-identified basis so that the Bureau cannot link the data in order to determine whether multiple records represent multiple individuals or multiple accounts of a single individual.

POSEY 4.
Dodd-Frank authorizes the Bureau to collect data that is "necessary" for it to fulfill its statutory duties. Why is it "necessary" to collect the volume of information that the Bureau plans to compile? Why would not data sampling suffice?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. In support of this project, credit card issuers provide a full file of accounts to the Bureau's contractor rather than a random sample because this is the same format in which they provide data to the same contractor for benchmarking services that they purchase from the contractor pursuant to private agreements. This reduces costs and burden for the issuers supplying the data as it avoids the need to draw a random sample, to provide data with respect to those accounts on an ongoing basis, and to add to the sample each time the data is provided to assure that the sample remains representative of all accounts, including newly-originated accounts.

POSEY 5.
If the data is "necessary" for consumer protection purposes, why is the Bureau obtaining it only from a small number of financial institutions?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau is collecting credit card data as part of its supervision program and not pursuant to Section 1022(b)(4)(B)(ii) of the Dodd-Frank Act. The issuers from whom the data is being collected are the largest credit card issuers and thus have particularly significant potential to create risks to consumers.

POSEY 6.
How will the Bureau protect consumers of institutions that are not subject to the data collection requirement?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau (Bureau) uses all of its available authorities to protect consumers of financial products and services. The Bureau seeks to use its limited resources in the most effective way possible, including choosing carefully the institutions on which to focus its supervisory, enforcement, and other efforts.

POSEY 7.

The Dodd-Frank provision authorizing tbe Bureau to obtain information for supervisory purposes refers to the "periodic" collection of information. How does an ongoing and perpetual collection of information meet the "periodic" standard?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. Tbe Consumer Financial Protection Bureau (Bureau) is authorized to gather information from institutions it supervises in order to assess compliance with the requirements of Federal consumer financial law, obtain information about the institutions' activities and compliance systems or procedures, and detect and assess risk to consumers and to consumer financial markets. Like other financial regulators, the Bureau receives, from certain institutions, loan-level data on a periodic basis relating to certain types of products. The Bureau is not receiving a real-time stream of continuous information about these products.

POSEY 8.

What are the specific purposes of collecting extensive personally-identifiable financial information about virtually everyone with a home mortgage or credit card? Why could such purpose(s) not be achieved hy collecting a narrower set of data, or hy the use of sampling?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau (Bureau) does not collect personally identifiable financial information about virtually everyone with a home mortgage or with a credit card. The national mortgage database which the Bureau and the Federal Housing Finance Agency (FHFA) are jointly creating contains a random sample of de-identified records of consumers with home mortgages drawn from the national credit reporting agency with whom the FHFA has contracted. Likewise, the Consumer Credit Panel is based on a small representative sample of the US population (approximately 2 to 4%) and contains only de-identified records. The credit card database contains records of all accounts from the issuers supplying this data for the reasons explained in response to question 4. The information in these databases is stripped of direct or personal identifiers.

POSEY 9.

What steps has the Bureau taken to ensure the security and confidentiality of the information in the loan level database? Where will the information he maintained and by whom? When and how will such information be destroyed after use?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. Loan-level credit card data is being maintained for the Bureau by Argus Information & Advisory Services which performs this same service for many credit card issuers. Please see the sections relating to security and confidentiality in the contract with Argus Information & Advisory Services produced in response to Capito/Duffy question 6.

The Bureau will manage all files in the system as permanent records until the disposition schedule for these records is approved by the National Archives and Records Administration, at which time, the Bureau will dispose of such files in accordance with the schedule.

POSEY 10.

Has the Bureau informed the financial institutions whose information is being collected of such security and confidentiality measures? If not, how can financial institutions who furnish information to the Bureau comply with their GLBA obligation to maintain the security of personally identifiable customer information?

*Response*

Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The information that the Consumer Financial Protection Bureau receives about consumers for the purposes of this project comes directly from financial institutions, and all of this information excludes direct or personal identifiers. The Gramm-Leach-Bliley Act and its implementing regulation, Regulation P, define "personally identifiable financial information" to exclude "information that does not identify a consumer, such as aggregate information or blind data that does not contain direct or personal identifiers, such as account numbers, names, or addresses." 12 C.F.R. Section 1016.3(q)(2)(ii)(B).

Even assuming that the financial institutions were disclosing personally identifiable financial information for this project, these disclosures would be exempt under the Gramm-Leach-Bliley Act and Regulation P. The Gramm-Leach-Bliley Act and Regulation P do not restrict financial institutions from disclosing personally identifiable financial information about consumers to "government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law." 15 U.S.C. 6802(e)(8) and 12 C.F.R. Section 1016.15(a)(7)(iii).

POSEY 11.

In the event of a breach of CFPB security that results in a loss to consumers and the institutions that furnished information about them, who is liable for the loss?

*Response*

Should the Consumer Financial Protection Bureau (Bureau) experience an incident that results in such a loss, the incident would be handled according to the Bureau's incident response procedures. These procedures are consistent with government standards and incorporate best practices from public and private sector incident handling teams. Liability for loss would typically be determined based on the factors that led to a breach.

POSEY 12.

Will the Bureau share information in the loan level database with other government agencies (e.g., OCC, FDIC, Federal Reserve, IRS, state consumer protection or tax officials?) Does the Bureau have the authority to refuse to share information with such entities?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau has entered into a Memorandum of Understanding with the Office of the Comptroller of the Currency (OCC) under which the loan level data in the credit card database can be shared with the OCC. This assures that the issuers will not be subject to duplicative requests for data.

POSEY 13.
Does the GLBA privacy policy notification requirement obligate financial institutions to inform their customers that information about them is being furnished to the CFPB? Do consumers have a right to "opt out" of such information sharing? The GLBA notice and opt out standards do not apply to information furnished to Federal functional regulators "to the extent specifically permitted or required under other provisions of law".

*Response*
Please see response to question 10.

POSEY 14.
Section 2012 of Dodd Frank requires the Bureau to enforce Federal consumer financial law "consistently" to promote markets that are "competitive." Isn't the creation of a database consisting solely of information obtained from larger institutions inconsistent with these requirements? What is the basis for collecting data only from a limited number of institutions? What has the Bureau done to evaluate the competitive implications of limiting its data collection to certain institutions?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau's (Bureau) credit card data collection activity is being conducted in coordination with the prudential regulators to ensure that the same data elements are being requested and that all large issuers are subject to a consistent requirement to provide account level data. The data collected represent approximately 85-90% of outstanding card balances. The issuers from whom the data is being collected are the largest credit card issuers and thus have particularly significant potential to create risks to consumers.

POSEY 15.
Has the Bureau sought or obtained OMB clearance for the establishment of the loan level database? If not, why not?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a

description of this activity. The Consumer Financial Protection Bureau has determined that the Paperwork Reduction Act is not applicable to this collection of data.

POSEY 16.
Has the Bureau complied with provisions of the Privacy Act such as obtaining public comment about the proposed creation of a "system of records"? If not, why not?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. When required by the Privacy Act, the Consumer Financial Protection Bureau publishes System of Records Notices in the Federal Register for public comment. Also as required by the Privacy Act, the Bureau forwards copies of SORNs to the House of Representatives Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget.

POSEY 17.
Is information in the database exempt from Freedom of Information Act requests?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. Loan-level data that the Consumer Financial Protection Bureau obtains pursuant to its supervisory authority is exempt from public disclosure pursuant to Exemption 8 of the Freedom of Information Act, 5 U.S.C. § 552(b)(8). To the extent that such data consists of trade secrets or confidential commercial information, it is also exempt from public disclosure pursuant to Exemption 4 of the FOIA.

POSEY 18.
How does the information collected by the Bureau differ from information collected from the same institutions by other regulators (e.g., OCC, FDIC, Federal Reserve, Office of Financial research)? To the extent it is the same, why has the Bureau decided not to obtain the information from the other regulators? Explain why the Dodd Frank Section 1025 requirement for "coordination" with prudential regulators to "minimize regulatory burden" do not apply to the loan level database.

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity. The Consumer Financial Protection Bureau is coordinating with the prudential regulators to ensure that the same data elements are being requested from all institutions from which data is being obtained on a consistent basis, and also to ensure that no institution is being required to provide the same data to multiple regulators.

POSEY 19.
Will members of the public have access to the information maintained about them by the Bureau? Is there a mechanism for correcting errors that consumers bring to the Bureau's attention?

*Response*
Your December 21, 2012 letter inquired about a "'loan level data' project . . . to collect information on consumer credit card accounts." Please see the response to question 1 for a description of this activity.

In general, where the Bureau collects information that is retrieved by a personal identifier and maintained in a SORN under the Privacy Act, individuals may request access to, amend, and correct records that pertain to them by submitting a request in writing in accordance with instructions appearing in Title 12 part 1070 of the Code of Federal Regulations, "Disclosure of Records and Information." Information in the credit card database does not contain direct or personal identifiers and cannot be obtained by reference to direct or personal identifiers.

**Post-Hearing Questions for the Record**
**Submitted to Hollister K. Petraeus**
**From Senator Thomas R. Carper**

**"The 90/10 Rule: Improving Educational Outcomes for Our Military and Veterans"**
**July 23, 2013**

1) Your testimony discussed the data crosswalk that the Departments of Veterans Affairs, Defense, and Education are developing to link the Education Departments database of schools (over 7,000 institutes of higher learning) to the VA's lists of approved programs (over 30,000). Is it accurate to say that the federal government lacks basic data on where GI benefits are spent, the extent to which those benefits cover tuition and fees, and how much and what type of student loan debt veterans incur? When will this crosswalk be available?

*Response*

Pursuant to Executive Order (EO) 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members" and the Comprehensive Veterans Education Information Policy law (Public Law 112-269), the Department of Veterans' Affairs (VA), Department of Defense (DoD), and Department of Education (ED) have been working on a data crosswalk to link ED's database of schools to the VA's list of approved programs.

While each of those departments possesses rich data on the benefits they administer, the lack of a crosswalk makes it difficult to compare data across federal agencies. For example, the VA knows how much money they spent in tuition and fees per beneficiary at a particular educational institution, but the VA does not know the average retention rate for students attending the same institution.

Once completed, the crosswalk will allow VA, DoD, and ED to share data about educational institutions across agencies, improve consumer information available to beneficiaries, and allow VA to track outcome measures that compare education benefit programs.

This crosswalk will be available sometime this fall.

2) Your testimony discussed the new complaint system for service members and veterans that is scheduled to go live later this summer. Can you describe the shortcomings in the various departmental complaint systems—Education, Veterans Administration, and DOD—that necessitated the creation of this new system? How will the new system address those shortcomings?

*Response*

While the Consumer Financial Protection Bureau (CFPB) handles consumer financial product and service complaints and includes those complaints in the Federal Trade Commission's (FTC) Consumer Sentinel database, there is currently no similar mechanism for different agencies or branches of the military to share complaints about educational institutions.

For example, if a servicemember or veteran submits a complaint about an educational institution, there is no formal process to account for the complaint or share it between agencies. Complaints about educational institutions have been dealt with on an ad hoc basis between agencies, making issues and trends difficult to identify and resolve.

As part of implementation efforts of EO 13607, VA partnered with DoD, ED, CFPB, the Department of Justice, and the FTC to develop a centralized complaint system for educational institution complaints. Beneficiaries of military and veteran education benefits will soon have the opportunity to submit feedback about educational institutions that fail to follow EO 13607's Principles of Excellence.

VA's implementation plan for EO 13607 will allow beneficiaries to submit feedback or complaints via the GI Bill Hotline (1--888--442-4551), or via an online web form located on gibill.va.gov and eBenefits.va.gov. This feedback will be shared internally with State Approving Agencies (SAAs) and VA personnel.

To create a centralized repository for these educational institution complaints, VA, DoD, and ED will begin forwarding complaints each agency receives to the FTC's Consumer Sentinel database. VA, DoD, and ED have been working with the FTC to streamline this submission process by standardizing the complaint intake form and the files provided to the FTC.

Once these educational institution complaints reside in the Sentinel database, any law enforcement agency (federal, state, and local) that has access to Sentinel will also have access to those complaints. VA is working with the FTC to gain access to the Consumer Sentinel database for VA personnel.

**"Making Sense of Consumer Credit Reports"**
**December 19, 2012**

**Questions for Mr. Corey Stone, Assistant Director for the Office of Deposits, Cash, Collections, and Reporting Markets, Consumer Finaucial Protection Bureau, from Senator Brown:**

One theme in credit reporting issues has been that, even if consumers are vigilant and try to check their credit reports (or purchase credit scores), they can still miss substantive credit issues that arise when a consumer goes to use a line of credit.

Consumers may not be able to understand the information contained in their credit reports, and, as the CFPB has reported, consumers who purchase their credit scores see a materially different score than a creditor would see 19-24% of the time.

**Is this lack of clear information consistent with the spirit of the FACT Act?**

The FACT Act has provisions to make the information in credit reports and the scores derived from them more accessible to consumers. The FACT Act entitles consumers to obtain a free credit report annually from each of the nationwide consumer reporting agencies and from nationwide specialty consumer reporting agencies, as well as additional free reports from nationwide consumer reporting agencies in connection with initial fraud alerts and extended alerts. Additionally, the FACT Act gives consumers the right to purchase a credit score at a reasonable fee and requires mortgage lenders who use credit scores in connection with consumer mortgage applications to provide the scores to the consumers. Subsequent amendments to the FCRA in Dodd-Frank further expanded consumer access to credit scores by requiring lenders to disclose credit scores with adverse action and risked based pricing disclosures.

In October 2012, the CFPB published a study, "Analysis of Differences between Consumer- and Creditor- Purchased Credit Scores," comparing credit scores obtained by consumers with those used by lenders. For the study, the CFPB analyzed 200,000 credit files from each of the three major nationwide consumer reporting agencies.

While the CFPB found that the educational scores sold by the credit bureaus generally correlate highly with the score most widely used by creditors, the correlations are not perfect, so as you point out, a substantial minority of consumers could find themselves with educational scores that would not be reflective of the score a lender would be looking at (most likely a FICO score).

Given this variation in outcome, the CFPB concluded in the report that "firms that sell scores to consumers should make consumers aware that the scores consumers could purchase could vary, sometimes substantially, from the scores used by creditors."

**How can we improve access and information for consnmers given the discrepancies?**

Improvements can be made in several areas.

**"Making Sense of Consumer Credit Reports"**
**December 19, 2012**

In the CFPB's recent study on credit reporting, the CFPB found that only about one in five people with a credit history (44 million consumers) check their free credit report from the nationwide consumer reporting agencies each year or obtain reports through paid credit monitoring services or notices of adverse action or risk-based pricing decisions. Regardless of the credit scoring model used by a lender, a consumer can benefit by reviewing the underlying information in his or her credit report. Consumers who identify and successfully dispute incorrect derogatory information in their credit files (e.g. an account reported as delinquent that was not in fact delinquent, an incorrect collection) will likely improve their standing with creditors regardless of the credit scoring model used. The CFPB encourages consumers to exercise their legal right to review their credit files.

Improvements can also be made in the disclosure of information to consumers who purchase credit scores. The CFPB noted in its October 2012 report that providers of educational credit scores should ensure that the potential for score differences is clear to consumers. As we noted in the report:

> … for a substantial minority of consumers, the scores that consumers purchase from the nationwide CRAs depict consumers' creditworthiness differently from the scores sold to creditors. It is likely that, unaided, many consumers will not understand this fact or even understand that the score they have obtained is an educational score and not the score that a lender is likely to rely upon. Consumers obtaining educational scores may be confused about the usefulness of the score being sold if sellers or scores do not make it clear to consumers before the consumer purchases the educational score that it is not the score the lender is likely to use.

**Does the variability in credit reports make it more difficult for consumers to monitor and correct their information?**

The CFPB study on credit scores found that for most consumers, the scores produced by different scoring models provide similar information about the relative creditworthiness of the consumers. For 19 to 24% of consumers, variations in scoring models could lead to consumers having an inaccurate perception of how lenders see their creditworthiness. In the cases where educational scores were higher than a score used by lenders, consumers may overestimate their creditworthiness, and might be lulled into a false sense of confidence. In cases where consumers have an educational score that is lower than what a lender might see, consumers could be motivated to improve the information in their credit file, both by changing behavior and correcting errors.

**Is there any evidence that a person's credit history has any connection with their job performance?**

We are not aware of evidence on this topic.

**"Making Sense of Consumer Credit Reports"**
**December 19, 2012**

**Would it be practicable or advisable for each credit inquiry listed on a credit report – whether a hard or soft inquiry – to include the inquiring party's contact information, the nature of their business, and the purpose of their inquiry?**

File disclosures to consumers currently provide the contact information for hard inquiries (inquiries that would impact a consumer's credit score). The contact information for soft inquiries (e.g. account reviews, pre-screening inquiries) is not provided. Since soft inquiries do not impact a consumer's credit rating, it is not clear that adding contact information for soft inquiries would assist consumers in improving their credit standing.

**Do you agree that FACTA inadvertently repealed the existing right of consumers and state officials to sue for any violations of the adverse-action provisions of the FCRA?**

FACTA amended section 615 of the FCRA so that sections 616 and 617, which create civil liability for certain violations of the FCRA, do not apply to failures to comply with section 615.

**Would you support or oppose restoring the original intent of the FCRA by restoring this private enforcement right?**

As an independent regulatory bureau, the CFPB is focused on carrying out, implementing, and enforcing the laws that Congress and the President enact. If there is a specific legislative proposal we are asked to review for purposes of providing technical advice on its likely consequences, we would be happy to do so.

Additional Questions for the Record

**The Honorable Jan Schakowsky**

1. **In December 2009, when the full House was considering the legislation that would become the Dodd-Frank Wall Street Reform and Consumer Protection Act, I offered an amendment to provide your agency with the authority to issue regulations on reverse mortgage transactions. I was proud that the amendment received broad support, including from Chairman Upton, Ranking Member Waxman, and fully 277 members of the House. All of these members recognized the importance of effective federal oversight of the market for reverse mortgages, which involves a complex financial product, aimed at an elderly population, which is beset by cases of deceptive marketing and consumer fraud. At the Subcommittee hearing on May 16, 2013, you discussed with the Subcommittee a Consumer Financial Protection Bureau (CFPB) report on consumer understanding of reverse mortgages, which was released in June 2012. Specifically, regarding this report, which you called "quite a comprehensive study," you said, "[w]e found that even after housing counseling, some of the basic characteristics of these loans were not well understood." To combat this confusion, you suggested that CFPB was considering future activities including promulgating rules as permitted by my amendment.**

    a. **Yes or no, do you believe that existing federal laws and regulations ensure that prospective consumers of reverse mortgages receive adequate information regarding the financial product they are interested in purchasing?**

    We have found that the disclosures consumers receive are confusing and can be improved; that misinformation persists in the market; and that while counseling may be effective for some consumers, it is not universally effective and can be improved.

    b. **In the June 2012 report on reverse mortgages, CFPB indicated that there are several areas in which it might issue regulations in order to protect consumers from risks posed by reverse mortgages. For each**

**of the following areas cited from the now year-old report, please detail the current status of efforts, indicate if any related rulemaking proceedings are forthcoming, and if so, indicate when a final rule will be completed:**

i. **"[A] project to improve and integrate TILA and RESPA disclosure requirements for reverse mortgages so that consumers can know before they owe when considering a reverse mortgage;"**

We still believe it would be beneficial to integrate TILA and RESPA disclosure requirements in a single, new disclosure. However, the Bureau is still in the process of developing integrated forms for traditional mortgages. It will be useful to apply lessons learned from that project in considering potential disclosures for reverse mortgages. In addition, because the Department of Housing and Urban Development has made several changes to the Home Equity Conversion Mortgage program in recent months, it would be useful to wait to see how the market reacts to these changes before issuing a proposal in this area.

ii. **"[Consideration] of the 2010 proposal by the Board of Governors of the Federal Reserve System regarding reverse mortgages," a proposal which "would have placed limits on misleading advertising, improved disclosures, and closed regulatory gaps related to cross-selling, among other things;"**

We still intend to take up these issues in a future rulemaking. Much has changed since the Board of Governors of the Federal Reserve System's 2010 proposal, and the Bureau does not intend to finalize that proposal, but rather expects to consider issuing a new proposal building on the work the Board did. Such a rulemaking could also address how and whether certain provisions of title XIV of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act should be applied to reverse mortgages. Again, however, because implementation of the title XIV requirements to traditional mortgages is still underway, and because the Department of Housing and Urban Development has made several changes to the Home Equity Conversion Mortgage program in recent months, it would be useful to apply lessons learned from these implementations in considering potential rules governing reverse mortgages.

**iii. "[Consideration] of whether other regulations are necessary and appropriate to protect consumers in the reverse mortgage market."**

We still intend to consider whether other regulations are necessary and appropriate to protect consumers in the reverse mortgage market. As noted above, due to the ongoing implementation of title XIV and Department of Housing and Urban Development's recent changes to the Home Equity Conversion Mortgage program, it is worthwhile to wait before issuing a proposal in this area.

**c. What improvements could be made to ensure prospective borrowers of reverse mortgages get the information they need to protect themselves from fraud?**

Reverse mortgage counseling provides a critical opportunity for potential borrowers to obtain fraud prevention information. In reverse mortgage counseling sessions, counselors are trained to educate and alert prospective borrowers of fraud risks, including exploitation of the loan proceeds by family members or caregivers. If a counselor suspects that the borrower is improperly influenced by another party, the counselor may require that a neutral third party accompany the prospective borrow in counseling. These fraud detection techniques may be bolstered by the addition of a take home 'fraud checklist' or guide. This document would supplement the counseling session by providing red flag scenarios for the borrower to consider after the counseling session, when more time is afforded for reflection. A signed checklist could be incorporated into the requirements (along with the counseling certificate) for obtaining a reverse mortgage.

In June 2013, the Consumer Financial Protection Bureau and the Federal Deposit *Insurance Corporation* (*FDIC) released Money Smart for Older Adults (MSOA),* an instructor-led training program that provides awareness among older consumers and their caregivers on how to prevent elder financial exploitation and to encourage advance planning and informed financial decision-making. Included in the training module is a section regarding reverse mortgage fraud. See http://files.consumerfinance.gov/f/201306_cfpb_msoa-participant-guide.pdf. Since release of MSOA, the FDIC and the Bureau's Office for Older Americans have distributed approximately 17,000 copies of the program guides and module, and are conducting trainings nationwide.

**d. CFPB recently opened its consumer complaint database to the public, which includes complaints on financial products such as reverse mortgages. According to the data, 272 reverse mortgage complaints were reported out of 5,000 total mortgage complaints since the CFPB launched. How can the CFPB encourage greater participation in the database among seniors, who are often hesitant to report being the victims of fraud?**

The Consumer Financial Protection Bureau encourages greater participation and awareness among seniors by expanding outreach efforts. For example, the Bureau continues to grow its stakeholder networks and distribution channels to raise awareness of Bureau resources, including the consumer complaint process. Stakeholder networks include federal, state, and local government, non-profit organizations, law enforcement; and home and congregate healthcare providers. Distribution channels include community organizations; Area Agencies on Aging, and senior centers, where some older adults (who may not use the Internet) can be reached with hardcopy materials and speaking events.

In addition, as mentioned above in answer 1.c., the Consumer Financial Protection Bureau, in partnership with the FDIC, is widely distributing the Money Smart for Older Adults consumer training program for older consumers and their caregivers, which encourages reporting of frauds and financial exploitation.

**2. Under current law, if FTC wants to seek civil penalties in an enforcement action, it must first refer the case to the Department of Justice. DOJ has 45 days to decide whether it will bring the case on FTC's behalf. FTC can only litigate the case if, at the end of 45 days, DOJ decides not to take action.**

**As FTC officials point out, this creates a difficult choice for the agency. It can file a case quickly to stop ongoing harm, but give up the possibility of civil penalties. Or it can seek civil penalties but wait weeks before it can file a case to stop conduct that is harming consumers.**

**a. Is it correct that the CFPB currently has the authority to seek civil penalties on its own? To date, has that authority been helpful?**

Yes, the Consumer Financial Protection Bureau has authority under 12 USC §§ 5563, 5564, and 5565 to seek civil penalties. To date, the Bureau has used this authority successfully to carry out our mandate to protect consumers through enforcement of Federal consumer financial law.

**Under the FTC Act, the FTC can pursue acts that are unfair or deceptive. The CFPB can pursue acts that are unfair, deceptive, or abusive. The addition of "abusive" to the prohibition of unfair or deceptive acts or practices permits the CFPB to address harmful conduct that does not neatly fall within the categories of "unfairness" or "deception."**

**For example, there are many cases where a consumer who suffered an economic harm as part of a financial transaction may have received some form of disclosure.**

**b. Can you give some examples of abusive practices, perhaps targeting seniors, about which CFPB is concerned?**

The term "abusive" is defined in title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and the Consumer Financial Protection Bureau has applied that definition in one public action to date – a case filed on May 30, 2013 against American Debt Settlement Solutions (ADSS), a Florida debt-relief company that misled consumers across the country and charged illegal fees for its services. In that matter, the Bureau alleged that ADSS engaged in abusive acts or practices because the nature of the company's conduct met the Dodd-Frank Act's definition of "abusive." Specifically, the Bureau alleged that the company enrolled consumers in its debt-relief programs even though it knew those consumers' financial conditions made it highly unlikely that they could complete the programs. Based on budget worksheets that ADSS had the consumers fill out, ADSS knew that these consumers had inadequate incomes to make the monthly payments required by their debt-relief programs. ADSS then collected "enrollment" fees in the first three to six months of their enrollment, in advance of negotiating or settling any debts. This caused certain consumers to spend their last savings on these fees before they subsequently would have to drop out of the program because they could no longer afford the ongoing monthly fees. Because these consumers could not afford to complete their debt-relief programs, they ended up paying substantial fees to ADSS without ever having a single debt settled. This was abusive in two ways under the Dodd-Frank Act: (1) It took unreasonable advantage of consumers' lack of understanding of how long it would take ADSS to settle their debts and therefore how much money they would spend before realizing any benefits from ADSS's debt-relief program, and (2) it took unreasonable advantage of consumers' reasonable reliance on ADSS to act in their interests by enrolling them in a debt-relief program that they could reasonably be expected to complete and by settling debts within three to six months as represented. On June 7, 2013, at the request of the parties, the court entered a consent order holding ADSS and its principal liable for this conduct.

The Bureau will take action to address other violations of the law in future enforcement actions, as appropriate, and the basis for those actions will necessarily be fact-specific.

3. **In addition to being inundated by mail, telephone, and Internet scams, seniors may also be at risk of exploitation by financial advisors, paid home care workers, and, tragically, family and friends – the last of which is particularly difficult for relevant federal, state, and local agencies to combat.**

   **Elder abuse is a nationwide problem that often goes unreported. In a November 2012 report, GAO noted that as the nation's senior population grows, so does the total amount of saved wealth that is vulnerable to exploitation. Since the money older adults lose in these cases is rarely recovered, this problem has implications for elder health and seniors' ability to support themselves.**

   **It is my understanding that an investment or financial advisor has a duty to give you the best advice for you – that is, he or she has a fiduciary duty to do so. However, a broker sells you stocks, bonds, or mutual funds but does not have to act in your best interest. Now we are seeing the word "senior" added to these distinctions. Your testimony states that there should be standards for the acquisition of senior designations. Has the Bureau considered drafting guidelines in this area?**

   The Consumer Financial Protection Bureau issued recommendations on several issues regarding financial advisers using and acquiring senior designations in its April 18, 2013 report to Congress and to the Securities and Exchange Commission. That report is entitled, Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks, and is available at http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf. The recommendations for senior designation acquisition include that policy makers require minimum standards for testing, units of education, and accreditation by organizations that confer the titles. The Bureau believes that these recommendations, if adopted, will reduce consumer confusion and help protect older consumers. The Bureau defers to the expertise of relevant federal and state regulators and policy makers for the drafting of additional guidelines.

4. **There are a number of federal agencies whose mission is in some way to address elder financial fraud and exploitation. President Obama established the Financial Fraud Enforcement Task Force 2009. In 2010, Congress established the Elder Justice Coordinating Council (EJCC) which includes officials from 11 federal agencies and coordinates activities related to elder abuse, neglect, and exploitation across the federal government. And there are other coordinating efforts ongoing. These all have different but overlapping goals.**

   **The FTC and CFPB recently collaborated with several other agencies to conduct a Senior Identity Theft Workshop to discuss and provide financial protection information for seniors. Would you care to comment on the workshop and any benefits of your recent collaboration of efforts? Are there certain types of fraud whose prevention lends itself to collaboration more than others? If so, can you identity those types and why they are ripe for collaboration?**

   The Consumer Financial Protection Bureau participated in a panel on identity theft in long-term care at the Federal Trade Commission's Forum on Senior Identity Theft on May 7, 2013. The Bureau's comments addressed the impact of diminished cognitive capacity on vulnerability to identity theft and other types of financial exploitation. Older Americans receiving long-term services and supports have a high prevalence of cognitive impairment due to Alzheimer's disease and other dementias. Research suggests that diminished financial capacity makes one more vulnerable to scams, fraud and other financial exploitation. The Bureau also addressed red flags for identity theft and other types of financial exploitation that operators of long-term care facilities may observe.

Subsequent to the FTC Forum, FTC and Bureau staff met to further explore opportunities for collaboration with regard to senior identity theft. The FTC described the resource it offers. The Bureau described the upcoming educational resources that it will offer, including the Money Smart for Older Adults training program, created in partnership with the FDIC, and Managing Someone Else's Money series for family members and caregivers with legal authority to handle an older incapacitated person's money and assets. The FTC Forum also provided a means for communicating with staff of other federal agencies about identity theft and exploitation. For example, Bureau staff soon will meet with Internal Revenue Service staff to discuss tax identity theft. These collaborations are useful for information sharing, joint promotion of educational materials, and sharing of ideas on policy and practice changes to protect older Americans.

The Bureau has not analyzed the issue of whether there are certain types of fraud whose prevention lends itself to collaboration more than others. Since the Bureau's Office for Older Americans has a broad mandate to help seniors recognize warning signs of unfair, deceptive, or abusive practices and to protect themselves from those practices, the Office benefits from collaborating with all other federal agencies that play a role in preventing, detecting, and responding to elder financial exploitation.

**QUESTIONS FOR THE RECORD**
**U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES**

**Director Richard Cordray, Consumer Financial Protection Bureau:**
**March 2013 Semi-Annual Report**

**QUESTION FROM REP. BILL FOSTER (IL-11):**
Director Cordray: as you know, Section 1024 of Dodd-Frank grants the CFPB the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank "larger participant(s)" of markets for other consumer financial products or services, as the Bureau defines by rule. Can you provide the committee with a sense of when the Bureau intends to exercise this authority with respect to the supervision of the nonbank online lending industry? It is my understanding that there are other agencies currently regulating this space, is it your intention to exercise your regulatory authority over these financial products? If so, when do [you] expect to do so?

***Response:***
The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Consumer Financial Protection Bureau to, among other things, supervise all payday lenders, regardless of whether they do business through storefronts, over the internet, or both. The marketplace in which nonbank online lenders operate is increasingly diverse, and the Bureau is committed to ensuring that consumers receive the full protection of Federal consumer financial law whether they obtain a loan online or from a storefront. The Dodd-Frank Act authorizes the Bureau to supervise payday lenders, to assess compliance with Federal consumer financial law, to obtain information about them and their compliance systems or procedures, to detect and assess risks to consumers and consumer financial markets, and promulgate rules as appropriate to implement Federal consumer financial law. Thus, when the Bureau launched its nonbank supervision program in January 2012, this included all payday lenders regardless of distribution channel. The Bureau has studied small dollar lending, including online payday lending, and continues to do so.

In January 2012, the Bureau held a field hearing in Birmingham, Alabama, to hear directly from consumers and providers of these products. At that time, the Bureau began its study, which resulted in a publication entitled, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" issued in April of this year.[1] The purpose of the Bureau's outreach,

[1] CFPB's Payday Loans and Deposit Advance Products report can be accessed at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

research, and analysis is to determine the best way to protect consumers while ensuring that they will have access to a small dollar loan market that is fair, transparent, and competitive.

The Bureau's White Paper underscored that consumer protection issues exist in the small dollar loan market, and that further attention to these products is warranted. The Bureau is continuing to study small dollar loan products to better understand why some consumers are able to use these products in a light to moderate way, while others seem to get trapped in a prolonged borrowing cycle, and the effectiveness of limitations that have been put into place by state laws, trade associations, and institutions to curb the sustained use that can lead to adverse financial consequences for consumers.

The Bureau seeks to protect consumers across the entire small dollar credit market. To the extent that consumers may experience injury in the nonbank lending market resulting from violations of laws within our authority, we will take appropriate action to ensure consistent implementation and enforcement of the applicable laws across the small dollar credit marketplace.

## QUESTIONS FROM REP. MURPHY (FL-1)

***Question 1:***
CFPB is charged with protecting American consumers from bad financial products and bad actors. I want to understand more about your priorities. No one likes when consumers are taken advantage of, but I have absolutely no patience when our veterans, the men and women willing to give everything for our country, are targeted. The New York Times recently reported that servicemembers were being charged excessive interest on their student loans. This is unacceptable in the United States. What is CFPB doing to prioritize actions against those who deliberately go after the patriotic men and women who served?

***Response:***
The Consumer Financial Protection Bureau's Office of Servicemember Affairs (OSA) addresses the specific challenges faced by servicemembers, veterans, and their families. Headed by Holly Petraeus, OSA conducted 116 outreach events from January 1, 2013 through August 31, 2013, delivering consumer financial information to more than 7,400 military and veteran consumers and more than 475,000 consumers using electronic communications and digital and social media to help them make better informed financial decisions.

In October 2012, the Bureau released "The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform," which detailed the problems servicemembers reported experiencing when attempting to obtain and/or retain their Servicemember Civil Relief Act (SCRA) rights with regard to their student loans. OSA also created an accompanying "Action Guide" for use by military advisors to provide information on repayment option for military borrowers.

Additionally, in March 2013, OSA teamed up with the Office for Students and the Office of Consumer Engagement to deliver the Bureau's first military-focused virtual financial education forum by means of live webcast. The forum reached nearly 300 military financial educators, legal assistance attorneys, and on-base college education counselors. Participants learned about student loan servicing issues for servicemembers and Bureau resources available to assist them.

Furthermore, the Bureau's recent enforcement action against US Bank and Dealers' Financial Services returned $6.5 million to servicemembers who participated in the Military Installment Loan and Educational Services (MILES) auto loan program.

***Question 2:***
I am honored to represent a district that's home to over 160,000 seniors, including a proud few from the Greatest Generation. As you know, our seniors aren't cynics -- they trust this great nation they built. What is the bureau doing to protect Florida seniors from people who are taking advantage of that trust and their all too limited income stream?

***Response:***
A primary mission of the Consumer Financial Protection Bureau's Office for Older Americans (OA) is to facilitate the financial literacy of individuals aged 62 and over on protection from unfair, deceptive, and abusive practices, and on current and future financial choices, including through the dissemination of materials to seniors on such topics. OA conducts outreach efforts nationwide with its core constituency, key public officials, financial institutions, industry, advocates, and other stakeholders. OA participated in 97 events from January 1, 2013 through August 31, 2013, reaching more than 5,740 participants.

Specific examples of outreach efforts include helping to coordinate Older American Protection Networks in several states, representing the Bureau on the Elder Justice Coordinating Council, which consists of 12 federal agencies that play a role in addressing elder abuse, and collecting and reviewing comments submitted in response to the Bureau's Request for Information regarding Senior Financial Exploitation.

In April 2013, the Bureau's Office for Older Americans released a report entitled "Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks" to both Congress and the Securities and Exchange Commission pursuant to Section 1013(g)(3)(C) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act.[2] The Report illuminates the challenges that older consumers face in trying to navigate the complex world of financial advice for seniors. The Report also highlights the need for consistent high-level standards of training and conduct for those advisers who want to acquire a bona fide senior designation. On November 8, 2013, OA released a consumer guide entitled "Know Your Financial Adviser" to help consumers understand senior adviser designations and how to check an adviser's background.

In addition, in June 2013, the Office for Older Americans released "Money Smart for Older Adults," in partnership with the Federal Deposit Insurance Corporation. Money Smart is a training curriculum to provide older consumers and their caregivers with information on preventing and responding to elder financial exploitation, including common frauds and scams targeted at older consumers.

On September 24, 2013, the Bureau, in conjunction with seven other federal agencies, issued guidance[3] to clarify that the privacy provisions of the Gramm-Leach-Bliley Act generally permit financial institutions to report suspected elder financial abuse to appropriate authorities.

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[2] http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf.
[3] *See Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults*, September 24, 2013 *available at* http://files.consumerfinance.gov/f/201309_cfpb_elder-abuse-guidance.pdf.

On October 29, 2013, OA released a set of four guides, called "Managing Someone Else's Money," to help financial caregivers carry out their duties and responsibilities in managing money for a family member or friend. Millions of Americans are managing money for someone who is unable to pay bills or make financial decisions. For these fiduciaries — such as agents under powers of attorney, guardians, Veterans Affairs fiduciaries, and trustees — the task can be overwhelming. But it's also critically important to the people who can't handle their own finances. These plain-language guides walk people through their duties, put them on the look-out for scams and theft, and refer them to additional sources of help.[4]

***Question 3:***
That young family in my district looking to buy their first home will benefit from CFPB responsiveness to industry concerns in the qualified mortgage sphere. While I still believe more can be done to preserve access to affordable mortgages for middle class families, I continue to hear that uncertainty remains one of the biggest burdens, particularly for community banks. As we all know, every time that QM gets better, it's another large stack of guidance that mom and pop community bankers have to sort through. In terms of pending improvements to QM, what certainty can you give the smaller banks in my district, many of whom are ready to quit mortgages altogether?

***Response:***
The Consumer Financial Protection Bureau has tailored the Ability-to-Repay rule and the standards for qualified mortgages (QMs) to allow small creditors to continue providing certain credit products, while carefully balancing consumer protections. The Bureau also notes, and frequently emphasizes to community banks, that the same safe and sound underwriting standards that they have been successfully applying for years, with historically small default rates, generally will meet the baseline Ability-to-Repay requirements with little further effort on their part.

To address concerns such as those you raised about the possibility that small lenders would not make portfolio loans that are not QMs, the Bureau created a QM provision specifically for small creditor portfolio loans. Under that provision, portfolio loans made by small creditors generally qualify as QMs — even if the 43 percent debt-to-income ratio is exceeded — as long as the creditor considered debt-to-income or residual income before making the loan, and as long as the loan meets the other requirements for qualified mortgages (including the prohibitions on risky product features).

[4] *See* http://www.consumerfinance.gov/blog/managing-someone-elses-money/?utm_source=newsletter&utm_medium=email&utm_campaign=20131029OA.

In addition, the Bureau has provided a two-year transition period, during which balloon loans made by small creditors and held in portfolio will be treated as QMs regardless of where the creditor predominantly operates. This decision will allow time for the Bureau to review whether its definitions of "rural" and "underserved" should be adjusted. The Bureau is committed to conducting such a review to ensure that the Bureau's definitions accurately reflect significant differences among geographic areas, to calibrate access to credit concerns, and to facilitate implementation.

Finally, the Bureau has included in its "Regulatory Implementation" initiative a number of elements specifically intended to facilitate small entities' efforts to understand and to implement the rules. These elements include "Small Entity Compliance Guides," videos, and webinars on the rules. They also include two "job aids" specially designed to highlight the small portfolio creditor QM provision discussed above: a one-page summary of the varieties of QM available, and a flow chart that walks a creditor through the steps to determine whether it can qualify for that provision's coverage. The Bureau has been taking every opportunity to circulate these job aids as widely as possible, including through small banks' and credit unions' trade associations and their primary federal regulators.

## QUESTIONS FROM REP. KYRSTEN SINEMA (AZ-9)

***Question 1:***
The state of Arizona is one of several states that prohibit payday lending. In the semi-annual report it is noted that in states where payday loans are prohibited (and others) residents may be obtaining internet payday loans. Are internet payday lenders subject to the same oversight and regulation as storefront payday lenders?

***Response:***
The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Consumer Financial Protection Bureau to supervise all payday lenders, regardless of whether they do business through storefronts, over the internet, or both. Consistent with the authority provided by the Dodd-Frank Act, the Bureau carries out its supervisory responsibilities by assessing compliance with Federal consumer financial law, obtaining information about supervised entities' compliance systems, and other activities and detecting and assessing risks to consumers and consumer financial markets.

All lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair, transparent, and competitive market. The marketplace in which payday lenders operate is increasingly diverse, and the Bureau is committed to ensuring that consumers receive the full protection of Federal consumer financial law, whether they obtain a loan online or from a storefront.

***Question 2:***
In the absence of payday lending Arizona has robust auto title lending. Has the CFPB assessed the risks posed to consumers by these products? Has the CFPB considered whether and how to supervise auto title lenders?

***Response:***
The Consumer Financial Protection Bureau is actively engaged in assessing risks to consumers across the small dollar lending market so that we can protect consumers across the entire spectrum of products. We recognize that auto title loans – and, in Arizona, auto registration loans – are a possible substitute for other forms of high-cost credit, including the payday and deposit advance loans that were the topic of the Bureau's April 2013 publication entitled "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings." To the extent that consumers may experience injury in the auto title lending market resulting from violations of laws within the Bureau's authority, we will take appropriate action to ensure consistent implementation and enforcement of the applicable laws across the small dollar credit marketplace.

As noted above, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act provides the Bureau with authority to supervise payday lenders. When examining a payday lender, the Bureau may examine the firm's auto-title lending operations, if any, to ensure they are in compliance with all Federal consumer financial law, assess compliance systems and procedures, and assess and detect risks to consumers or to consumer financial markets.

***Question 3:***
There are some obvious alternatives to payday loans, such as borrowing from a bank or credit union, taking a loan from a consumer finance company, using a credit card, or getting assistance from a friend or relative. However, I am concerned that low-to moderate-income households have difficulty accessing the small dollar loans they need to meet basic expenses. What other alternatives do Arizonans have?

***Response:***
There are many ways small dollar credit products are offered, and the Consumer Financial Protection Bureau's job is to ensure that regardless of how a consumer gets a small dollar loan or from whom, at a minimum, they are given the full protection of Federal consumer financial laws.

Our Offices of Financial Empowerment and Financial Education seek to identify and develop the tools that consumers, particularly the most vulnerable, need to make the best financial decisions for themselves and their families. That includes helping consumers understand the full costs and risks of any financial product and encouraging consumers to have emergency savings so that they can avoid having to seek out short-term loans in the first place.

The Bureau also hears regularly from financial services providers of all sorts who are developing products designed to meet the demands of low- and moderate-income consumers. The Bureau seeks to use the authorities that we have to implement and enforce Federal consumer financial law in a way that enables the functioning of a transparent and competitive marketplace.

***Question 4:***
This past March, the CFPB issued guidance on indirect auto lending and compliance with the Equal Credit Opportunity Act (ECOA). Auto lenders in Arizona have concerns with this guidance in part because the CFPB has not provided sufficient information on how the industry is to comply. Does the CFPB plan to issue additional guidance or clarification around this issue?

***Response:***
As you know, the Consumer Financial Protection Bureau published CFPB Bulletin 2013-02, Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act of 1974 (ECOA), to offer guidance to all indirect auto lenders within the jurisdiction of the Bureau, including both

depository institutions and nonbank institutions.[5] The Bulletin explains that the standard practices of indirect auto lenders likely make them "creditors" under ECOA and that a lender's discretionary markup and compensation policies may alone be sufficient to trigger liability under ECOA if the lender regularly participates in a credit decision and its policies result in discrimination. By describing the existing relevant laws and regulations that apply to indirect auto lending, the Bulletin's intent is to help indirect lenders recognize and mitigate the risk of discrimination resulting from discretionary dealer markup and compensation policies and incentives that may encourage it. The Bulletin also described steps indirect auto lenders might take to ensure that they were operating in compliance with fair lending laws. Importantly, the Bulletin makes clear that there are many possible paths forward for lenders.

For the purpose of conducting our supervisory work, we have chosen to use proxy methods that rely solely on public data so that lenders can replicate our methods without the need to recreate or purchase proprietary databases as part of their own fair lending compliance management systems.

Proxy methods vary based on the characteristic being proxied (race, national origin, or gender), and there are several reasonable methods of proxying for each of these characteristics. Some methods, for example, use solely surname or geocoding. The Federal Reserve Board, which publicly released some of its proxy methods in July, uses a surname Census database to determine if a borrower is Hispanic and geocoding to determine majority minority census tracts.[6] Other methods, like the Bureau's, integrate the same sources of data into a single proxy for race and national origin. We have chosen the integrated method because we consider it appropriate and helpful in evaluating the large and complex portfolios of the auto lenders supervised by the Bureau. Similarly, we expect lenders to choose a proxy method that will support a compliance management system commensurate with their size, organizational complexity, and risk profile.

Recently, the Bureau and Department of Justice (DOJ) ordered Ally Financial Inc. and Ally Bank to pay $80 million in damages to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers and $18 million in penalties. The Bureau and DOJ determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system. This case demonstrates that the risks of discretionary pricing in dealer markups in the indirect auto finance market are real and significant and provides for appropriate ways of addressing those risks. A

[5] Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, Mar. 21, 2013 *available at http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf*

[6] http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2013/080613.pdf.

strong Compliance Management System (CMS) will be implemented by Ally. We know from our supervisory work that a strong CMS can work to significantly reduce fair lending risk. A strong CMS was one of the suggested options for mitigating fair lending risk that we identified in the Bulletin. In addition, Ally may move to a non-discretionary compensation structure to mitigate the fair lending risk associated with discretionary dealer markups.

## QUESTIONS FROM REP. ROSS (FL-15)

***Question 1:***
The CFPB white paper on payday loans and deposit advance products states that "High-intensity borrowers are more likely to be sampled based on usage in a given month than low-intensity borrowers." Approximately what percentage of borrowers who took out 12 or more loans per year were sampled? What percentage of borrowers who took out one loan per year were sampled?

***Response:***
The Consumer Financial Protection Bureau's publication titled "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" was developed from information obtained from a number of storefront payday lenders over a 12-month period. For each account with activity in the first month of the study period, the Bureau studied all activity over 12 months. Overall, the study sample consists of a total of approximately 15 million loans generated by storefronts in 33 states. The Bureau's deposit advance findings were developed from information obtained from depository institutions offering this product. For this group, we examined for a 12-month period a random sample of accounts that were eligible to receive a deposit advance during the first month of our study or during the quarter prior to the start of our study.

In the White Paper, the Bureau used a sample based on borrowers who took out a loan in the first month of the lenders sample, and we analyzed borrowing for the 12 months. If a borrower did not borrow in the first month of a lender's sample period, the borrower was not included in our sample. Additionally, our sample did not exclude a borrower who borrowed a payday loan before the sample period, meaning that borrowers who are in the middle of an extended borrowing episode are included in the sample. Of the approaches available to us, the methodology we chose reasonably addresses the question of how prevalent certain consumer harms are in the payday lending industry.

***Question 2:***
The Bureau's Information quality guidelines (as found on http://www.consumerfinance.gov/informationquality) state that "…After review of the information disseminated by Bureau, the Bureau does not believe that it currently produces or sponsors the distribution of influential scientific, financial, or statistical information within the definitions promulgated by OMB." According to OMB, "'Influential' when used in the phrase 'influential scientific or statistical information' means the agency expects that information in the form of analytical results will likely have an important effect on the development of domestic or international government or private sector policies or will likely have important consequences for specific technologies, substances, products or firms."

***Response:***
Please see response to question 3, below.

***Question 3:***
Taken together, this indicates that the CFPB does not believe that any of the information it disseminates, including the payday loan white paper, should have an important effect on the development of policy nor consequences for specific products. Yet you cited the report in your testimony, and the Bureau cites the report in a number of places on its website and elsewhere that have important consequences for short-term lending products. Please explain this inconsistency.

***Response:***
Under the Office of Management and Budget's guidance on the Information Quality Act, an agency that produces "influential scientific or statistical information" should provide a high degree of transparency about data and methods. OMB's guidance also makes clear that such goals do not override confidentiality concerns; the Bureau's Information Quality Guidelines are in accord.[7]

***Question 4:***
You testified in response to one of my questions that the CFPB has data on the 13 states that effectively prohibit payday loans. Will the Bureau make that data publicly available? What does that data show with respect to the usage of unregulated online loans in those states?

- Has the Bureau examined the Kansas City Fed's study on payday loan restrictions?
- Has the Bureau examined the New York Fed's study on Georgia and North Carolina which found higher rates of bounced checks, complaints about debt collectors and Chapter 7 bankruptcies after those states banned payday loans?
- Has the Bureau examined the rates of consumer complaints to state regulators about unlicensed lenders after payday lending was banned or severely restricted in Washington State, Oregon, Montana and New York?

***Response:***
The Consumer Financial Protection Bureau's leadership recognizes the serious responsibility associated with its collection of information on consumer financial markets under the authorities granted by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act and

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[7] *See Bureau Information Quality Guidelines* ("The Bureau will make both original and supporting data and the source of the data available to the public when appropriate."); ("The guidelines do not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections"); *see also* Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 66 FED. REG. 49718 (Sept. 28, 2001) ("[T]hese guidelines do not alter the otherwise applicable standards and procedures for determining when and how information is disclosed. Thus, the objectivity standard does not override other compelling interests, such as privacy, trade secret, and other confidentiality protections.").

cannot freely disclose the microdata that it uses. The Bureau's published regulations "Disclosure of Information and Records Rules," 12 CFR Part 1070.40 et seq., outlines the restrictions on the disclosure of confidential information.

Currently 14 states and the District of Columbia either prohibit payday lending or subject it to a strict usury limit. The 14 states are: Arkansas, Arizona, Connecticut, Georgia, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia.

The Bureau publication entitled, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" underscored that consumer protection issues exist in the small dollar loan market, and that further attention to these products is warranted. The Bureau continues to study small dollar loan products to better understand the effectiveness of limitations that have been put into place by state laws, trade associations, and institutions, and is aware of the Kansas City and New York studies on payday loans.

The Bureau has reviewed the studies referenced and has examined complaints to the extent available.

***Question 5:***
In your mission of enforcing the federal laws governing regulating short term credit, money service business activity or payday lending, it is important that you make it clear to those businesses who follow Florida's and other state laws that regulators will only be pursuing those businesses that operate illegally, and outside of the regulatory system. How do you plan to both pursue illegal, unlicensed operators and conduct rule making related to licensed payday lending while at the same time ensuring that your efforts will not cause harm to those following the law or preempt the stable and effective regulatory environment we have in Florida?

***Response:***
The Consumer Financial Protection Bureau recognizes the importance of both state and federal laws and their respective relevance to the consumer financial marketplace. For example, state regulatory agencies license payday lenders, whereas the Bureau has authority over Federal consumer financial law, including various laws that confer substantive consumer protections relevant to payday lending. The Bureau meets its responsibilities under these laws in part by supervising payday lenders for compliance with them and by enforcing them directly. Payday lenders, in turn, must comply with state law and federal law, as applicable. Those who ignore applicable state or federal laws are at legal risk for doing so.

Compliance with state law does not exempt a lender from having to comply with federal law, and vice versa. We continue to expand our understanding of how the payday market operates and affects consumers in order to better inform our policy work in this area.

## QUESTIONS FROM REP. STIVERS (OH-15)

Director Cordray, having now been up and running for 2 years, the CFPB has only issued final rules where mandated by Congress. This includes remittances, Qualified Mortgages and a number of other mortgage rules. During this same time, we have seen several enforcement actions and the issuance of bulletins or Guidance. As we all know, Bulletins, guidance and enforcement actions make policy but do not include the thorough process of gathering input from all stakeholders as is required by the Administrative Procedures Act (APA).

Congress put the APA in place to ensure agencies collect information from all parties and is thorough during that process and can provide clarity having listened to everyone across the spectrum. It appears the CFPB, to-date, has taken every effort to get around using the APA except on those issues specifically laid out in Dodd-Frank. Further, I often hear enforcement actions, Bulletins and Guidance are not as clear and transparent as the rule writing process.

Doesn't the rule writing process provide clear & transparent rules for the banking industry which are not as clear with bulletins or other actions?

***Response:***

The Administrative Procedure Act (APA) sets out the basic principles by which federal agencies engage in regulatory activity and in applicable cases instructs an agency to seek public comment regarding a proposed rule. The APA does not mandate notice and comment for general statements of policy, non-binding informational guidelines, or interpretive rules.

In addition to the rulemaking specifically mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau has engaged in notice and comment rulemaking to promulgate new rules, or amendments to pre-existing rules.

The Bureau issued an Advanced Notice of Proposed Rulemaking[8] (ANPR) for debt collection (November, 2013), prepaid cards (May, 2012), and issued several proposed rules and requests for comment relating to its supervision of nonbanks.

The Bureau has also repeatedly issued Requests for Information (RFI) to inform policy making. These RFI's include, but are not limited to: payday lending (March, 2012); overdraft products (February 2012 and April 2012); servicemembers (September 2011); reverse mortgages (July 2012); senior financial exploitation (June 2012); arbitration (April 2012); streamlining inherited regulations (March 2012); and affordability of private student loans.

[8] *See* http://www.consumerfinance.gov/notice-and-comment/

**QUESTION FROM REP. PITTENGER (NC-9)**
Where in the process is the rule for Section 1071 of the Dodd-Frank Act?

***Response:***
The Consumer Financial Protection Bureau has begun to explore the issues we need to address pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act. In particular, we are looking at how we might work with other agencies to gain insight into existing small business data collection efforts and possible ways to cooperate in future efforts. The small business lending market is vast and complex, with many different types of financial institutions and products, so we need to ensure we consider the requirements associated with data collection. We also will learn from the changes that we will be making to Home Mortgage Disclosure Act regulations to enrich the information collected there, as required by the Dodd-Frank Act.

## QUESTIONS FROM REP. LUETKEMEYER (MO-3)

***Question 1:***
In your testimony before the Committee, you stated that a lender or other entity in full compliance with state and/or federal law should be allowed to operate as long as that entity remains in accordance with the law. Our understanding is that licensed and regulated lenders have had banking relationships threatened. Under the Dodd-Frank Act, the CFPB was given explicit authority to supervise entities that offer or provide non-bank small dollar loans to consumers. As the regulator of many of the products being threatened, what specific actions have you taken or will you take to ensure that these products remain viable and that these entities remain able to offer them?

***Response:***
The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Consumer Financial Protection Bureau to, among other things, supervise payday lenders; to assess compliance with Federal consumer financial law; to obtain information about them and their compliance systems or procedures; to detect and assess risks to consumers and consumer financial markets; and promulgate rules as appropriate to implement Federal consumer financial law. The Bureau has studied small dollar, short-term lending, including online payday lending, and continues to do so. In January 2012, the Bureau held a field hearing in Birmingham, Alabama, to hear directly from consumers and providers of these products. At that time, the Bureau began its study, which resulted in a publication entitled, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" issued in April of this year.[9] The purpose of our outreach, research, and analysis is to determine the best way to protect consumers while ensuring that they will have access to a small dollar loan market that is fair, transparent, and competitive.

The Bureau's White Paper underscored that consumer protection issues exist in the small dollar loan market, and that further attention to these products is warranted. The Bureau intends to continue its study of small dollar loan products to better understand why some consumers are able to use these products in a light to moderate way, while others seem to get trapped in a prolonged borrowing cycle. The Bureau would also like to better understand the effectiveness of limitations that have been put into place by state laws, trade associations, and institutions to curb the sustained use that can lead to adverse financial consequences for consumers.

The Bureau seeks to protect consumers across the entire small dollar credit market. To the extent that consumers may experience injury in the nonbank lending market resulting from violations of laws within our authority, we will take appropriate action to ensure consistent implementation

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[9] CFPB's Payday Loans and Deposit Advance Products report can be accessed at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

and enforcement of the applicable laws across the small dollar credit marketplace. As the Bureau looks to next steps, we will consider how best to exercise our authorities to protect consumers while protecting access to affordable credit.

***Question 2:***
What steps are you taking to ensure that the FDIC and other banking regulators issue proper guidance on this matter without infringing on CFPB authority? Will the CFPB issue guidance on this matter?

***Response:***
The Federal Deposit Insurance Corporation has issued guidance that relates to this topic. See "FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities," available at http://www.fdic.gov/news/news/financial/2013/fil13043.html.

In addition, see responses to Question 1 above and Question 3 below.

***Question 3:***
As the regulator for the payday loan industry your agency has spent considerable time and investment assembling data and reviewing the practices of the cash advance industry. Has the Bureau asked the FDIC, the OCC or the Department of Justice to deny basic banking services to companies in the industry? Does the bureau support the efforts by the agencies to encourage financial institutions not to bank legally licensed lenders in the space?

***Response:***
The Consumer Financial Protection Bureau's job is, among other things, to ensure that payday lenders comply with Federal consumer financial law. To this end, the Bureau works collaboratively with other federal and state partners in the markets where more than one governmental entity may have authority to take action. However, the Bureau is not the sole regulator of financial products and services providers and, in particular, does not engage in the same kind of safety and soundness regulation as the federal prudential regulators, who operate under a statutory mandate distinct from that conferred upon the Bureau. We recognize the judgment of the prudential regulators in the matters committed to their responsibility.

***Question 4:***
Do you believe that tribal governments have the right to use the Internet to make loans?

***Response:***
As noted above, all lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair, transparent, and competitive market.

***Question 5:***
Does the CFPB believe that the comprehensive array of federal consumer financial laws and regulations are generally adequate to protect consumers from improper lending practices? If not, please detail what additional provisions or changes are needed and why.

***Response:***
As you know, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in response to the worst financial crisis this country experienced since the Great Depression. Over the past three years, the Bureau and other financial regulatory agencies have been working diligently to implement the Dodd-Frank Act. Work on many of the rulemakings required by the Dodd-Frank Act is ongoing at various agencies. Once the rules required by the Dodd-Frank are implemented and in effect for some period of time, we will be in a better position to address whether to recommend changes that might make the statutory framework more effective.

***Question 6:***
It is widely recognized that many states have quite restrictive lending laws that limit the type of small dollar, short-term credit products that nonbank lenders may offer. It would be very helpful to have a better understanding of this patchwork of state lending laws. Please provide the Committee with a detailed comparative breakdown of what each state's law allows concerning offering specific types of small dollar products including such things as any minimum or maximum limitations on the length of the loan, the total interest allowed (noting what fees and charges are counted) as well as any exceptions from such limitations for certain fees or loan types, and any prohibited loan terms or conditions that apply with respect to any such loan product. Also, please include a state-by-state breakdown of state licensing requirements that apply to each such product.

***Response:***
Information regarding state payday lending statutes is available on the National Conference of State Legislatures website at http://www.ncsl.org/issues-research/banking/payday-lending-state-statutes.aspx.

***Question 7:***
Millions of underserved consumers are moving rapidly to meet credit needs via the Internet. What is the CFPB doing to promote even greater credit access for underserved consumers through online sources while also ensuring that online lenders comply with applicable federal laws and regulations?

***Response:***
All lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair,

transparent, and competitive market. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Consumer Financial Protection Bureau to supervise payday lenders, to assess compliance with Federal consumer financial law, to obtain information about them and their compliance systems or procedures, to detect and assess risks to consumers, and consumer financial markets, and to promulgate rules as appropriate to implement Federal consumer financial law.

The marketplace in which payday lenders operate is increasingly diverse, and the Bureau is committed to ensuring that consumers receive the full protection of Federal consumer financial law whether they obtain a loan online, or from a storefront. There is a demand for small dollar credit products, but debt traps should not be part of consumers' financial futures. In January 2012, the Bureau added payday lenders to its supervision program on top of its existing efforts to supervise the depository institutions that offer deposit advance products. We also held a field hearing in January 2012 in Birmingham, Alabama, to hear directly from consumers and providers of these products. At that time, the Bureau began its study, which resulted in a publication entitled, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings" issued in April of this year.[10] The purpose of our outreach, research, and analysis is to help better understand the best approach to protect consumers while ensuring they will have access to a small dollar loan market that is fair, transparent, and competitive.

The Bureau's White Paper underscored that consumer protection issues exist in the small dollar loan market, and that further attention to these products is warranted. The Bureau intends to continue its study of small dollar loan products to better understand why some consumers are able to use these products in a light to moderate way, while others seem to get trapped in a prolonged borrowing cycle. The Bureau would also like to better understand the effectiveness of limitations that have been put into place by state laws, trade associations, and institutions to curb the sustained use that can lead to adverse financial consequences for consumers.

As the Bureau looks to next steps, we will consider how best to exercise our authorities to protect consumers while protecting access to affordable credit.

***Question 8:***
The CFPB's Semi-Annual Report notes that consumers may have difficulty comparing small dollar loan products on an "apples-to-apples" basis and points out, for example, that APRs are not provided in all cases and may not include all fees. Has the CFPB collected any data through focus-groups, surveys and other methods, to determine whether consumers truly understand what an APR means when used to disclose the cost of various small dollar credit products with a term of less than one year? Has any research been conducted to determine whether consumers

[10] Bureau's Payday Loans and Deposit Advance Products report can be accessed at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

understand the costs of such short-term credit options better when all costs (interest, fees and other charges) are expressed as a dollar figure and as a percentage of the total loan amount instead of an APR? If not, will you collect such data and provide this Committee with your analysis of it?

***Response:***
The Consumer Financial Protection Bureau's "March 2013 Semi-Annual Report" stated with respect to the complexity and diversity of small dollar, short term loan products available in the marketplace: "It may be challenging to determine whether taking out a two-week payday loan, pawning a household good for a month, or gradually paying down a six-month installment loan makes better financial sense. One standard approach to comparing loan costs is the Annual Percentage Rate (APR); however, APRs may not be provided in every case, or include all fees. For example, APRs are not disclosed when a consumer incurs an overdraft fee, and other products might have application or other fees that are not included in this calculation. At least one survey suggests that many consumers may not understand how to use APR to measure the relative costs of different small dollar credit options."[11]

The Bureau continues to research consumer behavior in the small dollar credit market, including the impact of disclosures on consumers' choices and their understanding of loan costs.

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[11] *See CFPB March 2013 Semi-Annual Report, available at:* http://files.consumerfinance.gov/f/201303_CFPB_SemiAnnualReport_March2013.pdf at 39.

**QUESTIONS FROM REP. FINCHER (TN-8)**

***Question 1:***
Nearly 8.7 million American families depend on manufactured homes for reliable, safe, and sustainable housing. However, smaller-sized manufactured home loans are at risk of being adversely impacted by HOEPA/high cost mortgage provisions and loan originator guidelines in Dodd-Frank. Without regulatory relief tailored to this form of housing, the manufactured housing market will be facing loss of financing available to low- and moderate-income families, particularly in rural and underserved areas.

As you may know, the manufactured housing industry has been working with consumer advocates to develop a consensus approach to resolve the regulatory challenges facing this market. I understand that much progress has been made between the groups, and they have begun the process of communicating their joint concerns to members of your staff.

To the extent that you are able to comment on the Bureau's rulemaking processes, do you anticipate that there might be some accommodation made for the areas highlighted by these groups? What additional feedback do you think would be necessary from the Committee to underscore that there is concern for preserving access to credit in this market?

***Response:***
The Dodd-Frank Wall Street Reform and Consumer Protection Act has a very broad definition for loan originators, with some exclusions. One of these is a limited exclusion for employees of manufactured housing retailers that permits them to conduct certain activities without being treated as loan originators. The loan originator rule published in February addressed this exclusion, and in June the Consumer Financial Protection Bureau issued a proposal to clarify it further. The Bureau has considered public comment received on the June proposal, and on September 13 we issued a final rule.

The compensation paid to a loan originator is generally included for purposes of calculating points and fees under the Ability-to-Repay and Home Ownership and Equity Protection Act rules. Our final rule includes a provision that excludes from points and fees compensation paid by a retailer of manufactured homes to its employees. The points and fees calculation still includes loan originator compensation paid by other persons, including a creditor to loan originator employees of manufactured home retailers. Where the creditor has knowledge that the sales price includes loan originator compensation, then such compensation is included in points and fees. However the rule imposes no duty on the creditor to investigate. Thus, creditors with arrangements with retailers to build loan origination compensation into the homes' sale prices must count such compensation.

The final rule also provides guidance on what activities an employee of a manufactured home retailer may conduct without becoming a loan originator, stating that a retailer employee may: generally describe the credit application process to a consumer without discussing particular credit terms; prepare residential mortgage loan packages and provide general application instructions to consumers so consumers can complete an application, without interacting or communicating with the consumer regarding specific transaction terms; collect information on behalf of the consumer with regard to a residential mortgage loan; in certain circumstances, provide or make available general information about creditors and loan originators that may offer financing for manufactured homes in the consumer's general area.

Further, the rule on points and fees does provide more relaxed treatment for "smaller-sized manufactured home loans" that are secured by first liens on personal property. The Bureau provided the same accommodation that Congress prescribed in this respect. In so doing, as well as in its approach to all of its rulemakings under title XIV of the Dodd-Frank Act, the Bureau has remained mindful of the need to ensure that regulations do not unduly restrict access to credit in any market, including manufactured housing.

The Bureau has met with representatives from the manufactured housing industry and has requested additional data from a set of manufactured housing lenders to gain a more complete understanding of this market and the potential effects of this and other rules on the market for manufactured home loans. Available data on manufactured housing lending, however, may not be representative of all loans secured by manufactured housing and of all lenders who extend these loans. For this reason and because it must not prejudge any future decisions, the Bureau has not committed, and cannot commit, to making further modifications to the rules it has adopted.

## QUESTIONS FROM REP. SCOTT GARRETT (NJ-5)

*Question 1:*
Dodd-Frank contains provisions limiting the CFPB's authority to collect "personally identifiable financial information," yet the law does not define this term. How does the CFPB define "personally identifiable financial information" and does it include such information as a name, Social Security number, and address?

***Response:***
Pursuant to the Gramm-Leach-Bliley Act, the Consumer Financial Protection Bureau defines "personally identifiable financial information" by regulation as follows:

> (q)(1) *Personally identifiable financial information* means any information:
> (i) A consumer provides to you to obtain a financial product or service from you;
> (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or
> (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.
>
> * * *
>
> (2) *Information not included.* Personally identifiable financial information does not include: . . . .
> (B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

The remainder of the definition provides examples. The complete definition can be found at 12 C.F.R. §1016.3(q), along with interrelated terms.

*Question 2:*
How many U.S. consumer accounts is the CFPB monitoring as part of its data collection activities?

***Response:***
The Consumer Financial Protection Bureau does not track the financial habits or activities of any individual consumer.

Instead, in the normal course of carrying out its statutory mandates, the Bureau collects information from consumers who seek the Bureau's help through the consumer response function and from the institution involved in the complaint; from covered persons who are the subject of supervisory examinations or enforcement activity, as well as from whistleblowers and third parties who may have information relevant to an enforcement action; and in the performance of market monitoring activities.

***Question 3:***
It has been reported that the CFPB has requested account-level details regarding consumer credit card data from nine banks. Can you tell the committee which banks the CFPB is collecting this information from? Are there currently any plans to increase the amount of banks that the CFPB will obtain this information from?

***Response:***
The Consumer Financial Protection Bureau does not track the financial habits or activities of any individual consumer.

In the exercise of its supervisory authority the Bureau uses data stripped of direct or personal identifiers with respect to all credit card accounts maintained by a number of large card issuers. This data is collected and housed on behalf of the Bureau by Argus Infonnation and Advisory Services, a company that is in the business of obtaining account-level data for credit cards and other financial services from financial services companies. The data being provided to the Bureau are the same type of data that credit card issuers regularly provide to Argus, such as the monthly balance, fees charges, interest charged, and payments received on accounts. The data the Bureau receives does not include purchase transactions.

The issuers from which the data is being collected include the largest credit card issuers and thus have particularly significant potential to create risks to consumers. At present, the Bureau has no plans to increase the number of banks from which we will obtain this information.

***Question 4:***
In the strategic plan that the CFPB issued in April of this year, the CFPB said that it seeks to "acquire and maintain a credit card database...covering approximately 80% of the credit card marketplace" by the end of FY 2013. According to the U.S. Census Bureau, Americans hold approximately 1.2 billion credit cards. That would mean that the CFPB is planning to monitor about 960 million credit cards. Why is it necessary to monitor such a high number of credit card accounts?

***Response:***
The Consumer Financial Protection Bureau does not track the financial habits or activities of any individual consumer.

The Bureau does collect certain information in the normal course of carrying out its statutory mandate to protect consumers, ensure regulatory compliance, and monitor the financial services and products markets for risks to consumers. For example the Bureau collects account-level information as needed from consumers who submit consumer complaints as well as from the company the complaint is about. The Bureau also collects information from covered persons who are the subject of supervisory examinations or enforcement activity, as well as from whistleblowers and third parties who may have information relevant to an enforcement action.

In addition, the Bureau performs market monitoring activities, which involve the analysis of market trends and risks to consumers based upon aggregating and analyzing account information stripped of direct or personal identifiers.

The Bureau manages risks to privacy associated with collecting information by complying with the Privacy Act of 1974, Right to Financial Privacy Act, and E-Government Act of 2002; voluntarily adopting Office of Management and Budget privacy-related guidance as best practice; and applying National Institute of Standards and Technology risk management processes. The Bureau has many privacy protections in place to protect the consumer from misuse of information that directly identifies them, reveals their consumer behaviors, or describes personal characteristics such as race or gender, or credit characteristics. When the Bureau does obtain information that includes personal identifiers, it protects the information using technical, physical, and administrative controls that may include but are not limited to: acquisition provisions, privacy incident management, access controls, audit logs, physical security, records schedules, and minimizing the maintenance of personal information by deleting direct identifiers or coding information into generic categories to facilitate analysis.

***Question 5:***
How many people have access to CFPB databases containing personal consumer financial data? And who are the people that have access?

***Response***
In general, access to the Consumer Financial Protection Bureau's data is controlled, and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

***Question 6:***
Section 1022 (c)(4)(C) of Dodd-Frank is a limiting provision on the CFPB's general power. The provision reads "The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers…for purposes of gathering or analyzing the personally identifiable information of consumers." As the head of the CFPB and an attorney, do you believe that the CFPB has the authority to collect personally identifiable information as part of its examination process from supervised entities and then use that information for market

monitoring? And if not, upon what authority does the CFPB rely for collecting personally identifiable information in an examination and using it to monitor markets?

***Response:***

A number of provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, among them 12 U.S.C. § 5512(c), 12 U.S.C. § 5514(b), 12 U.S.C. § 5515(b), 12 U.S.C. § 5534, and 12 U.S.C. § 5562, authorize the Consumer Financial Protection Bureau to request information. The Bureau's information-gathering is consistent with these authorities and with limitations regarding personally identifiable financial information. The Bureau manages the privacy associated with its exercise of consumer protection authorities by complying with the Privacy Act of 1974, Right to Financial Privacy Act, and E-Government Act of 2002; voluntarily adopting Office of Management and Budget privacy-related guidance as best practice; and applying National Institute of Standards and Technology risk management processes.

***Question 7:***

The Statement of Record Notice for the CFPB's "Market and Consumer Research Records" database indicates that personally identifiable information is being collected and able to be retrieved by reference to such information. But the CFPB has not yet issued a privacy impact assessment (PIA), which is mandated by the E-Government Act in order to ensure that agencies are in compliance with laws and regulations governing privacy of any personal information the agency stores, collects, uses, and shares. Why hasn't the CFPB issued a PIA for this database and will you commit to issuing this PIA?

***Response:***

The requirement to publish System of Records Notices (SORN) is derived from the Privacy Act, and the requirement to conduct Privacy Impact Assessments is derived from the E-Government Act. While both laws help protect privacy, the requirements triggering each are different. For example, an activity that triggers a SORN may or may not require a PIA; and a PIA may be conducted when a SORN is not required.

In accordance with the Privacy Act, the Consumer Financial Protection Bureau published CFPB.022- Market and Consumer Research Records to permit the Bureau's collection and use of the information for market and consumer research purposes. The Bureau has developed a Privacy Impact Assessment that documents privacy risks associated with conducting research on consumer financial markets.[12]

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[12] *See* www.consumerfinance.gov.

***Question 8:***
As you know, the CFPB is largely shielded from congressional oversight and appropriations. Does the CFPB believe that it has a blank check to collect information on consumer activities?

***Response:***
No, the Consumer Financial Protection Bureau operates under statutes which define the scope of its authority. Similar to other independent agencies, the Bureau is subject to robust congressional oversight, with some facets unique to the Bureau. For example, the Director must appear before Congress biannually and report on, among other things, the Bureau's budget and significant rules and orders it has adopted. In the three years of Bureau existence, officials have appeared before Congress on 44 occasions. The Bureau is also subject to the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Congressional Review Act, the Privacy Act, and the Right to Financial Privacy Act, among other statutes applicable to federal agencies. In addition, the Bureau is the only independent financial services regulator with a statutory budget cap. The Bureau is also subject to three annual audits. The Bureau's financial statements are audited annually by the Government Accountability Office, the investigative arm of Congress. GAO also audits the Bureau's regulations. And, the Bureau's operations and budget are subject to an independent audit. The Bureau's activities are monitored closely by its Inspector General.

**QUESTIONS FROM REP. ROYCE (CA-39)**

In setting up the CFPB and the Supervision, Enforcement & Fair Lending Division, it is clear from reports that negotiations between supervision and enforcement on how best to conduct examinations initially resulted in one or two enforcement attorneys being assigned to examination teams in the field. These enforcement "ride alongs" have been met with much criticism – including from the CFPB's own Ombudsman who has cited "the potential for the policy to be a barrier to a free exchange during the examination." The Ombudsman also recommended "CFPB review implementation of the policy to have enforcement attorneys present at supervisory examinations." I am wondering if you can comment on the status of this practice. Has the CFPB decided to no longer have enforcement staff accompany examiners during examinations?

***Response:***

The Consumer Financial Protection Bureau intentionally grouped our supervision, enforcement, and fair lending offices together because we wanted them to be integrated and familiar with the work that each office was doing. The integrated model was intended to ensure supervision and enforcement work very closely together. We found over time that the most efficient way of accomplishing that goal did not require the enforcement attorneys to accompany the examiners on site.

## QUESTIONS FROM REP. STEVAN PEARCE (NM-2)

***Question 1:***
Has the agency begun studying ways to improve their definition of "rural"?
What steps will the agency take to develop a new definition? What timelines can be expected?

***Response:***
As you may know, the Consumer Financial Protection Bureau's Qualified Mortgage rule provided a general definition of "rural" using the Department of Agriculture's Urban Influence Codes. Those codes, in turn, are based on definitions developed by the Office of Management and Budget, in particular "metropolitan statistical area" and "micropolitan statistical area."

Access to credit in rural communities as well as the impacts of our rules on small creditors who serve those communities is a matter the Bureau takes very seriously. In response to concerns that have been raised, the Bureau amended the Ability-to-Repay Rule to provide a two-year transition period, during which balloon loans made by small creditors and held in portfolio will be treated as Qualified Mortgages regardless of the location of the particular creditor. This decision will allow time for the Bureau to review whether its definition of rural should be adjusted.

As a first step in examining other possible definitions, the Bureau has begun to examine the various data sources available. Notably, data collected under the Home Mortgage Disclosure Act has sparse coverage in rural areas.

The Bureau is committed to such a review to ensure that the Bureau's definition accurately reflects significant differences among geographic areas, to calibrate access to credit concerns, and to facilitate implementation.

***Question 2:***
Does the agency's data collection effort include Personally Identifiable Information such as: name, address, social security, zip, property and credit score of an individual?

***Response:***
The Consumer Financial Protection Bureau does not track the financial habits or activities of any individual consumer.

The Bureau receives personally identifiable information (PII) as defined by the Office of Management and Budget in OMB Memorandum M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information," May 22, 2007. M-07-16 defines "personally identifiable information" to mean "information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc."

The Bureau protects the PII it receives by implementing technical, physical, and administrative controls. These controls may include but are not limited to: acquisition provisions, privacy incident management, access controls, audit logs, physical security, records schedules, and minimizing the maintenance of personal information by deleting direct identifiers or coding information into generic categories to facilitate analysis.

***Question 3:***
Has the CFPB carried out case studies or analyzed cases of agencies, consumer groups or credit card companies, where information has been distributed, leaked, shared or hacked?

***Response:***
While the Bureau has not carried out specific case studies of other agencies or firms with data breaches, the agency is aware of the necessity of data protection. The Bureau's practice is to categorize its systems using Federal Information Processing Standard Publication 199, Standards for Security Categorization of Federal Information and Information Systems (FIPS 199). Based on this categorization, the Bureau implements security controls from National Institute of Standards and Technology Special Publication 800-53, Recommended Security Controls for Federal Information Systems and Organizations, to secure its data. Any additional Bureau policies, processes, and procedures, including those related to access, are based on these standard federally-practiced controls, industry best practices, as well as other guidelines and mandates issued for government agencies.

***Question 4:***
Has the Director or Deputy Director of the CFPB discussed, at length, the implication of a security breach with staff?

***Response:***
The Consumer Financial Protection Bureau leadership recognizes the serious responsibility associated with its collection of information on consumer financial markets under the authorities granted by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act. The Bureau's published regulations "Disclosure of Information and Records Rules" 12 CFR Part 1070.40 et seq., outline the restrictions on the disclosure of confidential information. The Bureau has a dedicated Chief Information Security Officer and a dedicated Chief Privacy Officer, both of whom report directly to the Chief Technology and Information Officer, who centrally manages Bureau response to potential privacy or security incidents. Bureau employees receive instruction on how to identify and report potential privacy or security incidents, in addition to new hire and annual mandatory trainings that meet the training requirements under the Privacy

Act, the Federal Information Security Management Act, and guidance issued by the Office of Management and Budget.

***Question 5:***
What actions are being taken to ensure that sensitive information, from millions of consumers, is not being leaked or used inappropriately? Please provide a detailed update.

***Response:***
The Consumer Financial Protection Bureau continues to rely, in part, on elements of the Department of Treasury's network and related IT infrastructure, including Treasury's directives that relate to security and privacy incidents. In anticipation of the Bureau's move to its own network infrastructure, the Bureau has developed new directives related to security and privacy incidents, which it will issue upon network independence. In the interim, the Bureau has developed supplemental incident-reporting materials for managing the breach, loss, or compromise of personally identifiable information (PII). These materials, in conjunction with processes outlined in Treasury's privacy and security incident directives, help the Bureau meet the requirements around the suspected or confirmed breach, loss, or compromise of PII outlined in the Office of Management and Budget -issued guidance (i.e. OMB M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007). As part of its supplemental interim procedures, the Bureau would assess the risk significance (or analyze the risk of harm) posed by a breach, loss, or compromise of PII to determine if notification, outreach, or additional mitigation is warranted or necessary. This would include alerting impacted individual consumers if their PII is confirmed to have been breached. When deemed necessary (i.e. risk of harm is deemed high), additional mitigation steps might include, for example, offering impacted individuals credit monitoring subscriptions/services.

***Question 6.***
Who made the decision to hire ASR Analytics?
Please describe the decision process for hiring contractors.

***Response:***
ASR provided independent audit support to the Bureau pursuant to two separate vehicles, both of which were competed. The first was a task order issued against an existing Department of Treasury contract which had been previously awarded by Treasury through a competitive process. Subsequently, the Bureau awarded a contract to ASR based upon a competition among existing General Services Administration small business vendors. The Request for Quote (RFQ) was sent via GSA's e-Buy system to a range of small businesses that were on the relevant GSA Schedule. One proposal was received and carefully evaluated against the criteria as stated in the advertised solicitation. The overall evaluation rating was "Good" and the price was determined fair and reasonable. Therefore, the contract was awarded to ASR.

## QUESTIONS FROM REP. BACHUS (AL-6)

***Question 1:***
Director Cordray, the current Qualified Mortgage rule includes fees paid to affiliated title insurance companies. However, fees paid to an unaffiliated title insurance company are not included. Will you please explain why you differentiate between fees paid to affiliated and unaffiliated title insurance companies? If the title insurance fees are equal, is there a benefit to the consumer if title insurance is purchased by an unaffiliated title agent?

***Response:***
Congress specifically identified third-party charges retained by the mortgage creditor, originator, or an affiliate of the creditor or originator as not excluded from the definition of points and fees.[13] Accordingly, the Consumer Financial Protection Bureau understood Congress to have weighed the relevant competing policy concerns related to fees (including title insurance fees) that are retained by affiliates and to have made a deliberate decision not to exclude such fees from the points and fees test. Particularly given Congress's clear determination in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau did not believe there was sufficient justification to use its exception authority to exclude affiliate fees from the calculation of points and fees.

***Question 2:***
There have been news articles and reports that federal agencies, such as the FDIC and DOJ, have been pressuring banks and third-party payment providers to stop doing business with online lenders. This leads to several questions.

**a.** Has the Bureau asked the FDIC, OCC and DOJ to deny basic banking services to companies in the industry?

***Response:***
No, the Bureau has not asked the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency or the Department of Justice to deny basic banking services to companies in the online lending industry.

**b.** Does the bureau support the efforts of these agencies to encourage financial institutions not to bank legally licensed lenders in the space?

[13] Section 1412, Dodd-Frank Act

***Response:***
The Consumer Financial Protection Bureau is unaware of efforts by any agency to encourage financial institutions not to provide banking services for lawfully operating businesses.

**c.** As the primary regulator, is the CFPB planning on issuing a rule on short-term lending for storefront and internet lending business?

***Response:***
The Consumer Financial Protection Bureau held a field hearing in January 2012 in Birmingham, Alabama, to hear directly from consumers and providers of these products. At that time, the Bureau began its study, which resulted in our white paper issued in April of this year titled "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings." The purpose of our outreach, research, and analysis is to help better understand the best approach to protect consumers while ensuring that they will have access to a small dollar loan market that is fair, transparent, and competitive.

The Bureau's White Paper underscored that consumer protection issues exist in the small dollar loan market, and that further attention to these products is warranted. The Bureau intends to continue its study of small dollar loan products to better understand why some consumers are able to use these products in a light to moderate way, while others seem to get trapped in a prolonged borrowing cycle. The Bureau would also like to better understand the effectiveness of limitations that have been put into place by state laws, trade associations, and institutions to curb the sustained use that can lead to adverse financial consequences for consumers. As the Bureau looks to next steps, we will consider how best to exercise our authorities to protect consumers while protecting access to affordable credit.

**d.** Do you think it is appropriate for any federal agency to seek to deny access to banking and payments systems to lawfully operating businesses?

***Response:***
The Consumer Financial Protection Bureau is not aware of any federal agency seeking to deny such access to lawfully operating businesses.

**e.** Does the CFPB need or want the FDIC to assume its responsibilities to ensure online nonbank lenders are complying with applicable law?

***Response:***
The marketplace in which payday lenders operate is increasingly diverse, and the Consumer Financial Protection Bureau is committed to ensuring that consumers receive the full protection of Federal consumer financial law whether they obtain a loan online or from a

storefront. The Bureau is not, however, the sole regulator of banking relationships and, in particular, does not engage in the same kind of safety and soundness regulation as the federal prudential regulators, who operate under a statutory mandate distinct from that which Congress conferred upon the Bureau. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Bureau to supervise payday lenders, to assess compliance with Federal consumer financial law, to obtain information about them and their compliance systems or procedures, to detect and assess risks to consumers and consumer financial markets, and to promulgate rules as appropriate to implement Federal consumer financial law. The Bureau is working diligently to implement the Act appropriately.

f. Has the CFPB, or FDIC, through any formal or informal action lead banks to believe that they should not provide banking and payment services to the online lending industry?

***Response:***
As noted above, the Consumer Financial Protection Bureau is unaware of efforts by any agency to encourage financial institutions not to provide banking services for lawfully operating businesses.

## QUESTIONS FROM REP. MULVANEY (SC-5)

***Question 1:***
Has the Inspector General responsible for CFPB oversight inquired specifically about the discrepancy between the CFPB's funding requests and its outlays?

- If so, what was the nature of the inquiry?
- Please provide any relevant documentation relating to such an inquiry.

***Response:***
The Office of Inspector General (OIG) of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau recently completed an evaluation of the Consumer Financial Protection Bureau's budget process for the Bureau's fiscal year 2013 budget justification published in February 2012. As part of this evaluation, the OIG reviewed the Bureau's processes and documentation related to fiscal year 2012 transfer requests from the Federal Reserve System. The OIG report, including the Bureau's management response can be found at http://www.federalreserve.gov/oig/.

***Question 2:***
Has any other entity inquired specifically about the discrepancy between the CFPB's funding requests and its outlays?

- If so, what was the nature of the inquiry?
  Please provide any relevant documentation relating to such an inquiry.

***Response:***
In addition to the regular oversight of the Consumer Financial Protection Bureau conducted by Congress, Section 1573(a) of the Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub. L. No. 112-10, requires the Bureau to order an annual independent audit of its operations and budget, and Section 1017(a)(5), Pub. L. No. 111-203 requires the Government Accountability Office (GAO) to annually audit the Bureau's financial statements in accordance with generally accepted government auditing standards.

The results of the independent audit for fiscal years 2011, 2012, and 2013 are available on the Bureau's website at http://www.consumerfinance.gov/reports/independent-performance-audit-of-cfpb-operations-and-budget/, http://www.consumerfinance.gov/reports/independent-performance-audit-of-cfpb-operations-and-budget-2/, and http://www.consumerfinance.gov/reports/cfpb-independent-audit-of-selected-operations-and-budget-fiscal-year-2013/, respectively. Similarly the results of the GAO audit for fiscal years 2011, 2012, and 2013 are embedded in the Financial Report of the Consumer Financial Protection Bureau and available on the Bureau's website at http://www.consumerfinance.gov/budget/. The reports describe the scope and the results of each of the engagements.

***Question 3:***
What is the current balance of the Bureau of Consumer Financial Protection Fund ("Bureau Fund")?

***Response:***
As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau publishes an annual Financial Report of the Consumer Financial Protection Bureau that includes audited financial statements of the Bureau. The Bureau reported in its financial statements for fiscal year 2013 a balance in the Bureau Fund of approximately $371 million, consisting of $325 thousand held as cash at the Federal Reserve Bank of New York, $27 million as a fund balance with Treasury, and $344 million in investments in U.S. Treasury securities. The funds held in the Bureau Fund are drawn down as needed to pay for obligations (e.g., to cover outlays) of the Bureau. These obligations include employee salaries and benefits, travel, rent, utilities, IT equipment, and other services received through intra-governmental agreements and contracts with vendors. A list of Bureau contracts with vendors is available at usaspending.gov.

The annual Financial Report for fiscal years 2011 through 2013 are available on the Bureau's website at http://www.consumerfinance.gov/budget/.

***Question 4:***
What has the Bureau Fund earned, either from interest or from the sale of investments/obligations, since its inception?

***Response:***
Funds held in the Bureau Fund are available to cover outlays related to existing and upcoming obligations of the Consumer Financial Protection Bureau. The funds are invested in U.S. Treasury securities until such time as an outlay is required of the Bureau – for example, when it is time to pay employees' salaries or to pay invoices from vendors or other government agencies.

The Bureau has earned approximately $30,000 in fiscal year 2011, $66,000 in fiscal year 2012, and $221,000 in fiscal year 2013 from interest and/or the sale of investments in Treasury securities.

***Question 5:***
Do you plan to draw down, increase, or maintain the amount held in the Bureau Fund? Please describe how you intend to achieve that goal and include a proposed timeline.

***Response:***
As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau ensures that the amount of funds requested each quarter from the Federal Reserve Board of Governors is reasonably necessary to carry out its mission.[14] Funds held in the Bureau Fund are available to cover outlays related to existing and upcoming obligations of the Bureau. These obligations include employee salaries and benefits, travel, rent, utilities, IT equipment, and other services received through intra-governmental agreements and contracts with vendors.

Funds held in the Bureau Fund at the end of fiscal year 2013 are drawn down to pay for obligations (e.g., to cover outlays) of the Bureau. Balances in the Bureau Fund, however, will fluctuate over time primarily due to the timing of both transfer requests and scheduled outlays. The length and timeline for drawing down funds from the Bureau Fund to pay obligations varies. For example, funds requested to cover employees' salaries are required every two weeks. However, funds related to intra-governmental agreements and contracts with vendors are drawn down as those entities perform the agreed-upon services and submit invoices for payment. The timeline for these outlays depends on the length of the agreement, which for most contracts generally takes between 3 to 12 months from the date the contract was executed, or longer for multiyear contracts.

***Question 6:***
In your recent testimony before the Committee, you discussed the CFPB's authority to regulate debt collectors.

**a.** Do you believe that it is the CFPB's responsibility to promote additional state regulation?

***Response:***
Many state and local governments license debt collectors and regulate their activities. Recently, a number of states and local governments have changed or are considering changing their statutes, regulations, and rules applicable to debt collection litigation. Most of these changes focus on rules of court procedure and evidence. These are areas that states have traditionally regulated.

**b.** Please describe all contacts by CFPB officials with state regulators and state legislative officials on issues related to the debt buyer and debt collection industry.

***Response:***

[14] Section 1017(a)(1), Dodd-Frank Act.

The Bureau regularly and routinely informs state regulators and officials about the Bureau's work, and consults and coordinates with them, as is expressly authorized and, in many cases, required by Congress, most notably throughout the provisions of the Dodd-Frank Act, subject to applicable limitations and safeguards.[15]

Indeed, in its recent ANPR on debt collection, the Bureau recognized this state role in explaining that it was interested in receiving comments concerning "how proposed rules could protect consumers in debt collection litigation without adversely affecting the traditional rule of the States in overseeing the administration and operation of their court systems and without imposing undue or unnecessary costs on the debt collection process."[16] The Bureau also developed a set of draft court rules on debt collection litigation, drawn directly from provisions already adopted by various states, and provided technical assistance on them to state regulators and officials who requested it.

c. Please include specific state legislative initiatives and proposed legislation that the CFPB supports.

***Response:***
On June 6, the Bureau and the Federal Trade Commission jointly hosted a roundtable entitled "Life of a Debt: Data Integrity in Debt Collection."[17] The roundtable included representatives from industry, consumer advocacy groups, and state and federal officials. In addition, the Bureau's Office of Supervision, Enforcement, and Fair Lending interact regularly with their state counterparts on confidential supervisory or enforcement matters related to the deht collection industry. When requested, the Bureau has provided technical assistance, including copies of

[15] *See, e.g.*, Dodd-Frank Act sections 1013(b)(3)(D) ("…the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies…"; 1013(c)(2)(B) ("…"…coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators…");…"; 1013(e)(1)(C) ("…coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families…");…"; 1013(g)(3)(E) ("…"…coordinate consumer protection efforts of seniors with other Federal agencies and State regulators…");…"; 1015 (""The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators…");…"; 1022(c)(6)(C) (providing access to Bureau examination reports for "…a prudential regulator, a State regulator, or any other Federal agency having jurisdiction…")"; 1022(c)(7)(C) "(…"…the Bureau shall consult with State agencies…");…"; 1024(b)(3) and 1025(b)(2) ("…"…the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities…");…"; 1025(e)(2) (""The Bureau shall pursue arrangements and agreements with State bank supervisors…");…"; 1042(b)(1) ("…a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau…");…"; and 1042(c) (""The Bureau shall…provide guidance in order to further coordinate actions with the State attorneys general and other regulators…")…",

[16] Bureau of Consumer Financial Protection, "Debt Collection (Regulation F); Advance Notice of Proposed Rulemaking, 78 Fed. Reg. 67848, 67877 (Nov. 12, 2013).

[17] http://www.consumerfinance.gov/newsroom/steve-antonakes-remarks-at-life-of-a-debt-data-integrity-in-debt-collection/

draft court rules derived from current state laws and court rules, to state regulators and officials that have jurisdiction over debt collectors' activities and have or are considering changing their statutes, regulations, and rules applicable to debt collection litigation.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**November 12, 2013**

**<u>Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Chairman Tim Johnson:</u>**

1. Director Cordray, in response to my question on rural lending at the hearing, you stated that the CFPB will "go back and reconsider how [it] had drawn rural in terms of being the Department of Agriculture's Urban Influence Code, particularly micropolitan counties which are rural but around a metropolitan county. And we will look at that carefully, take a lot of input before resolving it." Can you describe how the CFPB plans to reconsider this definition over the next two years, what the expected timeline is for soliciting input, and from whom?

*Response*

Our current QM rule provides a two-year temporary qualified mortgage window for balloon loans that small creditors[1] make and hold in portfolio without regard to where the creditor operates. In other words, small creditors across the country can make balloon loans (with certain limitations including meeting certain criteria under the statute such as having to be at least a 5-year term) that qualify as QM loans for 2 years after the rule goes into effect. During this period, as you note, our staff has committed to further studying the topic of small creditor balloon loans, especially with regards to access to credit in rural or underserved communities. In so doing, the Consumer Financial Protection Bureau intends to review whether the definitions of rural or underserved should be further adjusted for purposes of the QM rule. We have begun internal deliberations this winter, and we will follow up with your office as we work out timeframes for this review. Before issuing a final rule, the Bureau would seek public comment.

2. Director Cordray, as you know, outstanding student loan debt now exceeds $1.2 trillion. In the Bureau's latest student loan report, the Student Loan Ombudsman suggested that there be additional oversight of servicers, and the Bureau proposed a rule defining larger participants in the student loan servicing market early this year. When might we expect to see the CFPB finalize a rule and begin supervision of these companies?

   Additionally, due to increasing concerns about rising student debt, I want to make sure that we appropriately monitor the actions of those private participants in the student loan market under the Banking Committee's jurisdiction, including private student lenders and servicers. What suggestions do you have to improve the functioning of the private student loan market? Do you believe that legislative changes are needed to effect these improvements, and what other suggestions do you have for the Banking Committee to consider in working with the HELP Committee on the Higher Education Act reauthorization?

[1] Small creditors are ones that have $2 billion or less in assets and, who together with their affiliates, make 500 or fewer first lien mortgage loans per year.

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*Response*

On December 3, 2013, the Consumer Financial Protection Bureau issued a final rule defining larger participants in the nonbank student loan servicing marketplace. This rule will go into effect on March 1, 2014, at which point the Bureau will have the authority to examine larger nonbank student loan servicers. Student loan servicers impact tens of millions of Americans, and this rule is a critical step to ensure that the breakdowns in the mortgage servicing market do not repeat themselves in the student loan market.

As I noted in a Senate Banking Committee hearing you chaired this past April, student debt should be of concern. With $1.2 trillion in outstanding debt, many of us in the financial regulatory community have noted that this may be an impediment to economic growth and a roadblock for families looking to climb the economic ladder. The Department of Education and the Consumer Financial Protection Bureau have also been working together to ensure that borrowers of federal and private student loans are being fairly treated by financial services providers who administer their loans.

Private entities participate across the life cycle of a federal or private student loan and must comply with a number of Federal consumer financial laws that the Bureau administers. Notably, student loan servicers must comply with the Electronic Funds Transfer Act and Fair Credit Reporting Act, and student loan debt collectors must comply with the Fair Debt Collection Practices Act. And, these entities may not engage in unfair, deceptive, or abusive acts and practices.

In 2008, the Senate Banking Committee worked with the Senate Committee on Health, Education, Labor and Pensions to draft legislation, as part of the reauthorization of the Higher Education Act, to amend the Truth-in-Lending Act to enhance disclosures for consumers seeking to borrow a private student loan.

Since that time, Congress has enacted legislation to enhance consumer protections and improve the functioning of the mortgage and credit card markets. As noted in an October 2013 report from the Bureau's student loan ombudsman, policymakers might look at these changes and determine whether similar changes might also provide benefits to the student loan market. For example, the report noted that many student loan borrowers holding multiple loans face payment processing problems when seeking to repay their debt more quickly. Student loan servicers' payment processing policies vary and may not be transparent to many borrowers. The Credit CARD Act of 2009 addressed related issues. The Act and its implementing regulations ensure that borrowers who make payments in excess of the minimum amount due will have their payments promptly applied to credit card balances with the highest interest rate.

Additionally, the report also described how certain changes to laws governing mortgage servicing address challenges that might also be present in the student loan market. For example, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank

Act), Congress also amended the Real Estate Settlement Procedures Act and Truth-in-Lending Act that enhanced protections for horrowers in the mortgage servicing market. As implemented by Regulation X and Regulation Z, mortgage servicers will have certain obligations to correct errors asserted by borrowers, ensure prompt crediting of mortgage payments, and provide responses to requests for payoff amounts.

The Bureau has also published a number of other reports which may be useful to Banking Committee members in preparation for the upcoming reauthorization of the Higher Education Act. Bureau staff is available to further understanding of our analyses as the Committee seeks to address this large, growing financial services market.

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**Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Ranking Member Crapo:**

1. The Qualified Mortgage Rule (QM) has been widely debated, and we are roughly 60 days out from its effective date. Financial institutions, especially the small ones in Idaho, have struggled to ramp up their compliance operations. How will the rule change the mortgage shopping experience for the consumer and what steps has the Bureau taken, or planning to take, to educate consumers about how these rules will affect their shopping experience?

*Response*

The Consumer Financial Protection Bureau's mortgage rules will be important in addressing some of the most serious problems that had undermined the mortgage market during and leading up to the financial crisis. The Bureau's mortgage rules protect consumers from irresponsible mortgage lending by requiring that lenders make a reasonable, good-faith determination that prospective borrowers have the ability to repay their loans. The mortgage servicing rules establish strong protections for homeowners as they repay their loans, and especially for those facing foreclosure.

The Bureau took special care to ensure that our rules are balanced for community banks and credit unions and the consumers they serve. For instance, the Bureau has tailored the Ability-to-Repay rule and the standards for Qualified Mortgages (QMs) to enable small creditors to continue providing certain credit products, while carefully balancing consumer protections.

In addition, the Bureau has provided a two-year transition period, during which balloon loans made by small creditors and held in portfolio will be treated as QMs regardless of where the creditor predominantly operates. This decision will allow time for the Bureau to review whether its definitions of "rural" and "underserved" should be adjusted. The Bureau is committed to conducting such a review to ensure that the Bureau's definitions accurately reflect significant differences among geographic areas, to calibrate access to credit concerns, and to facilitate implementation.

To help consumers navigate the marketplace and take advantage of the benefits of the new rules, the Bureau has developed a consumer education and engagement plan. Among other things, the Bureau has developed consumer education materials including tips for homeowners; summaries of new mortgage rules and mortgage servicing rules; a set of common answers to frequently asked questions for our AskCFPB tool; and consumer guides and supporting graphics to explain the new rules. The Bureau has also published updated versions of certain mortgage publications that are required by statute or regulation to be delivered to homebuyers and those applying for adjustable-rate mortgages and home equity lines of credit, to reflect the new rules: Shopping for Your Home Loan - Settlement Cost Booklet, previously published by the U.S. Department of Housing and Urban Development; and Consumer Handbook on Adjustable-Rate Mortgages and What You Should Know About Home Equity Lines of Credit brochure, previously published by the Board of Governors of the Federal Reserve System. These publications are available on the Bureau's website at consumerfinance.gov/learnmore.

To help homeowners who may be facing foreclosure or encountering other issues related to the servicing of their mortgages, the Bureau has begun to train housing counselors and other intermediaries about the new mortgage servicing rules governing loss mitigation. This effort has been coordinated with the Department of Housing and Urban Development.

Finally, the Bureau is preparing to launch a new suite of tools and information that will guide prospective and current homeowners through the process of owning a home. The Bureau will provide guidance, decision-making tools, and information to help consumers become better shoppers, savvier negotiators, and, ultimately, more successful long-term homeowners.

2. The CFPB's Indirect Auto Lending Bulletin came out in March. The Bulletin represented a major policy shift without public input. On November 14, eight months after the Bulletin was published, the Bureau finally held a public forum on auto financing bringing together consumers, auto finance companies, and auto dealers.

   The Federal Trade Commission (FTC) spent more than a year conducting a study on the consumer protection issues that may arise in the sale, financing, and leasing of motor vehicles. It held focus groups, solicited public comments, and held industry roundtables. The FTC's final report is still pending and the agency has not yet conducted any rulemaking in this space. What coordination efforts did the CFPB undertake with the FTC when drafting the CFPB Bulletin, and why was a similar public outreach campaign not undertaken?

*Response*

The Consumer Financial Protection Bureau's March 21, 2013, Indirect Auto Bulletin was published to offer guidance to indirect auto lenders about compliance with the existing fair lending requirements of the Equal Credit Opportunity Act (ECOA).[2] The Auto Bulletin did not represent a policy shift, but instead highlighted the fair lending risk that some indirect auto lenders' markup and compensation policies can create based upon the discretion those policies permit, and financial incentives to exercise that discretion in particular ways.

The Bulletin explains that the standard practices of indirect auto lenders likely make them "creditors" under ECOA and that a lender's discretionary markup and compensation policies may alone be sufficient to trigger liability under ECOA if the lender regularly participates in a credit decision and its policies result in discrimination. By describing the applicable laws and regulations that apply to indirect auto lending, the Bulletin aims to help indirect auto lenders recognize and mitigate the risk of discrimination resulting from discretionary dealer markup and

[2] Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, Mar. 21, 2013 *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

compensation policies. This is the type of fair lending risk of which lenders need to be aware and monitor in their portfolios.

The Bureau has a number of tools at its disposal when dealing with practices that cause consumer harm, including nonpublic supervisory action, enforcement actions, rulemaking, and consumer education, among others. There are many factors that the Bureau considers when deciding which tools to use, and in determining what is the most appropriate tool to address a certain issue. When we consider whether to engage in rulemaking, a key question is whether existing law, regulations and official commentary already address the topic under consideration.

ECOA and Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.[3]

The Bureau published the Indirect Auto Bulletin to remind lenders of their responsibilities under ECOA and to offer guidance on how they might address the identified risks. Consistent with Bureau procedures, the Bulletin was reviewed prior to issuance to ensure compliance with all applicable legal requirements. The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity and in applicable cases instructs an agency to provide an opportunity for public comment before issuing a rule. The APA does not impose a notice and comment requirement for general statements of policy, non-binding informational guidelines, or interpretive memoranda. Accordingly, the Bureau was not required to solicit comments about the indirect auto compliance bulletin.

Recognizing the Federal Trade Commission's (FTC) shared responsibility in this area, the Bureau began a dialog with the FTC during the summer of 2011 regarding fair lending issues in the auto lending arena, including dealer markup. As part of this coordination, the Bureau participated in the FTC's Second Motor Vehicle Roundtable, which focused on military consumers, financial literacy, and fair lending and was held August 2-3, 2011, in San Antonio, Texas. In this manner, we shared resources with the FTC and gathered valuable public information and input on this topic. Likewise, Bureau personnel attended the Third FTC roundtable held in Washington, DC in December 2011. Since that time we have had an ongoing dialog about dealer markup in indirect auto lending with both the FTC and Federal Reserve Board of Governors (FRB), more recently joining with the FRB in their August 6, 2013 Webinar, titled Indirect Auto Lending – Fair Lending Considerations. Representatives of both agencies participated in the forum that the Bureau held on November 14, 2013.

We also regularly coordinate with the FTC on fair lending enforcement matters, including meeting with them on a bi-monthly basis.

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[3] 15 U.S.C. § 1691 *et seq.*; 12 C.F.R. pt. 1002.

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3. The CFPB has been closely examining small dollar credit products like payday loans and deposit advances. Have you considered how actions affecting these products may in fact drive up the cost of credit, or cause borrowers to turn to unregulated markets for credit, and how do you plan on balancing consumer demand with what you see as a dangerous product?

*Response*

There are many ways small-dollar credit products are offered and the Bureau's job is to ensure that – regardless of how a consumer gets a small-dollar loan or from whom – consumers are given the full protection of Federal consumer financial laws.

In taking appropriate action to protect consumers across the small dollar marketplace, the Bureau recognizes that there is a demand for small dollar credit products. Our Offices of Financial Empowerment and Financial Education seek to identify and develop the tools that consumers, particularly the most vulnerable, need to make the best financial decisions for themselves and their families. That includes making sure consumers understand the full costs and risks of any financial product and encouraging consumers to have emergency savings so that they can avoid having to seek out short-term loans in the first place.

The Bureau also hears regularly from financial services providers who are developing products designed to meet the demands of low and moderate income consumers. We seek to use the authorities that we have to implement and enforce Federal consumer financial laws in such a way that enables the functioning of a transparent and competitive marketplace.

4. In October, the CFPB sent an order to over 100 banks requesting a copy of the institution's consumer checking account agreements. The federal Paperwork Reduction Act of 1995 requires federal agencies to publish a notice for comment in the Federal Register anytime an agency seeks to collect information from 10 or more private entities including information requests and surveys required mandated by statute. Please explain why the Bureau did not take steps to comply with the Paperwork Reduction Act for this collection of information.

*Response*

The Consumer Financial Protection Bureau's orders were promulgated pursuant to its authority under Section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), and were issued to inform and augment the Bureau's market monitoring efforts, as well as to assist the Bureau as it works to complete the study mandated by Section 1028(a) of the Dodd-Frank Act. The Office of Management and Budget's regulations specify categories of items that are not subject to the Paperwork Reduction Act, which include among other things samples of products or like items so-designated by OMB. (5 C.F.R. 1320.3(h)(2), (h)(10)). The Bureau's orders sought the recipient covered-persons' standard form consumer checking account agreements. Collection of the information in question is exempt from the clearance requirement in the Paperwork Reduction Act.

5. Section 1100G of the Dodd-Frank Act requires the CFPB to abide by the Small Business Regulatory Enforcement Fairness Act's Small Business Advocacy Review Panel process. Please identify all of the Small Business Advocacy Review Panels the CFPB held in FY 2013. Additionally, please identify all planned proposed rules in FY 2014 for which the Bureau will conduct a Small Business Advocacy Review Panel.

*Response*

The Bureau is mindful that, without careful consideration, new statutory requirements we are implementing can potentially burden as well as benefit small financial services providers. We use many methods to reach out to small providers. One avenue, set out in the Dodd-Frank Act, is to convene a Small Business Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) before proposing a rule that would have a significant economic impact on a substantial number of small entities. In 2012, the Bureau held SBREFA panels on TILA-RESPA federal mortgage disclosures, mortgage loan servicing, and Title XIV mortgage loan originator compensation. We did not hold any SBREFA panels in FY 2013 as we were largely focused on finalizing rules that were proposed in FY 2012. The Bureau is planning to hold a SBREFA panel for a HMDA rulemaking in FY 2014. We have not yet determined which of the other rulemakings to be conducted by the Bureau in FY 2014 may have a significant economic impact on a substantial number of small entities, but it is likely that we will use SBREFA before commencing rulemaking with respect to debt collection, payday lending, and/or overdraft. We regularly conduct extensive outreach on the potential effects of a possible proposed rule on affected entities, including small entities.

6. Cost benefit analyses are important to ensure that entities, including small businesses, are not disproportionately burdened by federal regulations. Please list all regulatory efforts the CFPB plans to undertake in 2014 and state whether the agency plans to undertake economic analyses pursuant to the Regulatory Flexibility Act, E.O. 12866 and/or any other economic analysis for each regulatory effort planned.

*Response*

A critical part of the Consumer Financial Protection Bureau's mission is to make well-designed regulations that can help enhance market efficiency and fairness without imposing undue burdens. Such regulations benefit consumers, responsible firms, and society more broadly. Thus, the Bureau considers costs, benefits, and impacts on consumers and financial institutions in its rulemakings, and the Bureau seeks information more generally on the costs, benefits, and impacts of regulations. For example, in November 2013, the Bureau completed a report,

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"Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations: Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions."[4]

When the Bureau undertakes a rulemaking for which notice and comment are required, and for which the rule is expected to have a significant economic impact on a substantial number of small entities, the Bureau presents initial and final regulatory flexibility analyses as provided by the Regulatory Flexibility Act. In addition, the Bureau considers the costs and benefits of all of its substantive rules to consumers and to covered persons as required by Section 1022 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act. The Bureau publishes its preliminary cost benefit analysis with the proposed rule so that stakeholders have an opportunity to provide input through the public comment process. A final rule is accompanied by the Bureau's final analysis of costs and benefits.

On December 3, 2013, the Bureau posted its semi-annual update to its rulemaking agenda, which is available on Reginfo.gov.[5] As noted in the semi-annual update to the rulemaking agenda, the Bureau plans to work on , or participate in interagency groups working on, the rules listed below.

1. (Prerule) Home Mortgage Disclosure Act (Regulation C)
2. (Final Rule) The Expedited Funds Availability Act (Regulation CC)
3. (Final Rule) Restatement of Federal Consumer Financial Law Regulations
4. (Final Rule) Equal Access to Justice Act Implementation Rule
5. (Final Rule) Rules of Practice for Issuance of Temporary Cease-and-Desist Orders
6. (Final Rule) Further Amendments to 2013 Mortgage Rules (Regulations B, X, and Z)
7. (Prerule) Annual Privacy Notice
8. (Prerule) Payday Loans and Deposit Advance Products
9. (Prerule) Debt Collection Rule
10. (Prerule) Overdraft
11. (Prerule) Further Amendments to 2013 Mortgage Rules (Regulations X and Z)
12. (Proposed Rule) Requirements for Prepaid Cards (Regulation E)
13. (Proposed Rule) Supervision of Certain Nonbank Covered Persons--Defining Larger Participants in Certain Consumer Financial Product and Service Markets
14. (Proposed Rule) Amendments to FIRREA Concerning Appraisals
15. (Proposed Rule) Extension of the Temporary Exception for Certain Disclosures Under the Remittance Transfer Rule

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[4] "Understanding the effects of Certain Deposit Regulations on Financial Institutions' Operations: Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions," *available at* http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf

[5] The Consumer Financial Protection Bureau, Rulemaking Agenda, Dec. 3, 2013 *available at* *http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3170&Image58.x=58&Image58.y=5&Image58=Submit*

7. Banks have indicated value in the complaint process as it helps them identify areas to examine. However, the CFPB is publishing thousands of "unverified" and "unnormalized" complaints. Even as the CFPB acknowledges these complaints are not verified and may not be valid complaints, we have a government agency then encouraging folks to do their own research on this inaccurate information. Some prudential regulators have urged banks to avoid areas that could cause reputational risk. Do you see the CFPB's posting of unverified, inaccurate and unnormalized data as having the potential to create reputational risk, and should consumers be making decisions off inaccurate and unnormalized data being published by the government?

*Response*

The Consumer Financial Protection Bureau is clear that the Consumer Complaint Database contains complaints we have received, that steps are taken to confirm a commercial relationship between the consumer and the identified company, and that we do not verify the accuracy of all facts alleged in the complaints. In addition, the database includes data about the company's response to the complaint.

The purpose of the Consumer Complaint Database is to provide timely and understandable information about financial products and services and to improve the transparency and efficiency of the market. That data describes the nature of the complaint as submitted by the consumer and the company's view of its validity based on the company's response. Consumers and market participants can look at the information we publish about outcomes of complaints to get a good idea of how the company and consumer handled the complaint, such as closure with or without monetary relief or closure with an explanation. In addition to expanding the scope of the products covered by the database, we continue to evaluate, among other things, the potential for normalization of the data to make comparisons more user friendly and will soon be seeking feedback on how to normalize the data.

The Bureau has recently been recognized for its Consumer Complaint Database, receiving an Honorable Mention in the Administrative Conference of the United States Walter Gellhorn Innovation Award, for the innovative and transparent use of an online searchable database to empower consumers. The award honors the degree of innovation, cost savings to the government or public, the ease of duplicating the best practices at other agencies, and the degree to which best practices enhance transparency and efficiency in government. As well, the Project on Government Oversight profiled the Consumer Complaint Database in highlighting best practices for open and accountable government.

The Bureau publishes reports about complaint data, which may contain its own analysis of patterns or trends that it identifies in the complaint data. Reports containing aggregate complaint data are found at the bottom of the Consumer Complaint Database page. The Bureau's reports include some standardized metrics that may be used for comparisons across reporting periods and companies.

8. Argus Information and Advisory Services was awarded a $15 million contract in March 2012 to perform data aggregation, analysis, and storage on credit card data in furtherance of the Bureau's supervision authority. For each CFPB division and office listed below, please identify how many CFPB personnel have access to the data collected, analyzed, and/or processed by Argus. Additionally, for each CFPB division and office listed below, please identify how many CFPB personnel participate in on-site examinations.

- Executive Office of the Director
- Office of the CFPB Ombudsman
- Office of the Administrative Law Judge
- Division of Operations
- Office of the Chief Operating Officer
- Office of the Chief Administrative Officer
- Office of the Chief Financial Officer
- Office of the Chief Human Capital Officer
- Office of the Chief Information Officer
- Office of Consumer Response
- Office of Minority and Women Inclusion
- Office of the Chief Procurement Officer
- Office of Equal Opportunity Employment
- Division of Consumer Education and Engagement
- Office of Consumer Engagement
- Office of Financial Education
- Office of Financial Empowerment
- Office of Older Americans
- Office of Servicemember Affairs
- Office of Students
- Division of Supervision, Enforcement, and Fair Lending
- Office of Enforcement
- Office of Fair Lending and Equal Opportunity
- Office of Supervision Examinations
- Office of Supervision Policy
- Division of Research, Markets, and Regulations
- Office of Card Markets
- Office of Credit Information, Collections, and Deposit Markets
- Office of Installment and Liquidity Lending Markets
- Office of Mortgage Markets
- Office of Regulations
- Office of Research

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*Response*

The Consumer Financial Protection Bureau uses data stripped of direct personal identifiers with respect to all credit card accounts maintained by a number of large card issuers. This data is collected and housed on behalf of the Bureau by Argus Information and Advisory Services, a company that is in the business of obtaining account-level data for credit cards and other financial services from financial services companies. The data being provided to the Bureau are the same type of data that credit card issuers regularly provide to Argus, such as the monthly balance, fees charged, interest charged, and payments received on accounts. The data the Bureau receives does not include purchase transactions.

In general, access to the Bureau's data is controlled, and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

For security reasons, access to this information is continually updated and access numbers may change as a result. The Bureau conducts reviews of user access for all in-house databases, including data that the Bureau receives from Argus. As part of these reviews, the Bureau verifies that all access to a given dataset has been approved by the designated approving authority.

Access to the web-based interface is managed by Argus. Any Bureau employee who needs access must have their access request approved by the designated approving authority prior to a grant of access. The Bureau can remove access for anyone or everyone on the list at any time and removes access regularly when particular individuals no longer need that access for work purposes.

As of December 2013, a total of 35 individuals had access to the information in question. (As noted above, however, that number changes from time-to-time based on security reviews.)

- Executive Office of the Director: none
- Office of the CFPB Ombudsman: none
- Office of the Administrative Law Judge: none

Division of Operations: Division total is 17.
- Office of the Chief Operating Officer: none
- Office of the Chief Administrative Officer: none
- Office of the Chief Financial Officer: none
- Office of the Chief Human Capital Officer: none
- Office of the Chief Information Officer: 17 (included in the Division of Operations total above)
- Office of Consumer Response: none
- Office of Minority and Women Inclusion: none
- Office of the Chief Procurement Officer: none

- Office of Equal Opportunity Employment: none

Division of Consumer Education and Engagement: Division total is none.
- Office of Consumer Engagement: none
- Office of Financial Education: none
- Office of Financial Empowerment: none
- Office of Older Americans: none
- Office of Servicemember Affairs: none
- Office of Students: none

Division of Supervision, Enforcement, and Fair Lending: Division total is 4.
- Office of Enforcement: none
- Office of Fair Lending and Equal Opportunity: 1 (included in the Division of Supervision, Enforcement, and Fair Lending total above)
- Office of Supervision Examinations: 3 (included in the Division of Supervision, Enforcement, and Fair Lending total above)
- Office of Supervision Policy: none

Division of Research, Markets, and Regulations: Division total is 14.
- Office of Card Markets: 5 (included in the Division of Research, Markets, and Regulations total above)
- Office of Credit Information, Collections, and Deposit Markets: none
- Office of Installment and Liquidity Lending Markets: none
- Office of Mortgage Markets: none
- Office of Regulations: none
- Office of Research: 9 (included in the Division of Research, Markets, and Regulations total above)

With respect to the second question, the Bureau considers a number of factors in determining how many examiners are on-site for a given examination, including the scope of the review, the complexity of the areas being reviewed, and other factors as appropriate. The number varies by exam, but is typically between 6 and 14 field examiners. From time to time, a smaller number of personnel from Headquarters may also participate in the on-site portion of exams in some capacity. Such personnel are typically from the Supervision and Fair Lending Supervision functions. The Bureau's enforcement attorneys provide support to examinations through consultation with Supervision Headquarters, and do not routinely participate in on-site examination activities.

9. The CFPB stated it has entered into 25 memoranda of understanding with federal and state regulators. How many of these MOUs allow the Bureau to obtain data from other regulators where the data is not directly related to an on-site examination conducted by the CFPB?

*Response*

The Office of Consumer Response (Consumer Response) has agreements to share consumer complaint data with 25 state and federal agencies, including the Federal Trade Commission (FTC). Consumer Response contributes data to the FTC's Consumer Sentinel, which is available to local, state, and Federal law enforcement entities across the country. In addition, the Bureau has signed MOUs with the Conference of State Bank Supervisors and other signatories from all 50 states plus Puerto Rico and the District of Columbia designed to preserve the confidentiality of any information shared between the parties and related to the operation of the Nationwide Mortgage Licensing System and the Mortgage Call Report. The Bureau has also signed approximately 40 other MOUs with federal, state, and local governmental entities regarding the sharing of data and/or the treatment of shared data.

The MOUs set forth the terms regarding the treatment of any data that the providing agency chooses to share with the receiving agency. MOUs do not allow the Bureau to receive information that it would not otherwise be authorized to receive under applicable law, including but not limited to Sections 1024 and 1025 (requiring the Bureau to use existing supervisory reports of covered persons provided to a Federal or State agency to the fullest extent possible) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau's regulations regarding confidential treatment of information, 12 C.F.R. § 1070.40 *et seq.*, and any applicable regulations of other agencies. Thus, to the extent applicable law permits another agency to disclose – and the Bureau to receive – information unrelated to an on-site examination conducted by the Bureau, then the MOU between the Bureau and that agency governs the terms by which such data will be treated.

10. A recent Bipartisan Policy Center whitepaper recommended the Bureau make improvements to its Civil Penalty Fund. The BPC specifically criticized the Bureau for lack of transparency regarding the Fund's selection criteria when distributing funds. How does the Bureau identify groups that will receive distributions from the Fund, and does the Bureau plan on taking steps to further clarify its selection criteria?

*Response*

In May 2013, the Consumer Financial Protection Bureau issued a regulation to provide transparency about how money in the Civil Penalty Fund would be used to compensate victims and the circumstances in which funds may be allocated for consumer education and financial literacy programs as provided for in Section 1017 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Bureau has also adopted a set of criteria for selecting consumer education and financial literacy programs to be funded by Civil Penalty Fund money. The criteria ensure that funds will be used for programs that will serve consumers and improve consumer education and financial literacy. These criteria are disclosed on the Bureau's website. The criteria require, among other things, that programs further the Bureau's mission and strategic goals; promote or enhance financial literacy and consumers' economic security; and include specific outcome targets to ensure the programs' effectiveness.

We have undertaken significant outreach to inform how we use money from the Civil Penalty Fund for financial education initiatives. These efforts included a public request for information (RFI), which generated 50 detailed responses from experts around the country; hosting a widely attended conference at the Bureau with vendors and financial education groups; and, in our study of financial coaching, interviewing over two dozen leaders at financial coaching organizations and visiting actual training sessions.

The Bureau has selected the first consumer education and financial literacy program that it will fund with Civil Penalty Fund money. The Bureau has issued a Request for Proposal to deploy a financial coaching program that will serve two groups of Americans: (1) recent veterans who are transitioning from servicemember to veteran life, as well as military widows and widowers, and (2) economically vulnerable consumers who want to improve their approach to money management.

One-on-one financial coaching will help veterans transition from military to civilian financial life, and help consumers who may be cash-strapped learn how to manage the money that they have more effectively to achieve their financial goals. Working with a financial coach can also help consumers identify and understand how to distinguish between useful financial products and frauds and scams, thus safeguarding against them becoming victims of frauds and scams in the future. The program for recent veterans and military spouse survivors is planned to have a presence in all fifty states. The component for economically vulnerable consumers, although smaller, will provide financial coaching services through locations that are diverse in terms of geographic location, and include those from urban and rural communities, and from different cultural, ethnic, racial, and other backgrounds.

The Bureau plans to use the federal procurement process for these programs and will post information about the process and contract requirements as Civil Penalty Fund money becomes available for consumer education and financial literacy programs.

11. Industry stakeholders have expressed concern with the timeliness of the CFPB's examination process. Specifically, they have noted it takes much longer for a CFPB exam to be closed out than those conducted by the prudential regulators. The CFPB has set a goal of closing out exams in 90-120 days. What is the average number of days for current CFPB examinations? When do you expect the 90-120 day goal to be achieved for all examinations, and will the Bureau adopt an official policy establishing timelines for formally closing out exams?

*Response*

The Consumer Financial Protection Bureau supervises both banks and nonbanks. At the outset of our supervision program, the Bureau made a purposeful decision to have a strong quality control function to ensure consistency in our examinations findings across the country and across banks and nonbanks. As a consequence, our supervision work balances this goal with the need to close out exams. This is particularly important with the exams that have found complex and novel issues that need to be analyzed carefully and consistently. The Bureau took an average of 140 days to close the examinations that completed onsite work in 2013 and for which an Exam Report or a Supervisory Letter has been mailed. The Bureau is continually reviewing and evaluating its examination report review process in order to reduce the time it takes to issue Exam Reports and Supervisory Letters. As the Bureau continues to stand up its supervision and examination operations, we will be in a better position to evaluate and establish examination process timelines and related policies and procedures.

12. News reports indicated that the CFPB's advisory committees have restricted access to the general public in attending or listening in on advisory committee meetings in violation of the Federal Advisory Committee Act (FACA). What is the CFPB doing to inform its advisory committees and related bodies to abide by FACA and what steps will the CFPB take to ensure compliance with FACA to allow meetings to be fully open to the public?

*Response*

As an entity within the Federal Reserve System, the Bureau is exempt from the FACA. *See* 5 U.S.C. App. II § 4(b)(2) ("nothing in [the Federal Advisory Committee] Act shall be construed to apply to any advisory committee established or utilized by -- . . . (2) the Federal Reserve System."). The Consumer Financial Protection Bureau believes that closing portions of the meetings of the advisory bodies allows for robust and candid dialogue between the Bureau and committee members who represent a broad range of persons affected by the Bureau's official actions. The Bureau is at the same time committed to ensuring that the public is aware of the work of the advisory bodies. The Bureau publishes agendas of the topics under consideration by its advisory groups, as well as summary minutes of their deliberations. A portion of each meeting of the Consumer Advisory Board is reserved for public observation and participation.

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**November 12, 2013**

**Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Senator Coburn:**

1. The Bipartisan Policy Committee (BPC) issued a report that recommended that all fines collected above the amount to redress consumer harm should be deposited into the US Treasury to pay down debt, just like other federal regulators such as the FTC. Can you justify CFPB's unique ability to retain excess penalties to augment the agencies' normal budget activities? Does the CFPB's $541 million annual operating budget not provide enough resources for financial literacy and consumer education activities? Do you agree with the Bipartisan Policy Committee recommendation to remit monies in excess of redressing consumer harm the US Treasury?

*Response*

Congress, in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), provided that funds remaining after fully compensating victims may be allocated to consumer education and financial literacy programs. The Consumer Financial Protection Bureau's focus is on carrying out the requirements under the Dodd-Frank Act, including the various decisions that Congress made regarding the Bureau's use and management of funds.

2. The Civil Penalty Fund has an unobligated balance of $57.6 million. How much of the unobligated balance does the CFPB plan to utilize for consumer education and financial literacy?

*Response*

Every six months, the Fund Administrator decides how much money, if any, to allocate for consumer education and financial literacy programs. The first priority will always be to allocate funds for payments to victims. However, if funds remain after allocating enough money to provide full compensation to all eligible victims who can practicably be paid, the Fund Administrator may allocate some or all of those remaining funds for consumer education and financial literacy programs.

On May 30, 2013, the Consumer Financial Protection Bureau made its first allocation from the Civil Penalty Fund. In accordance with the procedures established by the Civil Penalty Fund rule, the Civil Penalty Fund Administrator allocated $10,488,815 to be used to make payments to eligible classes of victims from the Payday Loan Debt Solution, Inc. and Gordon, *et al.* cases—enough to provide full compensation for all eligible victims' uncompensated harm. Of the $34,042,863 that remained available for allocation, the Bureau allocated $13,380,000 for consumer education and financial literacy programs. On November 29, 2013, the Bureau made its second allocation from the Civil Penalty Fund. The Fund Administrator allocated $2,557,231 to be used to make payments to eligible classes of victims from the American Debt Settlement Solutions and National Legal Help Center cases. No funds were allocated to consumer education and financial literacy programs. The Bureau will next allocate funds from the Civil Penalty Fund between April 1 and May 30, 2014.

The Bureau has selected the first consumer education and financial literacy program that it will fund with Civil Penalty Fund money. The Bureau has issued a Request for Proposal to deploy a financial coaching program that will serve two groups of Americans: (1) recent veterans who are transitioning from servicemember to veteran life, as well as military widows and widowers, and (2) economically vulnerable consumers who want to improve their approach to money management.

One-on-one financial coaching will help veterans transition from military to civilian financial life, and help consumers who may be cash-strapped learn how to manage the money that they have more effectively to achieve their financial goals. Working with a financial coach can also help consumers identify and understand how to distinguish between useful financial products and frauds and scams, thus safeguarding against them becoming victims of frauds and scams in the future. The program for recent veterans and military spouse survivors is planned to have a presence in all fifty states. The component for economically vulnerable consumers, although smaller, will provide financial coaching services through locations that are diverse in terms of geographic location, and include those from urban and rural communities, and from different cultural, ethnic, racial, and other backgrounds.

The Bureau plans to use the federal procurement process for these programs and will post information about the process and contract requirements as Civil Penalty Fund money becomes available for consumer education and financial literacy programs.

3. Please provide a copy of the original contract or task order for each contract valued over $1 million since FY2012.

*Response*

Included with this response are copies of contracts and/or task orders (excludes modifications) awarded from October 1, 2011, through December 15, 2013, where the contract or task order value is over $1 million.

4. Please provide the original sole source justification for each of the sole source awarded contracts since FY2012 from the contract file.

*Response*

Included with this response are copies of sole source justifications for sole source contracts (excludes modifications) awarded from October 1, 2011, through December 15, 2013. For sole source contracts authorized under specific statute or regulation, such as contracts with the Small Business Administration under the 8(a) program or contracts awarded to a required source (*e.g.*

Federal Prison Industries or AbilityOne nonprofit), sole source justifications are not required for these types of awards.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**November 12, 2013**

**<u>Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Senator Merkley:</u>**

1. While the CFPB's March 21, 2013 Auto Bulletin doesn't mandate flat fees from lenders to dealers for originating a loan, auto dealers in my state are concerned that this is the real consequence necessary to protect dealers from charges of discrimination.

   Moreover, dealers fear that such flat fees are not in the buyers' best interest. For example, flexible fees allow a dealer to "meet or beat" a competition's financing offer by cutting into their own fees.

   Now no one should be incentivized to push a borrower into a trick-or-trap loan that is designed to explode on him or her, but these loans don't do that – and correct me if I'm wrong. Rather, they simply give the auto dealer the ability to keep the consumer's business by negotiating the price and financing of the car within the structure of an otherwise plain vanilla auto loan.

   I would appreciate it if the CFPB could do two things. First, it would be helpful to have a study of discrimination in the auto marketplace to identify the real problem. Second, until such study can shed light on policy options, please ensure that the CFPB is not in practice mandating flat fees that could potentially hurt both dealers and customers.

   Finally, please explore options for addressing discrimination that maintain flexibility for an auto dealer to give the consumer the best rate possible.

*Response*

The Consumer Financial Protection Bureau's March 21, 2013, Indirect Auto Bulletin was published to offer guidance to indirect auto lenders about compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA).[6] The Auto Bulletin highlighted existing fair lending requirements of ECOA. The bulletin advises lenders that the Bureau will closely review the operations of indirect auto lenders' markup and compensation policies based upon the discretion those policies permit.

Flat fees are mentioned in the bulletin merely as one example of a non-discretionary compensation mechanism; the bulletin does not mandate flat fees or any other particular system of dealer compensation. It is our understanding that a number of indirect auto lenders currently compensate auto dealers using a variety of non-discretionary programs, and lenders may choose to adopt a variety of means, including alternative compensation policies, to address fair lending risk. As a general matter, however, the Bureau believes that the legitimate business needs of

[6] Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, Mar. 21, 2013 *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

creditors and fair lending are compatible, a judgment that Congress has enshrined in law by enacting ECOA and by charging the Bureau with its enforcement.

The Bureau's and Department of Justice's (DOJ) recently announced enforcement action against Ally Financial Inc. and Ally Bank demonstrates the type of fair lending risk identified in the Bureau's bulletin. In addition to requiring Ally to pay $98 million in damages and penalties to resolve these issues, the Bureau's and DOJ's coordinated orders require Ally to establish a new compliance framework. Specifically, Ally will monitor dealer markup in order to prevent or redress future discrimination or Ally can decide to eliminate dealer markups altogether. Within this framework, Ally will be able to exercise its business judgment about how best to achieve compliance with fair lending law.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**November 12, 2013**

__**Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Senator Moran:**__

1. At the hearing, and previously in the auto financing letter of October 30 signed by 22 Senators including myself, you were asked about the accuracy of the CFPB's proxy methodology used to support its March 21 guidance. At the hearing, you responded that your proxy methodology was time-honored and well-tested both in social science literature and by the Justice Department and your fellow regulators, was state of the art, and similar to that utilized by the Federal Reserve Board.

   While a proxy methodology may well be consistent with other data collection efforts within the federal government, it is still unclear to me the exact degree of accuracy produced by your methodology with regard to indirect auto lending. As of this date, you have not divulged the accuracy or inaccuracy, on a percentage basis, of the CFPB's proxy methodology at the hearing or in your response to the previously mentioned letter. Is the CFPB not currently aware of the degree of accuracy that this proxy method yields? If the CFPB does have information on the accuracy of the proxy method, why has that number not been shared with Congress as has been requested?

*Response*

To further inform interested parties, including industry and consumers, and to be responsive to inquiries from Congress, the Consumer Financial Protection Bureau has provided additional information about its proxy methods. As previously explained, the Bureau published its March 21, 2013 Indirect Auto Bulletin to offer guidance to indirect auto lenders about compliance with the existing fair lending requirements of the Equal Credit Opportunity Act. The Equal Credit Opportunity Act and Regulation B prohibit discrimination on the basis of various listed characteristics, such as race, national origin, or sex. To comply with these laws, lenders should ensure that their practices do not produce an unlawful disparate impact on these bases. Statistical evidence is an important tool for identifying disparate impact. However, vital demographic information, such as race, sex, and ethnicity, is usually not collected by non-mortgage lenders. Thus, federal agencies have long used proxy methods in assessing whether to take action regarding particular lending practices. Various proxy methodologies are publicly available and have been used for decades in a number of different Civil Rights contexts, including voting rights cases, Title VII cases, and constitutional challenges, including jury selection and equal protection matters. In addition, federal banking regulators have made clear that proxy methods may be used in fair lending exams to estimate protected characteristics where direct evidence of the protected characteristic is unavailable.[7]

[7] *See Interagency Fair Lending Examination Procedures,* at 12-13, *available at* http://www.ffiec.gov/PDF/fairlend.pdf (explaining that "[a] surrogate for a prohibited basis group may be used" in a comparative file review and providing examples of surname proxies for race/ethnicity and first name

In general, the proxy methodology used depends on the characteristic being proxied. For example, to proxy for gender, the Bureau relies on a first-name database from the Social Security Administration that reports counts of individuals by gender and birth year for first names occurring at least five times for a particular gender in a birth year.[8] The proxy method assigns a probability that a particular applicant is female based on the distribution of the population across gender categories (male or female) for the applicant's first name. There are a greater variety of methods to proxy for race and national origin. A common method for proxying the probability that an applicant is Hispanic or Asian is to use the surname database published by the Census Bureau.[9] Another method to proxy for race and national origin-typically referred to as "geocoding"-uses the demographics of the census geography (e.g., census tract or block group) in which an individual's residence is located, and assigns probabilities about the individual's race or national origin based on the demographics of that area. This method is frequently used to proxy the probability that an applicant is African American, and it can be used to proxy for other racial and ethnic groups as well.

Over the last decade, another method to proxy for race and national origin has been developed that integrates the surname and geographical approaches described above. This method was developed by health research economists,[10] and it combines the respective probabilities generated by the surname and geographical proxies. Published research has found that the integrated approach produces proxies that correlate highly with self-reported race and national origin data and is more accurate than using surname or geography alone.[11] The Bureau uses the integrated proxy as the primary method for proxying race and national origin in our non-mortgage analyses.

We are aware of proxy methods for race and national origin that use nonpublic information, such as proprietary databases developed in the private sector matching first or middle names to certain racial or ethnic groups. For the purpose of conducting our supervisory work, we have chosen to use proxy methods that rely solely on public data so that lenders can replicate our methods without the need to recreate or purchase proprietary databases as part of their own fair lending compliance management systems.

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proxies for sex); see also, http://www.philadephiafed.org/bank-resources/publications/consumer-compliance-outlook/2012/first-quarter/fair-lending-webiner.cfm.

[8] See http://www.ssa.gov/oactlbabynames/limits.html.

[9] http://www.census.gov/genealogy/www/data/2000surnames/index.html.

[10] Marc N. Elliott et al., *A New Method for Estimating Race/Ethnicity and Associated Disparities Where Administrative*

*Records Lack Self-Reported Race/Ethnicity*, HEALTH SERVICES RESEARCH 43:5, Part I (Oct. 2008).

[11] Marc N. Elliott et al., *Using the Census Bureau's Surname List to Improve Estimates of Race/Ethnicity and Associated Disparities*, HEALTH SERVICES & OUTCOMES RESEARCH METHODOLOGY (2009) 9:69-83.

As we noted above, proxy methods vary based on the characteristic being proxied (race, national origin, or gender), and there are several reasonable methods of proxying for each of these characteristics. Some methods, for example, use solely surname or geocoding. The Federal Reserve Board, which publicly released some of its proxy methods in July, uses a surname Census database to determine if a borrower is Hispanic and geocoding to determine majority minority census tracts.[12] Other methods, like the Bureau's, integrate the same sources of data into a single proxy for race and national origin. We have chosen the integrated method because we consider it appropriate and helpful in evaluating the large and complex portfolios of the auto lenders supervised by the Bureau. Similarly, we expect lenders to choose a proxy method that will support a compliance management system commensurate with their size, organizational complexity, and risk profile.

2. When asked if you have done a "specific analysis on the data collected to confirm" the accuracy of your proxy methodology you gave a few more general details and then cited "an ongoing investigatory effort where we're working with the Justice Department. So the order of the day on those things is confidentiality unless or until you get to the point of taking some sort of public action, and so I want to be a little careful about not breaching that." In my estimation, the March 21st guidance could very well be considered a public action, yet we have not seen any information from the CFPB as to how accurate the data was that led to the publication of that guidance. Will you explain how the March 21st guidance failed to meet the criteria of a public action and how the indirect auto financing industry can be expected to comply with this guidance if there is no information as to the impetus for the CFPB's action? How would simply revealing the accuracy of the CFPB's proxy methodology affect any ongoing Justice Department investigations?

*Response*

Please see response to question 1.

The Consumer Financial Protection Bureau published the Indirect Auto Bulletin to remind lenders of their responsibilities under ECOA and to offer guidance on how to address the identified risks to all indirect auto lenders within the jurisdiction of the Bureau. ECOA and Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.[13]

[12] http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2013/080613.pdf.
[13] 15 U.S.C. § 1691 *et seq.*; 12 C.F.R. pt. 1002 *et seq.*

The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity and in applicable cases instructs an agency to provide an opportunity for public comment before the agency issues a rule. The APA does not impose a notice and comment requirement for general statements of policy, non-binding informational guidelines, or interpretive memoranda. Accordingly, the Bureau was not required to solicit comments about the indirect auto compliance bulletin.

3. The March 21st guidance was issued without public comment or hearing. I have not been made aware of a consultation or any input from the Federal Reserve Board (FRB) or the Federal Trade Commission (FTC) beyond advising them immediately prior to the issuance of the bulletin. Would you please share with me the exact date you first contacted and conversed with the FRB and the FTC about the bulletin in question?

*Response*

The Consumer Financial Protection Bureau's March 21, 2013, Indirect Auto Bulletin was published to offer guidance to indirect auto lenders about compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA).[14] The Auto Bulletin did not represent a policy shift but instead highlighted the fair lending risk inherent in some indirect auto lenders' markup and compensation policies based upon the discretion those policies permit.

Recognizing the Federal Trade Commission's (FTC) shared responsibility in this area, the Bureau began a dialog with the FTC during the summer of 2011 regarding fair lending issues in the auto lending arena, including dealer markup. As part of this coordination, the Bureau participated in the FTC's Second Motor Vehicle Roundtable, which focused on military consumers, financial literacy, and fair lending and was held August 2-3, 2011, in San Antonio, Texas. In this manner, we shared resources with the FTC and gathered valuable public information and input on this topic. Likewise, Bureau personnel attended the Third FTC roundtable held in Washington, DC in December 2011. Since that time we have had an ongoing dialog about dealer markup in indirect auto lending with both the FTC and Federal Reserve Board (FRB). The Bureau more recently joined with the FRB in their August 6, 2013 Webinar, titled Indirect Auto Lending – Fair Lending Considerations.

We also regularly coordinate with the FTC on fair lending enforcement matters, including meeting with them on a bi-monthly basis.

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[14] Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, Mar. 21, 2013 *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

4. As you confirmed in your response to questions during the hearing, the CFPB is forbidden from exercising any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer. Did this provision of Dodd-Frank play any role in the CFPB's failure to allow for public comments prior to the March 21st issuance of the guidance? If the possibility of violating this provision of Dodd-Frank did play a role, why was a hearing or comment period open only to auto lenders not convened to discuss this proposal?

*Response*

The focus of the Indirect Auto Lending and Compliance with ECOA, CFPB Bulletin 2013-02, was on indirect lending activity, not auto dealers. ECOA and Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.[15]

The Consumer Financial Protection Bureau published the Indirect Auto Bulletin to remind lenders of their existing responsibilities under ECOA and to offer guidance on how to address the identified risks to indirect auto lenders. The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity and in applicable cases instructs an agency to provide an opportunity for public comment before the agency issues a rule. The APA does not impose a notice and comment requirement for general statements of policy, non-binding informational guidelines, or interpretive memoranda. Accordingly, the Bureau was not required to solicit comments about the indirect auto compliance bulletin.

[15] 15 U.S.C. § 1691 *et seq.*; 12 C.F.R. pt. 1002 *et seq.*

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**November 12, 2013**

**Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Senator Reed:**

1. Recently, I have heard from Rhode Island constituents who have concerns about meeting the January 2014 date when the Bureau's mortgage rules, both underwriting and servicing, will be in effect. I appreciate that you have said that your "oversight of the new mortgage rules in the early months will be sensitive to the progress made by those lenders and servicers who have been squarely focused on making good-faith efforts to come into substantial compliance on time – a point that we have also been discussing with our fellow regulators." What constitutes good-faith effort and substantial compliance? What benchmarks will be used to determine whether a good-faith effort has been made and whether substantial compliance has been achieved?

*Response*

As I testified, oversight of the new mortgage rules in the early months will be sensitive to the progress made by those lenders and servicers who have been squarely focused on making good-faith efforts to come into substantial compliance on time – a point that the Consumer Financial Protection Bureau has also been discussing with our fellow regulators.

Some of the benchmarks we will look for in whether there was a good faith effort to comply with the Ability-to-Repay rule include many of the same fundamentals we look for in Compliance Management System systems planning. In our reviews of new rule compliance, we will be looking for progress in these areas: Board or management involvement; development of policies and procedures; development of training, support systems, and testing; and plans to monitor and audit once in effect. It is important to note that lenders do not have to make only qualified mortgages. Making a qualified mortgage is one way to comply with the Ability-to-Repay rule. If a lender makes a qualified mortgage, the lender is presumed to have complied with the Ability-to-Repay rule. When a lender makes a loan that does not fit the definition of a qualified mortgage the lender must still comply with federal law, including the Ability-to-Repay rule.

In addition, the Bureau has embarked on an implementation plan to prepare mortgage businesses for the new rules. To that end, we published plain-language compliance guides that will be updated as necessary. The Bureau launched a series of videos explaining our rules and worked closely with the other financial regulators to develop examination guidelines that reflect a common understanding of what the rules do and do not require, which were published well in advance of the effective date. The Bureau intends these efforts to be especially helpful to smaller institutions where compliance weighs more heavily on fewer employees.

**The Consumer Financial Protection Bureau's Semi-Annual Report to Congress**
**November 12, 2013**

**Questions for the Honorable Richard Cordray, Director of Consumer Financial Protection Bureau from Senator Toomey:**

1. In a recent amicus brief, the Bureau stated that it was not "tak[ing] a position about the proper analysis that the Court should engage in to determine how to interpret and apply state law" to tribal lenders. Does existing Federal law bar a Federally recognized sovereign tribe from extending a loan to a consumer at a rate exceeding the rate that would be permitted by the law of the jurisdiction in which the consumer resides?

*Response*

All lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair, transparent and competitive market. The marketplace in which payday lenders operate is increasingly diverse, and the Consumer Financial Protection Bureau is committed to ensuring that consumers receive the full protection of Federal consumer financial law—whether they obtain a loan online or from a storefront.

The Bureau has jurisdiction over a broad array of companies, including online lenders, loan servicers, and debt collectors. We will bring enforcement actions when we determine it is appropriate to do so. Recently the Bureau brought its first online lending lawsuit, in a significant step in the Bureau's efforts to address regulatory-evasion schemes that are increasingly becoming a feature of the online small-dollar and payday lending industry. In filing that suit, the Bureau has worked closely and collaboratively with state attorneys general and banking regulators.[16]

2. The Bureau's Advance Notice of Proposed Rulemaking for debt collection practices focuses a great deal on the information debt buyers obtain when they purchase charged-off consumer obligations from original creditors and seeks significant input on whether debt collectors should be further restricted in how they communicate with consumers. How will you ensure that these new regulations do not prevent responsible debt collectors from operating in this new regulatory environment?

*Response*

The Consumer Financial Protection Bureau is committed to ensuring that any rules it develops protect consumers without imposing unnecessary or undue burdens on responsible debt collectors. The Bureau currently is at the initial stage of its assessment of potential debt collection regulations, with its Advance Notice of Proposed Rulemaking (ANPR) seeking public

[16] *Consumer Financial Protection Bureau v. CashCall, Inc., WS Funding, LLC, Delbert Services Corporation, and J. Paul Reddam* (2013), *available at* http://files.consumerfinance.gov/f/201312_cfpb_complaint_cashcall.pdf

comment on a broad range of possible ideas for debt collection rules. The ANPR the Bureau published expressly requests comments concerning the advantages and disadvantages of these ideas. If the Bureau decides to publish a Notice of Proposed Rulemaking (NPR), it would likely convene a Small Business Regulatory Flexibility Act review panel to get input from small businesses as to the effects of a possible rule's requirements and restrictions on them. Within 60 days of the meeting of this panel, the Bureau would issue a report describing the information presented and its responses to that information. Finally, if the Bureau publishes an NPR with the text of a proposed rule and a discussion of its provisions, it would solicit public comments on the costs and benefits of its proposed requirements and restrictions. In short, the process that the Bureau would use to develop debt collection rules would provide the debt collection industry with ample opportunity to submit information concerning the costs and benefits of various regulatory ideas and requirements, thereby assisting the agency in creating rules that protect consumers without imposing unnecessary or undue burdens on responsible debt collectors.

3. Do you believe that it is the Bureau's responsibility to promote additional state regulation? Please describe all contacts by Bureau officials with state regulators and state legislative officials on issues related to the debt buyer and debt collection industry. Please include specific state legislative initiatives and proposed legislation that the Bureau supports.

*Response:*

Many state and local governments license debt collectors and regulate their activities. Recently, a number of states and local governments have changed or are considering changing their statutes, regulations, and rules applicable to debt collection litigation. Most of these changes focus on rules of court procedure and evidence. These are areas that states have traditionally regulated.

The Consumer Financial Protection Bureau regularly and routinely informs state regulators and officials about the Bureau's work, and consults and coordinates with them, as is expressly authorized and, in many cases, required by Congress, most notably throughout the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, subject to applicable limitations and safeguards.[17]

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[17] *See, e.g.*, Dodd-Frank Act sections 1013(b)(3)(D) ("the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies"); 1013(c)(2)(B) ("coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators"); 1013(e)(1)(C) ("coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families"); 1013(g)(3)(E) ("coordinate consumer protection efforts of seniors with other Federal agencies and State regulators"); 1015 ("The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators"); 1022(c)(6)(C) (providing access to Bureau examination reports for "a prudential regulator, a State regulator, or any other Federal agency having jurisdiction"); 1022(c)(7)(C) ("the Bureau shall consult with State agencies"); 1024(b)(3) and 1025(b)(2) ("the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by

Indeed, in its recent ANPR on debt collection, the Bureau recognized this state role in explaining that it was interested in receiving comments concerning "how proposed rules could protect consumers in debt collection litigation without adversely affecting the traditional role of the States in overseeing the administration and operation of their court systems and without imposing undue or unnecessary costs on the debt collection process."[18] The Bureau also developed a set of draft court rules on debt collection litigation, drawn directly from provisions already adopted by various states, and provided technical assistance on them to state regulators and officials who requested it.

On June 6, the Bureau and the Federal Trade Commission jointly hosted a roundtable entitled "Life of a Debt: Data Integrity in Debt Collection."[19] The roundtable included representatives from industry, consumer advocacy groups, and state and federal officials. In addition, the Bureau's Office of Supervision, Enforcement, and Fair Lending interact regularly with their state counterparts on confidential supervisory or enforcement matters related to the debt collection industry. When requested, the Bureau has provided technical assistance, including copies of draft court rules derived from current state laws and court rules, to state regulators and officials that have jurisdiction over debt collectors' activities and have or are considering changing their statutes, regulations, and rules applicable to debt collection litigation.

4. Under the Ability-to-Repay rule scheduled to go into effect on January 10, 2014, one way a mortgage loan can meet the requirements necessary to be classified as a "qualified mortgage" is for the loan to be eligible for purchase by Fannie Mae or Freddie Mac. As I understand it, both of the GSEs require loans to be underwritten using a specific credit score, despite the fact that there are other newer competing scores in the marketplace. Consumers and investors could be better served if the GSEs fostered a competitive credit scoring marketplace and that competition led to more predictive scores. What are your thoughts on allowing a more competitive credit scoring market for loans intended to be sold to the GSEs?

*Response*

The Federal Housing Finance Agency (FHFA) and the government-sponsored enterprises (GSEs) make decisions about the types of credit scores that the GSEs will accept. In making these determinations, the agencies evaluate the predictiveness of different scoring models and the

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prudential regulators and the State bank regulatory authorities"); 1025(e)(2) ("The Bureau shall pursue arrangements and agreements with State bank supervisors"); 1042(b)(1) ("a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau"); and 1042(c) ("The Bureau shall…provide guidance in order to further coordinate actions with the State attorneys general and other regulators").

[18] Bureau of Consumer Financial Protection, "Debt Collection (Regulation F); Advance Notice of Proposed Rulemaking, 78 Fed. Reg. 67848, 67877 (Nov. 12, 2013).

[19] http://www.consumerfinance.gov/newsroom/steve-antonakes-remarks-at-life-of-a-debt-data-integrity-in-debt-collection/

relative merits of allowing multiple scores. While one might expect allowing lenders to use multiple credit scores would promote a more competitive and dynamic marketplace for credit scoring, other considerations such as the potential for adverse selection if lenders are allowed to choose among multiple scores are important considerations that need to be taken into account when determining which or how many scores to allow. The FHFA and GSEs are better positioned to answer questions about these tradeoffs, particularly given their more comprehensive access to a historical record of mortgage borrower characteristics, loan performance, and credit scores.

It is also worth noting that utilizing GSE eligibility in order to obtain qualified mortgage status for a mortgage loan is a temporary provision (expiring at the earlier of 7 years after the rule's effective date of January 10, 2014, or when the GSEs are no longer under the conservatorship of FHFA) and is also only one option for obtaining eligibility. Under our permanent "general definition" of qualified mortgage, credit score is not a factor at all in determining qualified mortgage status.

**"The Semi-Annual Report of the Consumer Financial Protection Bureau"**
**House Committee on Financial Services Hearing**
**January 28, 2014**

**<u>Questions for the Record Submitted by Chairman Jeb Hensarling:</u>**

**Hensarling 1:**
Director Cordray, page 39 of the Bureau's Financial Report for Fiscal Year 2013, released December 16, 2013, disclosed that the Bureau has entered into an "interagency agreement between the General Services Administration…to provide for services related to the planned renovation of CFPB's Headquarters office space located in Washington, D.C." Additionally, on December 19, 2013, the Bureau released its "CFO update report for the fourth quarter of fiscal year 2013," the first page of which disclosed that Bureau obligations made during the fourth quarter included:

> "$145.1 million to the General Services Administration to provide for a range of services related to the renovation of CFPB's headquarters building. In addition to the actual renovation of both the interior and exterior of the building, services also include project management, contract management, environmental management, construction oversight and administration, and other technical services."

a. Please produce a copy of the interagency agreement that the Bureau has entered into with the GSA regarding the Bureau's planned renovation. Please produce copies of all renovation-related documents the Bureau has filed with the National Capital Planning Commission and U.S. Commission on Fine Arts.

*Response:*

Attached are the following documents:

- "CFA Concept Submission," January 2, 2014,
- "NCPC Project Plans Preliminary Submission," January 3, 2014,
- "NCPC Project Plans Preliminary Submission, Part E: Appendix, Revised," January 3, 2014,
- Memorandum of Understanding between the Consumer Financial Protection Bureau and U.S. General Services Administration National Capital Region, October 18, 2013, and
- Reimbursable Work Authorization No. N0800763, September 24, 2013.

b. When do you plan to file the Bureau's final plans with the National Capital Planning Commission?

*Response:*

The final design documents will be filed with the National Capital Planning Commission upon completion of the Design/Build-Bridging general contractor's creation of the final construction documents. At this time, we expect this to occur in early 2015.

**Hensarling 2:**
The Occupancy Agreement between the Office of the Comptroller of the Currency (OCC) and the Bureau was signed on February 17, 2012, the month following your recess appointment as Director of the Bureau, which occurred on January 4, 2012. Yet in your testimony, you stated "That was an agreement signed before I became director." Were you mistaken about the date upon which the Occupancy Agreement was signed, or were you indicating that the circumstances of your recess appointment did not yet endow you with the legal authority to act as the Director of the Bureau?

*Response:*

As a point of clarification, I took the question asked to refer to the interim agreement with the OCC to occupy the 1700 G Street, NW building. That Interagency Agreement was signed on July 21, 2011, before I became Director of the Consumer Financial Protection Bureau (Bureau), and represented our first commitment to this building. The current Occupancy Agreement with the OCC was signed on February 17, 2012, after my appointment as Director of the Bureau on January 4 of the same year.

**Hensarling 3:**
The Occupancy Agreement between the OCC and the Bureau provides that "The CFPB will be responsible for the cost of any improvements it may make to the Premises" and "The CFPB bears the responsibility for the cost of operation, maintenance, repair of the space as well as the capital improvement cost of replacement of all base building structures and systems necessary to keep the building structures and systems in good maintenance and repair." Why would you agree to these contract terms for a building the Bureau does not own?

*Response:*

The Consumer Financial Protection Bureau (Bureau) reviewed two outside reports in connection with this Occupancy Agreement. The first was a valuation by Ernst & Young for the Office of the Comptroller of the Currency entitled, "Office of the Comptroller of the Currency: 1700 G Street NW as of 1 February 2011 Valuation for internal-decision making purposes." This document estimated a lease rate for the building in as-is condition with no improvements paid for by the owner, of \$29.75 to \$38.00 per square foot. The second report, by Gensler for the Office of Thrift Supervision (OTS) in 2010, compared three renovation scenarios estimated at \$67 million, \$86 million, and \$107 million respectively. Based on these independent reports, the terms of the Occupancy Agreement contemplated the condition of the building as well as the estimated cost to renovate the building.

**Hensarling 4:**
In your testimony, you described your headquarters building as a "tough building," a "deteriorated building" and a "classic white elephant" that "must have been used pretty heavily." You further stated that "If I were a consumer I would be complaining a lot about the building if I owned it."

a. Did you have any inspection or appraisal reports or other information available to you at the time you committed the Bureau to its long-term Occupancy Agreement with the OCC that would have given you an indication of the condition of the building? If so, please produce dated copies of any such documents.
b. If not, why did you not conduct due diligence on the condition of the building before committing the Bureau to an investment of over $250 million in total annual rent payments over the Occupancy Agreement's 20-year term?

*Response:*

See response to Question 3. Attached are the following documents:

- Gensler, et al. Report, "Office of Thrift Supervision Building Evaluation," June 2010,
- Gensler, et al. Report, "Office of Thrift Supervision Building Evaluation Final Report," June 2010, and
- Ernst & Young, "Office of the Comptroller of the Currency: 1700 G Street NW as of 1 February 2011 Valuation for internal-decision making purposes."

**Hensarling 5:**
Regarding the Bureau's Occupancy Agreement with the OCC:

a. Which specific Bureau employees were responsible for negotiating and approving the Bureau's Occupancy Agreement with the OCC?

*Response:*

The negotiation of the Occupancy Agreement with the OCC was led by then-Chief Operating Officer Catherine West, with the support of staff from across the Consumer Financial Protection Bureau and the Department of the Treasury.

b. Does the buck stop with you or were other Treasury or Bureau employees also responsible for committing the Bureau to this Occupancy Agreement?

*Response:*

As the Director of the Consumer Financial Protection Bureau (Bureau), I am responsible for final Bureau agreements.

**Hensarling 6:**
According to an audit report released by the Treasury Department's Office of the Inspector General on December 20, 2013, the OCC engaged a private consulting firm in 2011 to perform a study to value the building at 1700 G Street, NW for sale and rental purposes. The Treasury IG report further states that:

> "The study valued the building at approximately $153.7 million. At the time of the study, OCC knew that CFPB was willing to occupy the entire building under triple-net rent terms, which requires the lessee to pay for net real estate taxes on the leased asset, net building insurance, and net common area maintenance. The results of the study found that the net present value of renting the property under a triple net rent contract for 10 years slightly exceeded the net present value of selling the building."

This IG report would seem to indicate that the Bureau's willingness to enter into lease terms favorable to the OCC induced the OCC to rent the building to the Bureau rather than sell it to another party. Do you agree or disagree with the Treasury IG's characterization of these events?

*Response:*

The Consumer Financial Protection Bureau has not drawn any inferences from the Treasury Department's Inspector General's report and takes the factual statements in the report at face value.

**Hensarling 7:**
The study referenced in the Treasury IG report was conducted by Ernst & Young and completed on February 4, 2011.

a. Which individual served as the leader or acting Director of the Bureau on this date?

*Response:*

On February 4, 2011, Elizabeth Warren was the Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau.

b. Which Bureau or Treasury employee(s) negotiated or communicated with the OCC on behalf of the Bureau regarding lease terms during this time period?

*Response:*

The negotiation of the Occupancy Agreement with the OCC was led by then-Chief Operating Officer Catherine West, with the support of staff from across the Bureau and the Department of the Treasury.

**Hensarling 8:**
In your testimony regarding the Bureau's decision to lease the OCC building at 1700 G Street, NW, you indicated that "we worked with GSA to try to understand what space was available in Washington, D.C., and there's very limited space for an agency with over a thousand employees." You also stated that "we looked around at surrounding areas as well." Please provide this Committee with copies of all documents prepared by the Bureau, the General Services Administration or any private contractor or consultant prior to February 17, 2012 that reference or evaluate the Bureau's commercial real estate lease or purchase opportunities.

*Response:*

As a point of clarification, in my testimony, which you reference, I was discussing the Consumer Financial Protection Bureau's (Bureau) search for space to occupy during the renovations of the building at 1700 G Street NW.

In regards to the documents requested, the Bureau has not, to date, found documents that can be responsive to this request.

**Hensarling 9:**
In your testimony regarding the Bureau's planned renovation of the OCC building at 1700 G Street, NW, you indicated that "We're going to have to vacate the building while this is going on."

a. When will the Bureau relocate its first employee from the headquarters building?

*Response:*

At this time, we anticipate that the first group of employees will move from the Consumer Financial Protection Bureau (Bureau) headquarters building at 1700 G Street NW, in May 2014.

b. How many total employees will be reassigned to another office location while the building at 1700 G Street NW is under renovation?

*Response:*

Approximately 950 employees and contractors will move into temporary space.

c. Will all impacted employees be reassigned to a new location on a rolling basis or all at once?

*Response:*

Employees will move on a rolling basis in waves of approximately 180-250, depending on the size of each work group.

d. How long will CFPB employees currently working at 1700 G Street, NW be reassigned to a temporary location?

*Response:*

At this time, we anticipate that employees will remain at the temporary space until the summer of 2017.

e. What will be the total costs of vacating the building and renting an alternate facility?

*Response:*

Based on the draft version of the Occupancy Agreement for 1275 First Street NE, the cost of renting temporary space in the first year was estimated at $31.73 per square foot, which includes base rent, operating expenses, real estate taxes, and the Public Building Service (PBS) fee. The Bureau recently awarded a contract to a company to provide moving and storage services for an amount just under $400,000.

f. What alternate office location has been selected for vacated employees?

*Response:*

The Bureau will be using a vacant building under lease to the General Service Administration (GSA). It is located at 1275 First Street, NE.

g. When was the contract for an alternate office location signed?

*Response:*

A draft version of the Occupancy Agreement was executed on March 8, 2013. The final version has not been signed.

h. Please provide us with a copy of these lease agreement.

*Response:*

Attached is the draft version of the Occupancy Agreement dated March 8, 2013. The final version has not been signed.

i. How many square feet of office space will be occupied by the Bureau and at what cost?

*Response:*

During the renovation, the Bureau will occupy approximately 306,000 rentable square feet at 1275 First Street NE. Based on the draft version of the Occupancy Agreement for 1275 First Street NE, the cost for this space in the first year was estimated at $31.73 per square foot, which includes base rent, operating expenses, real estate taxes, and the Public Building Service (PBS) fee. The Bureau will also retain approximately 72,000 rentable square feet in 1625 Eye Street at a cost of $40.56 per square foot through March 31, 2014, increasing to $42.18 per square foot on April 1, 2014.

j. Please provide this Committee with all relevant details and documents substantiating your responses to these questions.

*Response:*

In response to Questions 9(a), 9(b), 9(c), and 9(d), the Bureau's relocation timeline is attached. Regarding Question 9(e), the Bureau recently awarded a contract to a company to provide moving and storage services for an amount just under $400,000, and that contract is attached. And responses to Questions 9(f), 9(g), and 9(i) contain information that can be found in the draft version of the Occupancy Agreement dated March 8, 2013, provided in response to Question 9(h).

**Hensarling 10:**
Please provide this Committee with copies of the Bureau's contract(s), including all amendments, with the architecture firm Skidmore, Owings & Merrill LLP.

*Response:*

Attached are the following contracts:

- CFP-12-D-00011 MOD 001
- CFP-12-D-00011 SOM Task Order 0003 Mod 3
- CFP-12-D-00011 Task Order 0001 Mod 1
- CFP-12-D-00011 Task Order 0001 Mod 2
- CFP-12-D-00011 Task Order 0001 Mod 3
- CFP-12-D-00011 Task Order 0001 Mod 4
- CFP-12-D-00011 Task Order 0003 Mod 001
- CFP-12-D-00011 Task Order 0003 Mod 002
- CFP-12-D-00011 TO 002 MOD 001
- CFP-12-D-00011 TO 002 MOD 002
- CFP-12-D-00011, TO 003 MOD 004
- Task Order 0001 SOM
- SOM IDIQ

- Task Order 0002
- Task Order 0003

**Hensarling 11:**
Please provide this Committee with copies of any documents, including but not limited to any architectural or design plans, renderings, illustrations, electronic files and e-mail communications, provided to the Bureau by Skidmore, Owings & Merrill concerning the renovation 1700 G Street, NW.

*Response:*

Attached are the following architectural and design documents representative of the Bureau's current plans concerning the renovation of 1700 G Street NW:

- "Bridging Documents, 80% Progress Submission"
- "Bridging Documents, Design Objectives & Criteria, 80% Progress Submission," February 28, 2014
- "Bridging Documents, Drawing List & Specifications, 80% Progress Submission," February 28, 2014

We are in the process of trying to identify any communications that might be responsive to this request.

**Hensarling 12:**
Regarding the Bureau's planned renovations:

a. When does the Bureau expect to award a design build contract to renovate 1700 Street, NW?

*Response:*

The Consumer Financial Protection Bureau is using the General Services Administration (GSA) to procure the Design/Build-Bridging general contractor. At this time, the GSA estimates that the final award will be issued in September 2014.

b. What procurement process will be used?

*Response:*

The selection procedures will utilize the Best Value Tradeoff process in accordance with the Federal Acquisition Regulation (FAR) Part 15 and the Two-Phase Design/Build-Bridging Procedures in FAR Part 36.3. Stage I, Request for Qualifications (RFQ), shall result in a short list of offerors who will be invited to participate in Stage II of the procurement. Stage II, Request for Proposals (RFP), shall result in the selection of the Design/Build-Bridging contractor whose offer provides the best value to the Government.

c. When will construction commence?

*Response:*

The construction will begin after the final award is issued.

**Hensarling 13:**
During your testimony before the Committee on September 12, 2013, Rep. Rothfus asked you about salary levels for Bureau employees, and you responded by stating:

> "Again, the federal banking agencies are on a different pay scale than the GS scale. One of the things I want to note that's very important here – our statute requires us, it requires us – this is the law of the land that we're bound to follow – that we are to have a pay scale comparable to that of the Federal Reserve. Last I checked on our statistics, we're one percent lower average salary than the Federal Reserve. So we're complying with the law."

a. So that the Committee may properly compare the Bureau's compensation structure with that of the Board of Governors of the Federal Reserve System, please provide a copy of the Bureau's salary structure, including all pay classes, grades, steps, and locality adjustments.

*Response:*

Attached is a document containing 2013 Consumer Financial Protection Bureau Pay Tables.

b. Additionally, please provide a Microsoft Excel file containing Bureau employee salary data, organized by the following column headings:

- Employee, Fellow, Intern Name,
- Title,
- Pay Class,
- Pay Grade,
- Division,
- Office,
- Hire Date,
- Starting Salary or Hourly Wage at Hire Date,
- Amount of any Signing Bonus Awarded,
- Amount of any Relocation Incentive Awarded,
- Amount of any additional financial incentive awarded,
- Date(s) of any Raises(s) Awarded
- Amount(s) of any Raise(s) Awarded
- Date of Promotion (if applicable),
- New Title after Promotion (if applicable),

- New Salary or Hourly Wage after Promotion (if applicable),
- Current Annual Salary or Hourly Wage,
- Departure Date (if applicable),
- Annual Salary or Hourly Wage at Departure Date (if applicable),
- Annual Bonus awarded in 2011 (indicate calendar or fiscal year),
- Annual Bonus awarded in 2012, and
- Annual Bonus awarded in 2013.

*Response:*

Attached is an updated version of an Excel file that we have previously shared with your office in response to past requests for salary data on Consumer Financial Protection Bureau employees.

**Hensarling 14:**
The Bureau's contract service inventory list for FY 2013 shows that the Bureau paid Harvard University for two different programs held in Cambridge, Massachusetts: $37,500 for a "Harvard Law School Executive/Legal Education Program" and $69,000 for "registration fees for Bureau staff members to attend senior executive seminar(s)."

a. Please produce copies of all records associated with these programs, including but not limited to any pre-solicitation requests for quotes, the quotes submitted to the Bureau by Harvard, any contracts signed between Harvard and the Bureau, any travel, lodging, and meal vouchers associated with any Bureau employee, a complete list of every Bureau employee who attended either of these programs, and any materials provided to program participants.

*Response:*

These courses are off-the-shelf (OTS) programs, and are commercially available for open enrollment by employees of Federal Government agencies, private-sector companies, and non-profit entities. They constitute an expense, however not a traditionally contracted pursuit such as custom products or services to the Government, as they are OTS.

For these OTS commitments, no actual contracts exist between Harvard Law School and the Consumer Financial Protection Bureau (Bureau), except for a single transaction of $12,500. The original planned $37,500 was reduced to the single amount above. Similarly, no actual contracts exist between Harvard Kennedy School of Government (HKSG) and the Bureau, except for a Purchase Order which indicated that the Bureau budgeted funding to support "up to $69,000" if Bureau executives and/or senior managers committed to these external courses. The actual program expense consisted of three transactions of $6,900 each in 2013 (with one of those participants attending in 2014), and two more transactions at this level to date in 2014. Market research conducted by the Bureau's Office of Human Capital determined that, as compared to like offerings, these courses for executives and senior managers were competitively priced.

The following Bureau staff attended, or will be attending, external courses:

- Meredith Fuchs: Attended "Leadership in Corporate Counsel," 2013
- Edwin Chow: Attended "Strategic Management of Regulatory Enforcement Agencies," 2013
- Paul Sanford: Attended "Strategic Management of Regulatory Enforcement Agencies," 2013
- Abeshek Agarwal: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014
- Chris D'Angelo: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014
- Scott Pluta: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014

Attached are travel, lodging, and meal vouchers, where applicable, as well as course outlines, for the "Leadership in Corporate Counsel" and "Strategic Management of Regulatory Enforcement Agencies" programs, which include reading assignments for participants.

b. Why were these programs not mentioned in the Bureau's December 2013 report on "Growing our Human Capital," even though the report listed fifteen other "training and workforce development initiatives" instituted by the Bureau in 2013?

*Response:*

These programs were included in the December 2013 report, just not specifically referenced as off-the-shelf suppliers. We also did not list by course or curricula name all of the internal development and training programs that we are currently building, which are referenced in the report ("...design, development, and production of customized programs...").

Relatedly, the following sections in the report refer to training and development investments:

"Section 3.2: Key Accomplishments" includes reference to:
"Offering increased quantity and scope of learning programs for employees and leaders."[1]

Also, "Section 3.3: Future Action Items" includes reference to:
"Procurement of off-the-shelf programs, supplemented by the design, development, and production of customized programs, incorporating online references and resources (all as appropriate)."[2]

c. Why did you select Harvard to provide this program?

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[1] Growing our Human Capital: Human Capital Annual Report to Congress, Consumer Financial Protection Bureau, Jan. 13, 2014, p 16, *available at* http://files.consumerfinance.gov/f/201312_report_annual-human-capital-report-to-congress.pdf
[2] *Id.* at 20.

*Response:*

The selected programs met the specific needs and aims of the Consumer Financial Protection Bureau leaders' roles and development goals. The Harvard Law course, "Leadership in Corporate Counsel," was taken by our General Counsel, and balances legal content and strategic leadership topics, both of which constitute critical content for her role. The Harvard Kennedy School of Government course, "Strategic Management of Regulatory Enforcement Agencies," focuses specifically on management challenges within regulatory agencies and among government leaders in building a cohesive organization with diverse functional responsibilities and risks.

d. There are many nationally-recognized Universities in the greater DC area with similar capabilities, the selection of which would have minimized travel expenses. Did you not consider these universities to provide the programs for your senior employees? Why was it necessary to send your senior employees to Cambridge, MA to receive this training?

*Response:*

While there are strong, nationally-recognized universities in the Washington D.C. area, these courses were selected to address specific leadership development areas, which were not covered in the same way by programs found in the area. These courses met the needs of our General Counsel and Bureau leaders focusing on supervisory and enforcement activities at that time. The Harvard Kennedy School of Government, in particular, offers a blend of strategic leadership, public-sector focus, and the specificity of regulatory and enforcement topic areas, which were not found to be fully combined in other programs' courses. Additionally, these courses were concentrated residential programs over just a few days, as compared to other programs that take place over several weeks, which even if local can require a significant time commitment. Lastly, the fees included in these courses include course materials, accommodations, and meals; therefore incremental travel expenses were expected to be minimal.

e. Why was this seminar not held at the Bureau's headquarters instead of in Cambridge, MA?

*Response:*

These courses are considered off-the-shelf and commercially available to all government leaders. More critically, the interactions between leaders in the program from a variety of regulatory agencies are a key component of the case method learning model employed by the Harvard Kennedy School of Government. This learning model exposes participants to the different perspectives of leaders from agencies other than the Bureau. As there were only a couple of Bureau attendees planned for 2013 and 2014 to date, hosting a seminar for the small number of Bureau leaders at headquarters would not facilitate a similarly full and diverse class discussion.

f. How much money would have been saved if the Bureau had hosted this program rather than sending its employees to Harvard?

*Response:*

While we did not request that Harvard provide us with a supplier quote for a custom, on-site, development course, we understood that if the senior leaders engaged in the course found it valuable there would be future opportunities to evaluate more widespread training opportunities on-site in Washington, D.C.

**Hensarling 15:**
On May 28, 2013, the CPFB published a pre-solicitation notice to solicit quotes for "various Senior/Executive Manager workshops similar to the Harvard Kennedy School of Government programs."

a. Was this the pre-solicitation notice that resulted in the awards and programs referenced in question 14 above?

*Response:*

This pre-solicitation notice referred to the two Harvard Kennedy School of Government (HKSG) programs that the Human Capital team considered for executive education opportunities.

b. How many quotes did the Bureau receive?

*Response:*

Research of commercial pricing was conducted prior to the purchase order award, which included a comparison of executive education course programs from known providers. This was to ensure fair value would ultimately be obtained for the educational services provided. HKSG, once determined as offering best value, received a purchase order from the Consumer Financial Protection Bureau in order to provide the executive education on an as-needed basis at set pricing, up to a financial ceiling of $69,600. A formal quote was not received, as commercial off-the-shelf pricing and course descriptions were publically available from all firms considered.

c. With a pre-solicitation notice phrased in this way, it would appear that the Bureau's selection of Harvard's quotes was a foregone conclusion, was it not?

*Response:*

The Bureau would have selected a comparable, lower-priced option if one had been available. As noted above, a research comparison revealed that HKSG was the best-valued option when compared to similar offerings by other universities. Additionally, the pre-solicitation notice was posted with the intent to solicit additional vendors regarding their interest in providing executive education similar to HKSG.

**Hensarling 16:**
The Bureau's contract service inventory lists for FY 2012 and FY 2013 list a number of contracts the Bureau has awarded to companies for "paid search marketing services." Please produce copies of any such contracts, including but not limited to the contracts associated with the following awards.

- $122,513 paid to Fleishman-Hillard, Inc. on 3/16/2012;
- $94,692 paid to PCG Enterprises on 6/8/2012;
- $237, 300 paid to Digital Firefly Marketing on 8/21/2012; and
- $280,637 paid to Fleishman-Hillard, Inc. on 6/14/2013.

*Response:*

Attached are the following contracts, respectively:

- CFP-12-K-00007
- CFP-12-C-0005
- CFP-12-C-00003
- CFP-13-K-00021

**Hensarling 17:**
The Bureau's contract service inventory lists for FY 2012 and FY 2013 list a number of contracts the Bureau has awarded to a company named IDEO, LLC for "branding services." Please produce copies of any contracts awarded to any company for "branding services," including copies of all contracts awarded to IDEO, LLC.

*Response:*

Attached are the following contracts:

- TPDCFPBPA110006, Order 0001
- TPDCFPBPA110006, Order 0002
- TPDCFPBPA110006, Order 0003
- TPDCFPBPA110006, Order 0004
- TPDCFPBPA110006, Order 0005
- TPDCFPBPA110006
- CFP-14-Z-00001, Order 0001
- CFP-14-Z-00001

Please note that the awards of CFP-14-Z-00001, Order 0001 (Blanket Purchasing Agreement) and CFP-14-Z-00001 (underlying task order) were made to IDEO, LLC, but are not for branding services. They are for assisting the Consumer Financial Protection Bureau in implementing statutory requirements related to developing and implementing initiatives intended to educate and empower consumers to make better informed decisions; and responding to consumer complaints regarding consumer financial products or services.

**Hensarling 18:**
Please produce copies of any contracts awarded to GMMB, Inc., the Corporation for Enterprise Development, and the National Consumer Law Center.

*Response:*

Attached are the following contracts awarded to GMMB, Inc.:

- CFP-13-Z-00006, Order 0001
- CFP-13-Z-00006, Order 0002
- CFP-13-Z-00006, Order 0003
- CFP-13-Z-00006, Order 0004
- CFP-13-Z-00006

Attached are the following contracts awarded to the Corporation for Enterprise Development:

- CFP-12-Z-00019, Order 0001
- CFP-12-P-00008
- CFP-12-Z-00019, Order 0002
- CFP-12-Z-00019

Attached are the following contracts awarded to the National Consumer Law Center:

- CFP-12-P-00003
- CFP-12-P-00012
- CFP-12-P-00006
- TPDCFP13C0004

**Hensarling 19:**
Section 1017(d)(2) of the Dodd-Frank Act provides that amounts deposited in the Bureau's Consumer Financial Civil Penalty Fund may be used only for "payments to the victims of activities for which civil penalties have been imposed" or "for the purpose of consumer education and financial literacy programs." However, page 25 of the Bureau's Fiscal Year 2013 Financial Report discusses the Bureau's Civil Penalty Fund and states that in Period 1, "$1.6 million was set aside for any administrative costs."

a. What is the legal authority upon which the Bureau relied for using funds in the Civil Penalty Fund for "any administrative costs"?

*Response:*

Under well-established fiscal law principles[3], an agency may use funds for administrative expenses related to the purpose for which the funds were made available.

b. Please provide a full accounting of all administrative costs incurred specifically related to the Civil Penalty Fund.

*Response:*

As of March 31, 2014, $10,811.26 in administrative expenses was invoiced to and paid from the Civil Penalty Fund. Of the $10,811.26, $10,661.26 relates to the Payday Loan Debt Solution, Inc. case and $150.00 relates to the Gordon, *et al.* case.

c. Please indicate whether the administrative costs will solely be used for purposes of the Civil Penalty Fund.

*Response:*

Funds set aside from the Civil Penalty Fund for administrative expenses are used only for the administrative costs of hiring third-party administrators to distribute Civil Penalty Fund payments to victims.

**Hensarling 20:**
On a subpage of the Bureau's website entitled "Doing Business With Us," the Bureau discloses that it plans to build a "national database on US households' use of consumer financial products." Further, the Bureau discloses that it planned to solicit bids for this database in the first quarter of Fiscal Year 2014. Please produce all records referencing or relating to this "national database on US households use of consumer financial products."

*Response*:

The Consumer Financial Protection Bureau is not building a national database on every U.S. household. The Bureau's Office of Research has purchased a commercially available nationally representative survey of U.S. households' use of consumer financial products and services from Strategic Business Insights (SBI) (order attached). The data procured by the Bureau does not contain any directly identifying information of respondents.

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[3] Government Accountability Office, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 4-19–4-35 (3d ed.).

**Hensarling 21:**
On April 24, 2013, the Bureau released a "White Paper" on Payday Loans and Deposit Advance Products. Page 4 of this document states: "This white paper summarizes the *initial findings* of the CFPB's analysis of payday loans and deposit advance." (Emphasis added).

a. In light of the fact that the Bureau's White Paper only presented "initial findings," why does the Bureau's unified rulemaking agenda already list "Payday Loans and Deposit Advance Products" in the Bureau's "Prerule" stage of rulemaking?

*Response*:

As you may know, the Consumer Financial Protection Bureau (Bureau) released additional research on March 25, 2014, that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan. The Bureau will continue to collect and analyze information about the payday loan market. Subsequent findings will be reflected in any rulemaking pertaining to this market. These findings may be presented either through publications or presentations in advance of a rulemaking or through information presented as part of a rulemaking itself.

b. Why is the Bureau, according to the Office of Information and Regulatory Affairs (OIRA), "considering whether rules governing these products are warranted under CFPB authorities, and if so what types of rules would be appropriate" without first completing its research and issuing a White Paper containing finalized research and findings?

*Response:*

The initial findings shared in the Bureau's White Paper have led to concerns that certain features of payday loans may cause harm to some consumers. The Bureau's determination as to whether or not to issue rules pertaining to payday loans – and the scope and substance of any such rules – will be informed by these and subsequent research findings and by public comment.

c. Will you commit to finalizing the Bureau's research before proposing any rule to regulate these products?

*Response*:

As a data-driven agency, the Bureau is committed to seeking to obtain a comprehensive understanding of the markets for the financial services products it has the authority to regulate, and of how consumers experience those products. Indeed, the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Bureau to research, analyze, and report on "developments in markets for consumer financial products or services," "consumer behavior with respect to consumer financial products or services," and "risks to consumers in the offering or provision of consumer financial products or services." The Bureau conducts research and analysis on an ongoing basis. When ongoing research and market monitoring activities by the

Bureau identifies harm to consumers, the Bureau will use its various authorities, including its rulemaking authority, as appropriate, to address that harm.

d. The Bureau often cites its objective, data-driven approach to policy research and analysis. In the name of transparency, will you immediately make all data, methodologies and analysis underlying the Bureau's initial research and findings available to the public for peer review?

*Response*:

The Bureau released additional research on March 25, 2014, that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan. This report provides additional discussion of various methodological approaches that can be used to assess these data. To assure the integrity of its supervision program, the Bureau generally does not publicly share un-aggregated information obtained from supervised entities through the examination process.

**Hensarling 22:**
On December 12, 2013, the Bureau released a report entitled "Arbitration Study Preliminary Results." The Committee understands that the Bureau obtained information that formed the basis of its findings by issuing orders to financial institutions to provide it with copies of their standard-form consumer account agreements.

a. To how many financial institutions did the Bureau issue these orders?

*Response*:

Regarding the prevalence of arbitration clauses in consumer checking account agreements, the Consumer Financial Protection Bureau (Bureau) requested that certain financial institutions return one copy of the standard-form account agreement that they provided to consumers who opened the institution's core consumer checking account product. The Bureau issued orders to the following financial institutions (and/or, where applicable, relevant subsidiaries), only if the Bureau was unable to obtain current agreements via Internet searches: the 100 largest bank holding companies or subsidiaries based on consolidated deposits less than $250,000 (i.e. the deposit insurance threshold); a random sample of 150 bank holding companies or subsidiaries not among the 100 largest; and the 50 largest credit unions based on the amount of insured deposits. We ultimately sent the requests to 240 holding companies or relevant subsidiaries, and received responses from 92 percent of the recipients.

b. Why was this information collection not noticed in the *Federal Register*?

*Response*:

The Office of Management and Budget's (OMB) regulations specify categories of items that are not subject to OIRA (Office of Information and Regulatory Affairs)/OMB review and approval under the Paperwork Reduction Act, which include among other things, samples of products

(5 C.F.R. 1320.3(h)(2)). The Bureau's orders were promulgated pursuant to its authority under Section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and sought only the recipient covered-persons' standard form account agreements in the same form and format as they are provided to potential customers. Accordingly, the orders are exempt from the Paperwork Reduction Act's requirements for notice and comment within the *Federal Register* and OIRA/OMB approval.

c. Why was this collection not first approved by the Office of Information and Regulatory Affairs (OIRA)?

*Response*:

See response to Question 22(b), above.

d. Why did these orders not contain a valid OMB approval number?

*Response*:

See response to Question 22(b), above.

e. When does the Bureau plan to release a follow-up or subsequent study regarding arbitration?

*Response:*

The Bureau currently anticipates completing its study in the fall of 2014.

f. Will you make all data, methodologies, and analysis underlying this report available to the public for peer review?

*Response:*

All published work will comply with the Bureau's Information Quality Guidelines, which are published on our website at http://www.consumerfinance.gov/informationquality/.

**Hensarling 23:**
Will you please provide the Committee with a current list of every Bureau employee or contractor who has access to information contained within the Bureau's credit card database, national mortgage database, loan-level database, and consumer credit panel?

*Response:*

In general, access to the Consumer Financial Protection Bureau's (Bureau) data is controlled, and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53

Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

For security reasons, the Bureau's Technology & Innovation (T&I) staff continually update access rights to these databases, and the identity and number of personnel with access change as a result. The Bureau conducts regular reviews of user access for in-house databases, including the Credit Card Database and Consumer Credit Panel. As part of these reviews, the Bureau verifies that all access to a given dataset has been approved by senior Bureau leadership and is of continuing necessity to users' work.

As of February 2014, 20 Bureau personnel have access to the Credit Card Database for purposes of analysis and 11 have access to the Consumer Credit Panel for purposes of analysis. An additional 19 members of the T&I staff have access to both databases for technical assistance and support. The National Mortgage database is currently under construction as a joint project between the Bureau and the Federal Housing Finance Agency (FHFA), and FHFA manages the staff involved in the construction. A single member of the Bureau's staff currently has access to that database, solely for testing purposes. We are not familiar with your reference to a particular dataset known as the "loan-level database."

**Hensarling 24:**
Has any data collected as part of the Bureau's market monitoring efforts, including data collected or retained in its credit card database, national mortgage database, loan-level database, and consumer credit panel, ever led directly or indirectly to a Bureau investigation or enforcement action? If so, please fully describe all such instances in which this has occurred.

*Response:*

Teams within the Consumer Financial Protection Bureau's (Bureau) Offices of Research and Markets are charged with understanding consumer financial markets and consumer behavior. Their work contributes to the Bureau's evaluation of the need for consumer financial protection regulations, supervision, or enforcement actions. The analysis of consumer financial data and markets performed by these teams is essential to informing the work and decisions of the Bureau as a whole.

**Hensarling 25:**
Does the Bureau have a memorandum of understanding (MOU) with the Financial Stability Oversight Council, Office of Financial Research, U.S. Department of the Treasury or Internal Revenue Service? If so, please provide copies of all such memoranda to this Committee.

*Response:*

The Consumer Financial Protection Bureau (Bureau) entered into a Memorandum of Understanding (MOU) with the Financial Stability Oversight Council and its members (attached), including the Department of Treasury and the Office of Financial Research, setting forth the treatment of any non-public information shared amongst the signatories to the MOU. The Bureau also has an MOU with the Department of Treasury's Financial Crimes Enforcement Network (attached) related to access to information collected pursuant to the Bank Secrecy Act. The Bureau does not have an MOU with the Internal Revenue Service.

**Hensarling 26:**
Are you open to creating an advisory opinion process whereby lenders and other regulated entities can petition the Bureau for an opinion on whether a proposed product or service is likely to be found lawful and compliant by the Bureau? This process is used by many other regulatory agencies and provides greater certainty to market participants and encourages product innovation, which benefits consumers. In your view, could the Bureau adopt such an advisory opinion process by rule, or is legislation required?

*Response:*

We agree that consumer-friendly innovation and entrepreneurship is important for ensuring that all consumers have access to fair, transparent, and competitive consumer financial markets. The Consumer Financial Protection Bureau (Bureau) has taken steps to encourage and facilitate such innovation. In November 2012, the Bureau launched Project Catalyst, a program of working together with innovators to make sure they have good communication to understand the regulatory implications of their products and to help the Bureau understand what ideas do and don't work for consumers. The Bureau has also implemented a policy for authorizing companies to test disclosures (or disclosure delivery methods) that might work better than what regulations currently call for. As we continue our efforts, we welcome input about how best to foster innovation.

**Hensarling 27:**
Are you open to providing the public advance notice of the release of any enforcement bulletin and regulatory guidance and affording the public the chance to comment on any such bulletin or guidance? Such a process could provide the public with an additional opportunity to provide the Bureau with helpful feedback, even in instances where the Bureau is simply restating its view of existing law and regulations. If you do not support providing the public with this opportunity, please articulate your reasons for opposing such a process. In your view, could the Bureau adopt such a notice-and-comment process by rule, or is legislation required?

*Response:*

The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity and in applicable cases calls for comments from affected parties and the general public concerning an agency's activity. The APA does not impose a notice and comment requirement for a general statement of policy, a non-binding informational guideline, or an interpretive memorandum.

We value public input in our formulation of policy, and the Consumer Financial Protection Bureau (Bureau) engages stakeholders using a variety of mechanisms, ranging from informal consultations between industry and market specialists in the Bureau to published notices with a specified comment period. The Bureau has elected to engage in notice-and-comment rulemaking in a number of cases that would not have been required under the APA. In some circumstances a formalized notice-and-comment process is not the optimal vehicle. For example, in September 2013 the Bureau issued a bulletin explaining the meaning of certain provisions in its mortgage servicing rules. The Bureau issued that bulletin in response to requests from various stakeholders that we provide additional clarity about certain topics before the mortgage rules came into effect. A notice-and-comment process could have taken until after institutions were required to comply with the provisions at issue, and thus could have impeded the attempt to provide the needed clarity.

**Hensarling 28:**
I am concerned that the Bureau is undertaking investigations that duplicate similar efforts undertaken by other state and federal agencies, which is an inefficient use of limited law enforcement resources.

a. Without revealing the identity of any company under current investigation, please state the number of Bureau investigations currently underway in which another state or federal agency is conducting an investigation of the same company or of the same or similar activities.
b. Please state the percentage of Bureau investigations in which another state or federal agency issued a subpoena, civil investigative demand, or otherwise obtained information from the same company being investigated before the Bureau did so?
c. Finally, is the Bureau currently investigating any company that is not currently considered to be a financial services company? If so, please describe the products or services provided by any such company and the legal basis for the Bureau's authority to investigate such companies.

*Response:*

Coordination and collaboration with our law enforcement counterparts on both the state and federal level is a high priority for us. The Consumer Financial Protection Bureau (Bureau) is committed to working with law enforcement partners for many reasons. Strong lines of communication ensure that we are aware of emerging harm to consumers and that we address these issues in a timely and appropriate fashion. In addition, effective coordination and collaboration helps us avoid duplication of efforts. In some cases, this coordination is directed by statute or Memorandum of Understanding (MOU), but it is, in all cases, the type of good government we strive to practice. With partners such as the states and the Federal Trade Commission (FTC), the Bureau seeks to avoid duplication of efforts, and has entered into several interagency agreements that reflect this objective. The Bureau also works closely with prudential regulator partners to avoid duplication and burden. The fact of our investigating the same entity as a law enforcement partner does not itself reflect inefficiency; indeed it often represents these coordinated efforts. In fiscal year 2013, the Bureau shared and received information with state and/or federal law enforcement partners in 80 matters.

The Bureau's enforcement authority is not limited to solely financial services companies. As appropriate, the Bureau may investigate other types of persons' possible violations of the laws the Bureau enforces.

**Questions for the Record Submitted by Representative Bill Huizenga:**

**Huizenga 1:**

On January 14, 2014, the Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing on the recently enacted Ability to Repay rule and its Qualified Mortgage (QM) definition.

In testimony, Bill Emerson, the Vice Chairman of the Mortgage Bankers Association (MBA) and CEO of Quicken Loans, which is headquartered in my home state of Michigan, made a series of recommendations for how the CFPB could improve the Ability to Repay rule so it better serves consumers and promotes the vibrant flow of safe and affordable mortgage credit. Among MBA's recommendations are increasing the threshold for smaller balance loans, establishing a "right to cure" calculation errors and other processing mistakes, providing better written guidance, and raising the APOR tolerances.

I understand the CFPB is considering making adjustments to the Ability to Repay rule later this year.

a. What is the Bureau's timeframe for publishing amendments to the Ability to Repay (APR/QM) rule?

*Response*:

The Consumer Financial Protection Bureau (Bureau) is considering various issues for possible rulemaking during calendar year 2014, including under the Ability-To-Repay (ATR)/Qualified Mortgage (QM) rule. Some issues may be addressed more quickly, either because we recognize that they are more urgent or because they are easier and more straightforward to address than others – or in some cases both. Accordingly, the Bureau may conduct more than one rulemaking process in 2014 with different timelines for each.

b. Is the CFPB considering revising the "points and fee" threshold for smaller loans? Currently, loans with a balance of less than $100,000 are able to qualify as QM loans with higher "points and fees," ranging from 3 percent to as high as 8 percent for the smallest loans. Would you agree that setting the definition closer to the national average of $219,000 would improve access to credit for low- and moderate-income Americans?

*Response*:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the basic three percent points and fees limit for qualified mortgages (QM), but it also required the Bureau to prescribe rules adjusting this limit to permit lenders that extend smaller loans to meet the QM requirements. Prior to the transfer of its consumer financial protection functions to the Bureau, the Board of Governors of the Federal Reserve System (Board) initially proposed the smaller loan limit as $75,000. In response to comments on the Board's proposal, the Bureau raised the smaller loan limit to $100,000. It was estimated that this increase would double the percentage of loans eligible for the adjusted limit from approximately 10 percent to 20 percent. This resulted in a substantial increase in loans eligible for an adjusted limit while still giving deference to the statutory norm for most loans. The Bureau is monitoring the market for evidence about the effect of the rule on consumers, including any impact on their access to credit.

c. Is the CFPB considering providing lenders with the ability to "cure" mortgages that were intended to be QMs but, through a calculation error or other processing mistake, did not fit into the strict definition? Without such a procedure, lenders will tend to avoid transactions at the boundaries of QM – an outcome at odds with your stated goals for the new rule.

*Response*:

The Bureau has heard this concern from creditors and is thinking carefully about the different types of issues that may arise with regard to different types of errors and different types of thresholds under the Qualified Mortgage (QM) definition. For example, the types of errors that may occur and the types of correction mechanisms – if any – that might be appropriate could be different for the limit on points and fees than for the threshold for debt-to-income ratio that applies to certain types of QMs. The Bureau wants to be sensitive to consumers' interests in assessing any cure mechanism, as well as how to maintain strong compliance incentives. We realize that creditors and secondary market actors may have different concerns. In light of the complexity of the issues, we expect to be inviting public comment soon.

d. Is the CFPB considering establishing a better process for the provision of written guidance? In his testimony, Mr. Emerson noted that the absence of timely, authoritative written guidance has resulted in industry confusion and understandable reluctance to offer consumers certain beneficial loan features such as bona fide discount points that help them reduce their interest rate and monthly payment.

*Response*:

The Bureau provided the mortgage industry with an extraordinary level of implementation support and guidance, through the auspices of a major initiative dedicated to just that purpose, during calendar year 2013. This included several rounds of written clarifications, amendments, and guidance. The Bureau undertook that initiative because we recognize that, without timely and smooth implementation of new rules, those rules do not deliver to consumers the intended benefits and protections. Accordingly, assistance to industry in interpreting and implementing our rules has been and remains a high priority for the Bureau. In performing this function, we must be careful to balance legal requirements and practical considerations; there is often a trade-off between the speed and the reliability of answers provided. A notice and comment process provides all stakeholders an opportunity to weigh in on complex issues. The Bureau continues to examine our experiences in providing industry implementation support, while also remaining mindful of our obligations under the Administrative Procedure Act, and expect to apply any lessons learned in implementation of additional rulemakings, such as the integrated federal mortgage disclosure forms required by the Dodd-Frank Act.

e. Is the CFPB considering raising the APOR/APR thresholds to qualify as QM safe harbor loans? Only mortgages where the APR is less than 150 basis points over the applicable benchmark APOR qualify. Increasing the spread to 200-250 basis points would extend QM loans to a greater number of borrowers, satisfying their credit needs with sustainable and affordable loans.

*Response*:

As a point of clarification, when a (first lien) loan's annual percentage rate (APR) exceeds the applicable average prime offer rate (APOR) by 150 basis points it does not automatically become non-QM. If it meets the criteria for a QM, the loan remains a QM but is subject to the rebuttable presumption of compliance with ability-to-repay requirements under the Dodd-Frank Act and Bureau regulations rather than being subject to a safe harbor that attends a QM with lower overall loan pricing. The consumer's ability to rebut that presumption is limited to a showing, based on information of which the creditor was aware, that the creditor left insufficient residual income to meet daily living expenses after making the scheduled mortgage payments. We believe this approach strikes the right balance. We continue to monitor the effects of the rules on the market and we remain open, as always, to new empirical information.

**Questions for the Record Submitted by Representative Mick Mulvaney:**

**Mulvaney 1:**

A recent report issued by the Philadelphia Federal Reserve Bank under its Working Paper Series found that stricter regulation of third-party collectors is associated with creditors extending fewer lines of credit and reducing the amount of credit offered – all of which ultimately harms consumers. The report concluded that "financial regulation that institutes strong consumer protection must be balanced with creditor rights in order for the latter to extend consumer credit in the first place." As the Bureau engages in its rulemaking on the debt collection industry, how will you ensure that there is balance between strong consumer protection and creditor rights?

*Response*:

The Consumer Financial Protection Bureau (Bureau) has been considering and will continue to consider the potential costs to industry (including creditors) of any debt collection rule that may develop. Section 1022(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires that the Bureau consider the potential benefits and costs of its rules to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services (such as credit) resulting from any such rules. In addition, the Paperwork Reduction Act requires that the Bureau obtain Office of Management and Budget (OMB) approval for information collections, a debt collection rule. To obtain such approval, the Bureau would have to justify its collections of information by, among other things, establishing the need and intended use of the information, estimating the burden the collection will impose on those subject to the proposed rules, and showing that the collection is the least burdensome way to gather the information. The Regulatory Flexibility Act further requires the Bureau to conduct certain analyses regarding the impact of its rules on small businesses. All of these legal requirements ensure that the Bureau will consider the costs of debt collection rules, including their effects on creditors, as part of the process of developing rules.

The Bureau has already begun soliciting and considering information about the potential costs, benefits, and impacts of regulation in the debt collection area. In November 2013, the Bureau published an Advanced Notice of Proposed Rulemaking (ANPR) relating to debt collection. The ANPR posed many questions about the costs of possible restrictions and limitations on debt collection and solicited information from stakeholders, including debt collectors and creditors, describing and documenting the potential costs associated with various proposals. The deadline for public comments in response to the ANPR was February 28, 2014, and the Bureau received many detailed responsive industry comments. The Bureau is also compiling and considering available empirical research that may bear on the costs and effects of proposed debt collection rules. In particular, economists in the Bureau's Office of Research have closely reviewed the Philadelphia Federal Reserve Bank Working Paper referenced in your question and have discussed with its author his analysis, findings, and conclusions.

**Mulvaney 2:**

In response to a question from Rep. Meeks about the importance of ensuring access to small-dollar credit, you mentioned several different products, including payday loans and "certain types of installment loans." I share your understanding that small-dollar lending serves an important function for many borrowers, especially those who may not utilize traditional banking services, and hope the Bureau will work to ensure the continued viability and availability of these products.

You indicated that the Bureau plans to "move ahead with making some policy judgments and regulations in this area." As you do so, please provide to me:

a. The Bureau's definition of "installment loan" and how the Bureau is distinguishing between the different types of installment loans that you referred to during the hearing.

*Response:*

An installment loan is repaid over the term of the loan through a fixed number of periodic payments. The Consumer Financial Protection Bureau (Bureau) recognizes that there are a variety of different installment loans. For example, installment loans may be secured or unsecured, may vary in length, and may be used for a variety of different purposes, including asset purchases or meeting short-term expenses.

b. The features of installment loans that, in the opinion of the Bureau, provide value to consumers.

*Response:*

Installment loans may benefit consumers by allowing them to borrow money and repay over time consistent with their budgetary needs and preferences.

c. The features of installment loans that are of concern to the Bureau.

*Response:*

The Bureau continues to research and monitor the market to evaluate the extent to which features or practices associated with installment loans present risks of consumer harm. The Bureau is concerned that, at least with respect to some installment loans, lenders may not rigorously underwrite the loans to determine whether consumers are likely to be able to repay the loan. The Bureau is also concerned that front-loaded fees and charges may create incentives for lenders to encourage borrowers to refinance their loans, even if it would not be in the consumers' interest to do so. In addition, the Bureau is concerned that some lenders may market add-on products, such as credit insurance, that provide little benefit to consumers and raise the cost of borrowing.

**Mulvaney 3:**
In response to questions from Rep. Luetkemeyer, you emphasized that "online lenders that are legitimate and valid deserve protection against online lenders that are undercutting them,

violating the law, not complying with the same requirements that they comply with." I applaud you for this statement, and for your recognition that "there's a lot of online lending that is perfectly proper and valid, and may even cut some costs over physical, in-person lending."

You also mentioned that you have been working with state attorneys general to resolve issues that arise from the complex nature of online regulation. In addition to state attorneys general, are you working on these issues in cooperation with the Federal Deposit Insurance Corporation or the Department of Justice?

As the primary regulator for payday lenders, how will you ensure that recourse is available to legitimate online lenders who may have been negatively impacted by enforcement or regulations intended to stamp out illegitimate lenders?

*Response:*

The Consumer Financial Protection Bureau (Bureau) works collaboratively with others in the federal government, including the Department of Justice and the Federal Deposit Insurance Corporation, on a variety of issues, including issues related to online lending. As the Bureau has stated repeatedly, all lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. This is true for online lenders, just as it is for lenders operating out of physical storefronts. The Bureau will continue to make clear that it is committed to addressing unlawful online lending activities and is not seeking to prevent online lenders who comply with the law from continuing to operate.

**Mulvaney 4:**
The CFPB's April 2013 white paper on "Payday Loans and Deposit Advance Products" looks at "sustained use" of payday loans, and then states that such use "may become harmful for consumers when they are used to make up for chronic cash flow shortages."

a. If "chronic cash flow shortages" are the underlying problem, it seems unlikely that regulating "sustained use" is the solution. Do you agree?

*Response:*

The Consumer Financial Protection Bureau's (Bureau) White Paper raised concerns that payday loans could be harmful for consumers when such loans are used to make up for chronic cash flow shortages. Payday loans are unlikely to help consumers with persistent gaps between their expenses and their income. Moreover, consumers with chronic cash flow shortages are likely to have difficulty repaying their loans without re-borrowing repeatedly. As a result, many such consumers experience sustained use of what are ostensibly short-term loans and thus end up incurring substantial costs.

b. Isn't the potential regulation of sustained use simply another way of regulating the cost that consumers may pay for a particular financial product, in this case payday loans?

*Response:*

The Bureau's concerns about sustained use of payday loans stem from the finding that many consumers who obtain ostensibly high-cost, short-term loans end up in high-cost, long-term debt. The Bureau has not determined what, if any, steps it should take to address sustained use of payday loans.

c. Doesn't Dodd-Frank, by prohibiting the CFPB from setting a usury rate, prohibit regulation of the cost of a financial product?

*Response:*

Section 1027(o) of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides that the Bureau does not have the authority to establish a usury limit.

d. The same white paper also fails to provide sufficient granular data to explain the measure of sustained use, which is necessary in order to determine if such use is beneficial or harmful to the consumer. How do you respond to this significant oversight, and don't you agree it must be addressed before the white paper can be part of the basis for CFPB rulemaking?

*Response:*

The White Paper provides suhstantial data about consumer usage patterns for payday loans, including the sustained use of such loans by many consumers. The Bureau released additional researcb on March 25, 2014 that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan.

e. Do you foresee any other research being released by CFPB regarding payday lending prior to any rulemaking?

*Response:*

The Bureau released additional research on March 25, 2014 that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans horrowers often take out following a new loan. The Bureau will continue to collect and analyze information about the payday loan market. Subsequent findings will be reflected in any rulemaking pertaining to this market. These findings may he presented either through publications or presentations in advance of a rulemaking or through information presented as part of a rulemaking itself.

**Mulvaney 5:**
The Bipartisan Policy Center published a report in September 2013 that listed several concerns with the CFPB's transparency efforts. In part, BPC found that after a June 2013 forum, "CFPB held an ostensibly public follow-up meeting. The meeting, however, was open only to those consumer groups, industry members and government officials who received a personal invitation from the CFPB."

BPC also noted that CFPB fails to publish notices of its field hearings in the *Federal Register* without providing the level of disclosure found in Federal Register notices from other regulators. BPC also criticized the CFPB for occasionally providing vague descriptions of the hearing topics.

Alarmingly, BPC found that there were instances where CFPB did not provide any notice at all of public hearings, including for its hearings on overdraft fees and payday lending.

a. What federal regulations must CFPB comply with regarding notice of public meetings and hearings?
b. Does CFPB have any additional internal requirements for publishing notice of public meetings?
c. How does the CFPB define a public meeting? Does a meeting where attendance was limited to invitees meet the definition of a public meeting?
d. If the public is excluded from CFPB meetings, either directly by exclusive invitations or indirectly by inadequate notice, how is the Bureau accomplishing your stated goal of increased transparency?
e. Are you willing to submit to the Committee a plan of action for the upcoming months to improve transparency at the CFPB?

*Response:*

The Consumer Financial Protection Bureau (Bureau) is proud of its record of openness, transparency, and engagement with the public. We have hosted between eight to eleven public events per year. We arranged these events in the interest of public input and accountability. To ensure robust participation, we promote these field hearings through visible placement on our website, press releases, email notices, and calls to congressional delegations near the hearing location. Given that our target audience for these hearings is the general public, we have not published notices in the *Federal Register* because it is not a publication widely read by the general public.

With respect to the Bipartisan Policy Center report, we note several inaccuracies as to our record for publicizing events. Contrary to the report, the Bureau gave advance notice of both of the field hearings on February 22, 2012 and January 19, 2012. The Bureau publically announced the February 22, 2012 hearing 12 days before the event.[4] The Bureau released a media advisory statement entitled, "Consumer Financial Protection Bureau to Convene Field Hearing in Birmingham, Alabama on Payday Lending," a week before the January 19, 2012 event. In fact,

[4] http://www.consumerfinance.gov/blog/save-the-date-new-york/

demand to attend our January 19th payday hearing was so high that the Bureau had to announce a move to a larger venue to accommodate the public.[5] For individuals who could not attend the January 19th hearing, the Bureau also invited public comments to be submitted for the record after the hearing.[6] In addition, whenever possible, the Bureau has streamed its public hearings so that geography and timing do not interfere with the ability of the public to view events. Recordings of these public events are posted on the Bureau's website[7] after the events have concluded. Finally, with regard to publication of hearing agendas, given that our target audience for field hearings is the general public, the Bureau intentionally provides a broad topic agenda so that all members of the public feel welcome to attend and voice their experiences. Constraining the agenda to specific technical or regulatory issues could discourage a broad exchange of ideas from the general public.

The Bureau has adopted a number of operating norms to ensure transparency such as publicizing public hearings on our website and through the media, live Internet streams where possible, and transcripts. For our Consumer Advisory Boards, established by the Dodd-Frank Wall Street Reform and Consumer Protection Act to advise and consult with the Director, we also publish meeting agendas, minutes, annual reports, and videos of the public portions of these meetings.[8] Consumer Advisory Board meetings are also published in the *Federal Register* prior to the meeting. Like other government entities, including departments and agencies, federal regulators, and Members of Congress, the Bureau hosts some events with stakeholders that are open to the public, and others that are not.

The Bureau always welcomes input and advice from Congress and the public on how we can make our field hearings and other open meetings more accessible and robust forums for the public to provide input.

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[5] http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-convenes-field-hearing-in-birmingham-alabama-on-payday-lending/

[6] http://www.consumerfinance.gov/blog/share-your-input-on-payday-lending-for-the-official-record/

[7] http://www.consumerfinance.gov

[8] http://www.consumerfinance.gov/advisory-groups/advisory-groups-meeting-details/

**Questions for the Record Submitted by Representative Andy Barr:**

**Barr 1:**
As the CFPB is aware, many community banks originated balloon loans as the bulk of their consumer real estate lending portfolio. These banks must take action when a balloon loan they currently have in their portfolio matures.

Unfortunately some borrowers may not show a verifiable income sufficient to qualify for a new loan under the ability-to-repay standards, even though they have never actually missed a payment on their existing balloon loan and have a clean credit history.

a. The community banks in my district are wondering whether the ability-to-repay rule requires them to foreclose on a borrower who has never missed a payment. Should the community bank, mindful of past performance of the loan, willfully disregard the ability-to-repay rule and rewrite the loan based on its best judgment and close knowledge of the borrower, or should the bank begin foreclosure proceedings, notwithstanding the borrower's prior record, since the borrower cannot pay off the matured loan?

*Response:*

Congress made a decision in the Dodd-Frank Wall Street Reform and Consumer Protection Act to impose certain special safeguards on the way that balloon mortgage loans are underwritten to address concerns that consumers were being left without the ability to repay or refinance such loans. At the same time, Congress also recognized that small creditors in rural and underserved areas were more likely to make balloon loans and that such restrictions might create access to credit issues in such areas. Accordingly, the statute provides that balloon loans can be Qualified Mortgages if they are made and held on portfolio by small creditors that operate predominantly in rural or underserved areas.

In implementing these provisions, the Consumer Financial Protection Bureau (Bureau) concluded that it was appropriate to provide a two-year transition period during which balloon loans made by any small creditor – regardless of that creditor's location – could be designated as Qualified Mortgages if they are held on portfolio and meet certain other conditions. This should help consumers and creditors address the refinancing of existing balloon loans during this period. The Bureau is also using this two-year period to study a broad range of issues with regard to balloon loans, small creditors' ability to transition to making adjustable rate mortgages, and the definition of "rural or underserved areas." The Bureau intends to work with both consumers and creditors to preserve access to refinancing options on performing existing loans.

b. Given these concerns, would you support a legislative fix that would grandfather into the qualified mortgage safe harbor balloon loans with a history of performance and which are currently held in portfolio by the community bank?

*Response:*

The Bureau generally does not take a position for or against prospective legislation. As noted above, the Bureau is already working to analyze and address concerns on this topic, and would implement any such statutory amendments faithfully if they were enacted into law.

**Barr 2:**
In addition, during the hearing, I asked you about a series of nondiscriminatory factors that could explain why one consumer might pay less for an auto loan obtained through an auto dealer, compared to another consumer. If one of these factors is the reason why prices vary from consumer to consumer, there is no unlawful discrimination. Hence, to do a proper comparison, these variables need to be pulled out of the CFPB's analysis when alleging disparate impact.

You conceded during the hearing that some of these factors are "relevant." My question concerns whether these "relevant" factors were properly considered in CFPB's analysis of disparate impact.

Please answer Yes or No to the following (if "No" please state a reason why):

a. Is the amount financed considered when CFPB is alleging disparate impact discrimination in indirect auto financing?
b. Is borrower creditworthiness considered, including the efforts by the dealer to arrange financing for the consumer?
c. Is the presence of a competing offer from another financing source considered?
d. Is the length of the loan considered?
e. Is the presence of a manufacturer's discount of the rate considered?

*Response:*

Yes, the Consumer Financial Protection Bureau's (Bureau) analysis considers creditworthiness factors, like credit scores and debt-to-income ratios; characteristics of the collateral; and terms of the deal, like the amount financed, down payments, the existence of a manufacturer discounted rate, and term of the loan. These factors are typically taken into account by lenders in arriving at the appropriate "buy rate," and thus the Bureau's analysis of dealer markup accounts for them by focusing only on the difference between the buy rate and the added cost of the discretionary dealer markup. Because the above-cited factors are already taken into account when determining the appropriate buy rate and are, therefore, considered in the overall interest rate the consumer receives, they are generally, absent additional evidence of legitimate business need in conjunction with their consideration in setting the dealer markup, not appropriate to use as "controls" again for an analysis of only dealer markup.

To date, the Bureau has not been provided with supporting documentation that would justify inclusion of controls for efforts by the dealer to arrange financing for the consumer or the presence of a competing offer from another financing source, and so has not considered them in its analysis. Variables that lack supporting documentation as to their consideration in setting the dealer markup are generally not appropriate to use as "controls."

Each supervisory examination or enforcement investigation is based upon the particular facts presented by the entity under review. Thus, in our analyses we consider analytical controls which are appropriate to each particular entity. Any controls are dependent upon the particular lender's policies, practices, and procedures. When lenders share with us the nature and results of their own analyses, we are open to hearing specific explanations for the decisions they have made to include particular analytical controls that reflect a legitimate business need. In the credit context, a creditor practice is discriminatory in effect if it has a disparate impact on a prohibited basis, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.

Lenders can and should take creditworthiness and terms of the loan into account in the pricing of credit. The Bureau's focus is on the fair lending risk created by policies that allow dealers the discretion to mark up each consumer's buy rate after the lender has taken these factors into account in determining the risk-based buy rate for a particular loan, and then compensating dealers by giving them a share of that mark up.

**Barr 3:**
Finally, the Bureau has repeatedly asserted, including in a response to my office, that the Indirect Auto Bulletin is exempted from the Administrative Procedure Act's (APA) Notice of Proposed Rulemaking (NPRM) requirements. Specifically, the Bureau stated that the Bulletin falls under the exemption "for general statements of policy, non-binding informational guidelines, or interpretive memoranda."

a. Under which of these exceptions to the APA does the Bureau feel it can circumvent the standard rulemaking procedures, particularly NPRM? Simply, which of the following categories does the Bulletin fall under: a general statement of policy, a non-binding informational guideline, or interpretive memoranda?
b. Even under this exemption, the APA requires agencies to publish these rules within the *Federal Register*. Has the Bureau published a notification of the issuance of the Bulletin in the *Federal Register?* If not, does the Bureau intend to?
c. It is clear from the legislative history of the APA that Congress did not intend for these exceptions from the law's notice and comment requirements to be a loophole for the agencies to expedite the promulgation of rules. What is the agency's rationale for using this exception?
d. Since the Bulletin appears to be intended to change behavior with the force of law, how can the Bureau claim that it only applies to intra-agency behavior in the manner of a statement of policy, informational guidelines, or rules of agency organization, procedure or practice?
e. How does the agency intend to keep Congress, the public, and industry stakeholders notified on the proposal, promulgation, and implementation of rules addressing disparate impact and the justification of these rules?

*Response:*

The Equal Credit Opportunity Act (ECOA) and Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.

The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity, and in applicable cases, allows for comments from affected parties and the general public concerning an agency's activity. The Auto Bulletin principally reminded institutions of their legal responsibilities under existing law and provided suggestions for mitigating legal risks. The Bulletin did not establish additional legal requirements for either the public or for the Consumer Financial Protection Bureau (Bureau). Rather, the Bulletin provided examples of internal controls, program features, and compliance management systems that institutions might use to mitigate legal risk. While the Bureau regularly engages in extensive dialogue with stakeholders, our issuance of the Bulletin to provide clarity and guidance for institutions regarding the application of ECOA and Regulation B, and our attendant supervisory and enforcement approach, did not necessitate notice and comment under the APA.

The Bureau made the Auto Bulletin available to the public via numerous means, including its website and public speeches. The Bureau is committed to following the requirements of the APA across all its rulemakings.

**<u>Questions for the Record Submitted by Representative Steve Stivers:</u>**

**Stivers 1:**
A recent *Washington Post* story quoted Deepak Gupta, the Bureau's former Litigation Counsel and Senior Counsel for Enforcement Strategy as saying:

> "Sometimes you couldn't write down your thinking, because it could wind up in front of some hostile congressional committee…I would use the word paranoia, except paranoia implies that it's not justified."

This admission comes on the heels of a July 2013 report that the Bureau is coaching its employees to "FOIA-proof" their Outlook calendars by instructing them to "avoid annotating entries with agendas, detailed discussions," and "minimize attachments to your calendar appointments."

a. Is it a widespread practice at the Bureau to avoid documenting its activities so as to evade Congressional scrutiny? Was Professor Gupta acting contrary to Bureau policy? Have you made it clear to Bureau staff that it is not in the Bureau's interest to frustrate a Congressional inquiry?

*Response:*

The Consumer Financial Protection Bureau (Bureau) does not encourage employees to avoid documenting their activities for any reason. In fact, the Bureau publishes the Director's complete schedule with descriptions of meetings on the Bureau's website every month. Indeed, employees at every level are counseled regularly on their duty to preserve records that document the organization, functions, policies, decisions, and procedures of the Bureau. The Bureau's policy with respect to congressional inquiries, which has been communicated to all staff, is to respond to such inquiries with timely, accurate, complete, and consistent information.

b. I have a bill that creates a Senate confirmed independent inspector general for the CFPB (H.R. 3770). Would you agree or support this bill which would provide Congress additional oversight of your agency?

*Response:*

The Bureau does not generally take positions on legislation. We currently have a very strong, experienced Inspector General who is in engaged in rigorous oversight of the Bureau.

**Stivers 2:**
In the same *Washington Post* story, Leonard Chanin, the former head of rulemaking at the CFPB made the following comments about your organization: "I lost faith that the agency would become a truly independent entity and carefully balance consumer costs and access to credit with

consumer protection," Chanin said..." There is great risk in assuming you know what is best for the consumer..."

Do these comments trouble you in any regard? Do you see it as your job to remove decision making ability from consumers and transfer it to the Bureau staff? Why would Mr. Chanin make these comments if this was not an issue at the Bureau?

*Response:*

Section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act calls for the Consumer Financial Protection Bureau (Bureau) to consider the potential benefits, costs, and impacts of its consumer protection regulations, including the potential reduction of access by consumers to consumer financial products and services. The Bureau continually seeks to improve our understanding of consumer preferences and decision-making. The Bureau supports its efforts in rulemaking, supervision, enforcement, consumer education, and research and reporting by carefully integrating direct input and advice from consumers, as well as industry.

The Bureau's efforts to gather consumer input is not limited to notice-and-comment periods during the rulemaking process. For example, prior to issuing a recent rule to integrate mortgage disclosure forms under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), the Bureau conducted testing with consumers to gauge their understanding and decision-making to craft better disclosure forms. The Bureau also tested the forms with industry and gathered extensive stakeholder feedback through our website. We also hold regular meetings, roundtables, field hearings, and various other events across the country where consumers have an opportunity to share their insights with the Bureau both generally and in the context of specific initiatives and rulemakings. The Bureau's Office of Consumer Response also has provided the Bureau with a unique opportunity to hear directly from consumers, and has received over 300,000 complaints since July 2011. The Bureau has also engaged extensively with various advisory groups, such as our Consumer Advisory Board, Community Bank Advisory Council, and the Credit Union Advisory Council, to provide multi-faceted views of the consumer financial experience.

Mr. Chanin, of course, is entitled to his own opinions. The broad acceptance of the mortgage rules by both consumer advocates and industry indicates satisfaction with the way in which the Bureau balanced the competing concerns in its most important set of rulemakings to date. As a data-driven organization, we want to be sure that our analysis of particular segments of the industry is based on current and solid facts about that industry, its business practices, and its participants. The Bureau carefully considers potential effects of rules we are considering on consumers' costs and access to credit and other financial services. This has been and continues to be the Bureau's approach with planned rulemakings, as evidenced in the Bureau's balanced approach to the remittance and mortgage final rules it has adopted.

**Stivers 3:**
In response to questions about forms of "nondiscretionary compensation" of dealers that indirect auto lenders can evaluate, Bureau staff has indicated that "flat fees" are but one form of such

compensation. At the auto finance forum in November 2013, Bureau staff said that other forms of "nondiscretionary compensation" could include flat percentages per amount financed and/or tying dealer compensation to the amount financed and the loan term. Both of these options seem like variation of flat fees.

a. Are there examples of "nondiscretionary compensation" that the CFPB can share with industry?

*Response:*

Regarding the types of alternative dealer compensation systems that would be acceptable to the Consumer Financial Protection Bureau (Bureau), the answer depends on the specifics of each lender's business. As the Bureau has indicated, in our experience, permitting discretion in pricing and tying compensation to the exercise of that discretion may often significantly increase fair lending risk. Potential nondiscretionary compensation systems could vary in design and sophistication, depending on the needs of an individual lender's business.

Industry participants have identified several possible models of nondiscretionary dealer compensation. One model compensates dealers using the same flat amount for each loan. Under another model, dealers are paid a flat percentage of the amount financed. Alternatively, a lender could develop a hybrid system in which compensation was tied to both the amount financed and the duration of the contract. Both of these latter approaches are nondiscretionary compensation systems that allow for differences in compensation based on loan amount and potentially term and hence differ from a flat fee approach. These represent only a few examples of potential non-discretionary compensation systems that mitigate fair lending risk. There could be many other possibilities.

As a general matter, lenders will likely consider a variety of factors in designing a dealer compensation system, including the extent to which the fair lending risk presented by discretionary compensation is mitigated, whether the system would create new risks of discrimination or other consumer harm, and the economic sustainability of the system.

b. Should the vehicle finance industry expect a "large participant" rulemaking in 2014?

*Response:*

Yes. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorized us to supervise "larger participants" of markets for consumer financial products and services that we define by rule. So far, the Bureau has issued three rules defining larger participants in the consumer reporting, consumer debt collection, and student loan servicing markets. The Bureau has also issued a proposed rule defining larger participants in the international money transfer market. Defining larger participants in the auto lending market is a priority for the Bureau, and we hope to publish a proposal on this topic by the end of 2014.

**Questions for the Record Submitted by Representative Blaine Luetkemeyer:**

**Luetkemeyer 1:**
The No FEAR Act requires federal agencies to post quarterly summaries on its public website pertaining to EEO complaints filed with the agency. Is it correct that in the most recent No FEAR Act report 23 employees filed an Equal Employment Opportunity complaint against the bureau?

*Response:*

There were not 23 formal Equal Employment Opportunity (EEO) complaints filed by employees against the Consumer Financial Protection Bureau (Bureau) from the period fiscal year (FY) 2012 through Quarter 1 of FY 2014. In FY 2012, the Bureau received 11 formal complaints; in FY 2013, the Bureau received nine formal complaints; and in FY 2014, the Bureau received three formal complaints. Formal EEO complaints can be filed by employees, former employees, or applicants for employment. Of the 23 formal EEO complaints filed since FY 2012, nine of the complaints were filed by applicants for employment.

**Luetkemeyer 2:**
The No FEAR Act disclosure indicates 11 out of the 23 complaints are either pending or have been withdrawn. This means that 12 of these complaints have been disposed of in some manner. What happened with these complaints, and were they resolved favorably for the employees?

*Response:*

Of the 23 formal complaints, 10 cases have been settled on terms mutually agreeable to the parties; five cases received Final Agency Decisions issued by the Consumer Financial Protection Bureau's (Bureau) Equal Employment Opportunity (EEO) Office (three merit decisions found that the filer did not succeed on the merits of the claim asserted and two procedural dismissals in accordance with 29 C.F.R. § 1614.107(a)(1) for failure to state a claim); four cases are pending hearing before the Equal Employment Opportunity Commission; three cases are pending investigation through the Bureau's administrative complaint process; and one case was withdrawn by the filer.

There have been no findings of discrimination in any of the formal EEO complaints filed.

**Luetkemeyer 3:**
The Bureau seems to have taken it upon itself to regulate certain financial products based on the notion that they could contain an element of discrimination. Should Congress be conducting more rigorous oversight of CFPB to ensure the Bureau is not violating principles it claims to represent?

*Response:*

Congress included many oversight provisions for the Consumer Financial Protection Bureau (Bureau) in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), including certain oversight measures not applicable to any other regulator.

Among other things, the Bureau's Director is appointed by the president but must be confirmed by the U.S. Senate. The Director can also be removed by the president for cause.

Additionally, the Director must testify before the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs twice a year. The Bureau must also submit Semi-Annual Reports to both Committees pursuant to Dodd-Frank Act, which must include a justification for the Bureau's budget, a list of rules the Bureau has adopted, and a list of supervisory and enforcement actions in which the Bureau has been involved, among other things.

The Director and other Bureau officials testify before various congressional committees on a number of issues, allowing Members of Congress additional opportunity to exercise public scrutiny and oversight of the Bureau and its work. Since the inception of the Bureau, its officials have testified 47 times at congressional hearings before bodies of Congress.

Like other independent banking regulators, the Bureau has an independent source of funding. However, the Bureau is the only independent regulator with a cap on its funding, as mandated by Congress.

The Bureau's financial statements are required to be audited annually by the Government Accountability Office (GAO). The Bureau's operations and budget must be audited annually by an independent auditor, and the Bureau is audited regularly by its Inspector General.

Like all other regulatory agencies, the final actions of the Bureau, including final rules, are subject to judicial review under the Administrative Procedure Act (APA), and may be set aside. Congress may also overturn any rule the Bureau promulgates. Additionally, and unique to any other federal financial regulator, the Financial Stability Oversight Council can overturn any Bureau regulation.

The Bureau is also required to consult with other regulators about prudential, market, and systemic objectives during its rulemaking. And, unlike any other federal financial regulator, Bureau rulemakings are subject to the Small Business Regulatory Enforcement Flexibility Act (SBREFA) review panel process, which requires consultation with affected small businesses prior to the publication of proposed rules for public comment. The Bureau is also required to assess significant rules every five years, and is required to consider not only the potential costs and benefits of our rules for industry and consumers, but also the specific impact of our proposed rules on banks and credit unions with $10 billion or less in assets, as well as the impact on consumers in rural areas. These latter provisions are also unique to the Bureau.

**Luetkemeyer 4:**
After meeting with officials from both the Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC), both agencies have admitted to some sort of wrongdoing by their respective staffs regarding online lenders. DOJ and FDIC have both clarified in writing that legal lenders should have no problem maintaining relationships with financial institutions. Will you issue any formal or informal guidance or correspondence which indicates that it is acceptable for institutions to do business with online lenders operating within the law?

*Response:*

The Consumer Financial Protection Bureau's (Bureau) role is, among other things, to ensure that payday lenders comply with Federal consumer financial law. To this end, the Bureau works collaboratively with other regulators in the markets where more than one governmental entity may have authority to take action. However, the Bureau is not the sole regulator of financial products and services providers. Other agencies operate under statutory mandates distinct from those conferred upon the Bureau.

To the extent that consumers may experience injury from violations of laws within our authority, we will take appropriate action to ensure consistent implementation and enforcement across the small dollar credit marketplace. However, all lenders must comply with the laws applicable to them. This is true for online lenders, just as it is for lenders operating from physical storefronts.

**Luetkemeyer 5:**
A report recently released by the Inspector General of the United States Postal Service (USPS) suggested that USPS move into the lending space and offer small dollar short-term loans. How do you respond to this report? Does CFPB support the notion that USPS is a qualified lender or should consider entry into the lending and/or financial services space? If it was to move into this or a similar business, how would CFPB oversee USPS?

*Response:*

The Consumer Financial Protection Bureau (Bureau) takes no position on whether the United States Postal Service should engage in small dollar short term lending. However, we would expect any party offering consumer financial products to do so responsibly and in conformity with all applicable laws. Where consumers experience injury from violations of laws within our authority, we will take appropriate action to remedy that harm.

**Luetkemeyer 6:**
I found several of your responses to my Questions for the Record, submitted following your appearance before the Committee on September 12th, troubling and nonresponsive. Below, you will find one such response illustrating my concern:

> Luetkemeyer Question: "Do you believe that tribal governments have the right to use the internet to make loans".

Cordray Response: "All lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair, transparent, and competitive market."

Please answer the following question with either "yes" or "no": Do you believe tribal governments have the right to use the Internet to make loans?

*Response:*

Yes, tribal governments may use the Internet to make loans, to the extent permitted by applicable laws.

**Luetkemeyer 7:**
It has come to my attention that there has been and continues to be coordination between the Department of Labor (DOL) and CFPB on the DOL fiduciary rulemaking. Please explain in detail the coordination that exists on this matter between DOL and your Bureau, and all roles, including formal and information roles, CFPB is taking in conjunction with this rulemaking.

*Response:*

Consumer Financial Protection Bureau staff members have met several times with representatives of the Employee Benefits Security Administration of the Department of Labor (DOL). DOL staff members have mentioned several times that they are working on a conflict of interest rule, but have not shared the content of the rulemaking.

**Luetkemeyer 8:**
Has CFPB coordinated with the Securities and Exchange Commission (SEC) on the SEC fiduciary rulemaking? If so, in what capacity?

*Response:*

The Consumer Financial Protection Bureau has not coordinated with the Securities Exchange Commission (SEC) on the SEC fiduciary rulemaking.

**<u>Questions for the Record Submitted by Representative Nydia Velazquez:</u>**

**Velazquez 1:**

We have learned that as a consequence of CFPB implementation of Dodd-Frank requirements for background checks under the Loan Officer Compensation provisions, lenders and loan servicing companies have started to add additional employee validation requirements as a standard for any and all vendors, including subcontractors and their sub-agents. In fact, such requirements are now being applied to such routine property preservation services as mowing lawns or inspections of vacant property that are performed by thousands of small businesses. These activities are well outside the normal duties performed by a loan officer. Overly-broad application of the background checks policy is costly to small businesses and does not materially affect the quality of lending practices. Can and will CFPB issue a guidance document that will clarify the intent and scope of the DFA Loan Officer Compensation provisions regarding background checks, clarifying that the employee validation requirements are limited to loan officers and individuals who perform the normal duties of loan officers?

*Response:*

Neither the Consumer Financial Protection Bureau's (Bureau) Loan Officer Compensation rules nor its Mortgage Servicing rules specifically require that lenders and loan servicing companies perform background checks on all employees of third party service providers. The final rule issued in Septemher 2013 provides clarifying details about the requirements' coverage. The Bureau currently does not plan to issue an additional guidance document regarding additional service provider oversight.

The Mortgage Servicing rules do, however, require servicers to have policies and procedures reasonably designed to ensure that the servicer can facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law. The Bureau also issued a Bulletin in April 2012 clarifying that supervised financial institutions must have an effective process for managing the risks of service provider relationships and recommending that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers.

The Bureau's expectations regarding service provider oversight will take into account the level of risk of consumer injury presented by a particular service provider. Factors that could increase the risk of harm include:

- Significant direct contact with consumers,
- Performing multiple services related to a single mortgage loan account,
- Whether the quality of the service provider's performance impacts consumers, and
- Whether the service provider's failure to comply with contractual or regulatory obligations could result in violations of Federal consumer financial law or injury to a consumer.

Conversely, when a service provider presents a low risk of harm, the Bureau expects that a servicer's due diligence will include, at a minimum, ensuring that the service provider has in place appropriate policies and procedures, as described above, and for the tracking of consumer complaints about the service provider. The Bureau expects that certain forms of due diligence may be unnecessary in low risk situations. For example, the Bureau does not expect that servicers would require criminal or other background checks on every single one of a service provider's employees when the servicer has determined that the service provider presents a low risk of harm, as the cost to both the servicer and service provider could likely significantly outweigh any potential benefits to consumers.

**Questions for the Record Submitted by Representative Dennis Ross:**

**Ross 1:**
In your last visit, I questioned you on the April White Paper on Payday lending. I'm still concerned about the Bureau's activities in this area, particularly as it might unduly prevent the good actors in that space from fulfilling the financial needs of the underbanked.

The CFPB's fall 2013 list of upcoming rulemakings, payday loan products were listed, indicating that your agency intends to take action in the near term. Can you provide the committee with any indication on the timing of proposing regulations for alternative or payday loan products?

*Response:*

The Consumer Financial Protection Bureau (Bureau) anticipates that it will take action in the near term regarding small dollar lending. The Bureau will give more specific indications of its timing when it publishes the next update of its Unified Agenda.

**Ross 2:**
Another area of concern for many Americans is access to mortgage credit and restriction of consumer choice. A woman from Brandon, Florida called my office the other day, nearly in tears because of the skyrocketing premiums she faces with her new Obamacare-approved plan. She had been unable to keep the healthcare she liked and confessed to my office "I'm afraid of my government." I'm worried that in telling families we know what is best for them--we are making the same mistakes in mortgages that were made in health insurance.

- Example: A credit union in my area made a loan to a credit worthy, self-employed individual. That credit union is doubtful they would have had the confidence to make the loan under the new QM regulations.
- Another example—Bay Cities Bank in Tampa recently announced it would stop originating mortgages all together, according to the banks President: "When you make it hard enough for a company to offer residential loans, eventually they are going to say we can't make economic sense of this line of business anymore."

What is the legal liability a lender faces for originating a non-QM loan that does not comply with the ability-to-repay requirement? If you operated a bank and were responsible for the fiscal health of that institution, would you take on that liability?

*Response:*

Lenders that have long upheld sound underwriting standards have little to fear from the Ability-to-Repay (ATR) rule; the strong performance of their loans over time demonstrates their care in underwriting to borrowers who have the ability to repay. Nothing about their traditional lending model has changed, and they can continue to offer the same kinds of mortgages to borrowers whom they evaluate as posing reasonable credit risk – whether or not they meet the criteria to be classified as Qualified Mortgages (QM). A reasonable, good faith determination of a borrower's ability to repay has always been the hallmark of responsible, lending, and this common-sense approach is what informs the ability to repay requirement.

There is no requirement that a creditor has to make a QM loan. If a loan is a QM, there is a legal presumption that the ability to repay requirement has been met. But there is no presumption that the ability to repay requirement is not met if the loan is not a QM. We did an analysis for our ATR/QM rule with very conservative assumptions that we think would tend to overestimate the risk. The analysis concluded the ability to repay liability risk was small and would increase the interest rate on a $210,000 loan by no more than 3 to 10 basis points. We realize that, however small the additional risk, every lender must take it into account. But we think risk is managed by responsible lending. It should be kept in mind that making a reasonable and good faith determination is not a guarantee that the borrower will repay the loan, and it should not be considered as such. It is only a determination that the borrower has the ability to repay the loan at the time the loan is made.

**Ross 3:**
Short of providing financial education and preventing fraud, why should it be the CFPB's job to determine which products and terms will be provided to consumers?

*Response:*

The marketplace determines what products, terms, and services will be offered and provided to consumers. One of the Consumer Financial Protection Bureau's (Bureau) responsibilities is to ensure that the products and services within its jurisdiction comply with Federal consumer financial laws. For example, the Bureau generally is tasked with ensuring that consumer financial products and services provided in the marketplace are not unfair, deceptive, or abusive, and that access to credit is nondiscriminatory under the Equal Credit Opportunity Act. In addition, the Truth in Lending Act, as amended by the Dodd-Frank Act, requires a creditor to make a reasonable assessment of a borrower's ability to repay before using a mortgage loan.

**Ross 4:**
Won't the overall effect of the QM rule be to advantage certain types of products and certain terms in the market place over others?

*Response:*

Congress made a policy judgment in adopting the Dodd-Frank Wall Street Reform and Consumer Protection Act that creditors should make a determination of a consumer's ability to repay a mortgage loan based on verified and documented information. In so doing, Congress effectively banned "no doc" and "low doc" loans. Congress also made policy judgments that certain loans with certain features should not be treated as Qualified Mortgages (QM). However, the Bureau believes that non-QM loans can be made responsibly and, indeed, that responsible non-QM loans are a critical component of the overall market. The Bureau crafted the rule very carefully to encourage responsible lending and a vibrant market for both QM and non-QM loans.

**Ross 5:**
As a father of college-age sons, I'm concerned about the effect of the Debt-to-Income qualification for QM loans. It seems to me that mortgage credit options for young people with student loan debt will be severely limited, if not eliminated, by the 43% Debt-to-Income threshold. The Federal Reserve did not require lenders to consider this ratio, why did the CFPB?

*Response:*

A debt-to-income (DTI) ratio is a basic tool that creditors use regularly to assess consumers' ability to repay new debt, and the Consumer Financial Protection Bureau (Bureau) believed that it was appropriate to use the authority granted by the statute to require creditors to consider this ratio in order to meet Qualified Mortgage (QM) requirements. One type of QM further requires that consumers' DTI ratio not exceed 43 percent. The Bureau chose the 43 percent threshold for the basic QM definition in part because it has long been used by the Federal Housing Administration (FHA) as a general boundary for defining affordability, and is more liberal than benchmarks used by some other market players. We believe that it allows ample room for consumers to qualify for qualified mortgages. At the same time, we recognized that because some creditors might be reluctant initially to make loans that are not QMs, it would be helpful to create transition mechanisms to ensure that qualified borrowers above the 43 percent threshold could access responsible credit while the market adjusted to the rule. Accordingly, we also adopted provisions allowing loans that are eligible for insurance or purchase by the government-sponsored entities or certain federal agencies to be designated as QMs even if they exceed a 43 percent DTI. We believe that this mechanism will address short-term concerns about access to credit while allowing room for a vibrant and responsible market for non-qualified mortgages to develop over time. Among other restrictive thresholds, we could have included in the rule a threshold to limit loans by credit score, or by loan-to-value ratio, neither of which the Bureau incorporated into the rule.

**Ross 6:**
Once the GSE exemption expires, where will consumers with DTI's above 43% go to get a loan?

*Response:*

We fully expect that responsible lending can and will continue outside of the 43 percent debt-to-income (DTI) qualified mortgage (QM). The GSE/federal agency QM – which is not really an exemption but a different category of QM – was developed as a temporary measure that expires in a maximum of seven years, depending on certain conditions, and will not require a DTI ratio of 43 percent or less. It provides QM coverage until the covered federal agencies develop their own QM rules, as provided for in the Dodd-Frank Wall Street Reform and Consumer Protection Act. As the other federal agencies adopt their own QM rules, it will bring more certainty and stability into the markets those agencies serve. The Department of Housing and Urban Development, which serves a significant market through the FHA, has already finalized its own QM rule. The temporary QM also gives creditors and the market time to develop familiarity and comfort with operating outside the QM space. We expect the market to recognize the business opportunity outside of QM and to make that adjustment before the temporary QM definition expires.

In addition, there is another form of QM that does not require a DTI ratio of 43 percent or less, and that does not expire, which requires that the loan be made by a small creditor, satisfy certain other limitations on points and fees and restrictions on risky loan features, and be retained in portfolio by the creditor. Although this QM definition does require that the creditor consider the consumer's DTI ratio, it does not set any specific cap on DTI. This covers the vast majority of community banks and credit unions, and makes their mortgages QM with the safe harbor from any legal liability. The addition of this extra provision was designed to protect relationship lending by smaller institutions, and has been greeted with favor by thousands of those institutions.

**"Who's in Your Wallet:**
**Examining How Washington Red Tape Impairs Economic Freedom"**
**House Committee on Financial Services Hearing**
**April 8, 2014**

**Meredith Fuchs, General Counsel**
**Consumer Financial Protection Bureau**

**<u>Questions for the Record Submitted by Rep. Andy Barr:</u>**

1. Ms. Fuchs, in previous hearings before this Committee, Director Cordray indicated that the CFPB is looking at possible changes to mortgage rules, including a re-evaluation of the definition of rural areas. When can we expect these revisions to become finalized? In this evaluation, will the Bureau look at minimizing burdens on community financial institutions? If not, why not?

*Response*:

The Consumer Financial Protection Bureau (Bureau) is providing a two-year transition period during which small creditors can originate balloon payment qualified mortgages even if they do not operate predominantly in rural or underserved areas. In addition to providing time for small creditors to further develop their capacity to offer adjustable-rate mortgages, the Bureau expects to re-examine the definitions of rural or underserved during this time to determine, among other things, whether these definitions accurately identify communities in which there are limitations on access to credit and whether it is feasible to develop definitions that are more accurate or more precise. The Bureau is in the process of research and analysis to deepen our understanding of small creditors' origination of both balloon and adjustable rate mortgages and the implications of the Dodd-Frank Wall Street Reform and Consumer Protection Act provisions on access to credit. The Bureau is taking a holistic approach to better understand the issues regarding consumer protection, state regulation, technical systems, compliance processes, credit risk management, and other considerations that prompt small creditors to offer balloon loan products, and the potential transition issues in converting to other loan offerings. These efforts are being undertaken for the purpose of ensuring access to markets for consumer financial products and services for all consumers, while seeking to minimize burdens on financial institutions. This is a complicated topic that requires time.

**<u>Questions for the Record Submitted by Rep. Keith Ellison:</u>**

1. I have reviewed the consent order between the Department of Justice, CFPB and Ally Financial Inc. and Ally Bank, which required Ally to pay $80 million in damages to 235,000 minority borrowers who paid higher interest rates for their auto loans relative to similarly situated non-Hispanic white borrowers. In addition, Ally was also ordered to pay $18 million in penalties: http://www.consumerfinance.gov/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-toconsumers-harmed-by-discriminatory-auto-loan-pricing/.

This order is the federal government's largest-ever auto loan discrimination settlement. I am pleased to see CFPB's strong response to discriminatory practices in lending markets.

a. I understand that the CFPB cannot discuss current investigations, however, can you tell me how many cases the CFPB referred to the Department of Justice as possible violations of the Equal Credit Opportunity Act regarding possible discrimination in auto lending?

*Response*:

The Consumer Financial Protection Bureau (Bureau), along with the other federal agencies which have responsibility for enforcement of the Equal Credit Opportunity Act (ECOA), refers certain matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. In our recent Fair Lending Report[1], we stated that the Bureau made one auto lending-related referral to the DOJ, and subsequently took joint enforcement action with the DOJ against that indirect auto lender for violations of ECOA. Since the period covered in the report, the Bureau has referred several additional auto lending-related matters to the DOJ.

b. Can you tell us what the CFPB has discovered generally with regard to policies that exist in the indirect auto lending market that may have resulted in higher interest rates or less favorable loans provided to African American, Latino and Asian Pacific American borrowers?

*Response*:

As noted in the Bureau's bulletin, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*[2] (Auto Bulletin), many of the indirect auto lenders subject to the Bureau's supervisory authority have policies that allow auto dealers discretion to mark up established buy rates and compensate dealers based on those markups. Historically, the failure to properly or consistently monitor discretionary policies and practices for compliance with anti-discrimination laws has been a contributing factor in discrimination in auto lending and in other product

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[1] *See* Consumer Financial Protection Bureau, *Fair Lending Report of the Consumer Financial Protection Bureau* (Apr. 30, 2014), *available at* http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf.

[2] Consumer Financial Protection Bureau, CFPB Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (Mar. 21, 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

markets, like mortgages. This pattern has been documented by scholars[3] and is reflected in relevant case law[4] and DOJ enforcement actions.[5]

c. On March 21, 2013, the CFPB published guidance on Fair Lending Practices to Indirect Auto Lenders: http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-hold-auto-lenders-accountable-for-illegal-discriminatory-markup/. What led the Bureau to issue this guidance? Why was guidance issued instead of a regulation?

*Response:*

As you know, the ECOA and its implementing regulation, Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.

Many of the indirect auto lenders subject to the Bureau's supervisory authority have policies that allow auto dealers discretion to mark up established buy rates and compensate dealers based on those markups. As noted in the Auto Bulletin, "Because of the incentives these policies create, and the discretion they permit, there is a significant risk that they will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases." The Auto Bulletin did not set forth substantiated findings of discrimination, but instead highlighted the fair lending risk inherent in some indirect auto lenders' markup and compensation polices based on the discretion the policies permit.

In addition, the Auto Bulletin explained that the standard practices of indirect auto lenders can make them "creditors" under ECOA and was designed to help indirect auto lenders recognize and mitigate the risk of discrimination resulting from discretionary dealer markup and compensation policies. The Auto Bulletin also described steps that indirect auto lenders might

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[3] For example, *see* Cohen, Mark A. (2012). "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation." Review of Law and Economics vol. 8, no. I (21-58). Working Paper available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951827.

[4] *See* Coleman v. Gen. Motors Acceptance Corp., 196 F.R.D. 315 (M.D.Tenn. 2000), *vacated and remanded on unrelated grounds,* 296 F.3d 443 (6th Cir. 2002); Jones v. Ford Motor Credit Co., 2002 WL 88431 (S.D.N.Y. Jan. 22, 2002); Smith v. Chrysler Fin. Co., 2003 WL 3287 I 9 (D.N.J. Jan. I 5, 2003); Osborne v. Bank of America Nat' I Ass'n, 234 F.Supp.2d 804 (M.D. Tenn. 2002); Wise v. Union Acceptance Corp., 2002 WL 31730920 (S.D. Ind. Nov. 19, 2002).

[5] *See, e.g.* , United States v. Springfield Ford, Inc., No. 2:07-cv-03469-PBT (E.D. Pa. Aug. 21, 2007); United States v. Pacifico Ford, Inc., No. 2:07-cv-03470-PBT (E.D. Pa. Aug. 18, 2007); United States v. NARA Bank, et al., No. 2:09-cv-07124-RGK-JC (C.D. Cal. Nov. 1 8, 2009); *see also* United States v. Countrywide Fin. Corp. No.2:11-cv-10540-PCG-AJW (C.D. Cal. Dec. 28, 2011); United States v. AIG Fed. Sav. Bank, No. 1:99-mc-0999 (D. Del. Mar. 4, 2010).

take to ensure they are operating in compliance with fair lending laws. Importantly, the Auto Bulletin made clear that there are many possible paths forward for lenders. It also emphasized that dealers should be fairly compensated and did not in any way foreclose consumers' ability to negotiate their interest rate on an auto loan.

Finally, because the Auto Bulletin served to remind institutions of their legal responsibilities under existing law, it was appropriate to issue guidance, rather than a regulation. The guidance provided suggestions for mitigating legal risks; it did not establish additional legal requirements for either the public or for the Bureau. Rather, the Auto Bulletin provided examples of internal controls, program features, and compliance management systems that institutions might use to mitigate legal risk.

2. Is the CFPB familiar with the Center for Responsible Lending's (CRL) January 2014 research, *Non-negotiable: Negotiation Doesn't Help African Americans and Latinos in Dealer-Financed Car Loans?* http:/ /www.responsiblelending.org/ other-consumer-loans/auto-financing/researchanalysis/CRL-Auto-Non-Neg-Report.pdf.

   The study surveyed more than 900 consumers who recently bought cars. CRL found that African Americans and Latinos attempt to negotiate loan pricing with car dealers more often than white consumers: 39% of Latinos and 32% of African Americans reported negotiating their interest rate, compared to only 22% of white respondents. Yet white car buyers reported receiving lower interest rates—even those who didn't try to negotiate at all. Previous research has shown that interest rate disparities persist even when controlling for credit differences. The report identifies three factors that can add unnecessary costs to car loans made by dealers: 1) hidden dealer increases in the interest rate ("markups"), 2) misleading information that leads consumers to stop negotiating the interest rate, and 3) add-on products, such as insurance and warranties. In addition to getting higher interest rates, African Americans and Latinos also reported more instances of receiving misleading information, and they were nearly twice as likely as white consumers to be sold multiple add-on products.

   Will the CFPB review the research from consumer groups whose research shows disparities in pricing by ethnicity? How will the CFPB build on this research?

*Response:*

Yes, the Consumer Financial Protection Bureau (Bureau) has seen and reviewed this study by the Center for Responsible Lending. The Bureau regularly considers input from a variety of external and internal stakeholders to inform our risk-based prioritization process, which seeks to make the best use of our research, examination, and enforcement resources. Our risk-based prioritization approach reflects entities, products, and markets under our jurisdiction, including assessing fair lending risk to consumers, through many qualitative and quantitative factors to determine what, where, and how risks to consumers should be addressed. These factors include: complaints and tips from consumers, advocacy groups, whistleblowers, and other government agencies; supervisory and enforcement history; quality of lenders' compliance management systems; data analysis; and market insights, such as factors and trends identified by our Division of Research, Markets, and Regulations, as well as independent research, such as the study you highlighted. The Bureau integrates this information into the fair lending prioritization process, which is incorporated into the Bureau's larger risk-based prioritization process, allowing the Bureau to efficiently allocate its fair lending resources to the areas of greater risk to consumers.

**<u>Questions for the Record Submitted by Rep. Scott Garrett:</u>**

1. I'm interested in the Agencies' positions regarding the non-bank SIFI designation process. Specifically, are there rules, regulations or statutory language that restrict FSOC voting members (the Agencies' principals), from meeting with firms that are under consideration for non-bank SIFI designation? Does the firm under consideration meet with the FSOC voting members, including Chair Yellen, Comptroller Curry, Chairman Gruenberg, and Chairman Matz before voting on a Notice of Proposed Designation (NPD) or is it after such a vote? It's my understanding that the process, thus far, has not included an opportunity for a firm to make their case that they are not systemic to the FSOC voting members prior to the FSOC voting to designate a firm via a NPD. Do the Agencies support the opportunity for a firm to meet with FSOC voting members prior to a NPD vote, if the firm requests such opportunity? If not, please explain why any of the Agencies opposes the opportunity for a firm to meet with Agency principals prior to their vote on a NPD.

*Response*:

The Financial Stability Oversight Council (FSOC) regulations implement a careful process for potential designation of nonbank financial institutions for supervision by the Board of Governors of the Federal Reserve System, and to be subject to prudential standards, in accordance with Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In particular, those firms in Stage 3 interact closely with FSOC staff and are able to provide any information relevant to a particular potential designation. While this process does not currently afford an opportunity for the firm under consideration to meet with Principals at this stage, one firm did recently meet with the Deputies Committee while in Stage 3. Consistent with the rules, after a Notice of Proposed Designation, the specific firm can request a hearing with Principals and to date, one firm has taken that opportunity.

**<u>Questions for the Record Submitted by Rep. Bill Huizenga:</u>**

1. The Dodd Frank Act gives the CFPB the authority to provide exemptions from its rules for certain classes of institutions. We have heard from credit unions and small banks about the ever increasing regulatory burden the Bureau's rules place on them, even though there is little—if any evidence to support an argument that they are treating consumer poorly. Why hasn't the Bureau done more to focus its rulemaking on the bad actors in the financial services sector, as oppose to imposing additional burden on credit unions and small banks? Does the Bureau intend to use its authority to exempt these institutions from its rulemaking in the future? If not, why not?

*Response*:

The Consumer Financial Protection Bureau (Bureau) also shares your concern that regulations should not place unnecessary burdens on credit unions and small banks. We recognize that, with few exceptions, credit unions and small banks did not engage in the type of risky lending that led to the mortgage crisis. We also understand that if the regulations implementing the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act are unnecessarily burdensome, these institutions may be more likely to retreat from the market, which could restrict access to credit for some.

For these reasons, the Bureau takes special care to ensure that its rules are balanced for credit unions and the consumers they serve. For instance, the Bureau has tailored the Ability-to-Repay rule and the standards for qualified mortgages (QM) to encourage small creditors to continue providing certain credit products, while carefully balancing consumer protections. To address concerns such as those you raised, the Bureau created a QM provision specifically for small-creditor portfolio loans, which covers the vast majority of credit unions and small banks.

2. There are many who are concerned that the QM rule will constrain mortgage credit after the exemption for GSE-compliant loans expires. One recommendation would be to increase the threshold for "small loans" from $100,000, as the rule now allows, to $200,000. This would increase the availability of credit to first-time and moderate-income borrowers.

    a. Do you have the legal authority to increase this amount?

*Response*:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) limits the points and fees payable in connection with a loan that is a qualified mortgage (QM) to 3 percent of the total loan amount. The Act also requires that the Consumer Financial Protection Bureau (Bureau) prescribe rules adjusting this limit to permit lenders that extend smaller loans to meet the QM requirements. However, the Act did not define the threshold for "smaller loans."

    b. If so, why haven't you increased this threshold?

*Response*:

The Federal Reserve Board, which originally had authority for implementing the Dodd-Frank Act before that authority transferred to the Bureau, proposed a threshold of $75,000 for "smaller loans." The Bureau increased this "smaller loan" threshold to the current $100,000 (indexed for inflation). The Bureau also carefully designed a tiered sliding scale system that allows smaller dollar loans to be qualified mortgages even when the total points and fees are greater than three percent of the total amount of the loan. The permissible relative share of points and fees percentage increases as the loan amount declines to reflect the fact that fixed costs represent an increased percentage of the loan amount for smaller loans. For the very smallest loans, the limit is 8 percent of the total loan amount. This threshold and tiered sliding scale apply to all QMs, including the current Government Sponsored Enterprises (GSE) eligible QMs. Thus the question of whether to raise the threshold is not necessarily related to the expiration of the GSE-eligible QM definition.

c. If not, would you support legislation that would require that you increase the threshold for small loans to ensure low-income consumers can have access to mortgage credit?

*Response*:

The Bureau generally does not take a position for or against prospective legislation. The Bureau strives to implement its statutory mandates faithfully and fairly and has made every effort to ensure that access to mortgage credit is fair and transparent.

3. What legal liability does a lender face for originating a non-Qualified Mortgage that is ultimately found not to comply with the ability-to-repay requirement? Given these risks, do you believe that lenders will originate non-Qualified Mortgages? Or will they avoid these mortgages altogether?

*Response*:

The Truth in Lending Act (TILA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), provides that a consumer who brings a timely action against a creditor for a violation of the ability-to-repay (ATR) requirement may be able to recover special statutory damages equal to the sum of all finance charges and fees paid by the consumer for up to three years, unless the creditor demonstrates that the failure to comply is not material.[6] This recovery is in addition to: (1) actual damages; (2) statutory damages in an individual action or class action, up to a prescribed threshold; and (3) court costs and attorney fees that would be available for violations of other TILA provisions. Moreover, when a creditor, or an assignee, other holder, or their agent initiates a foreclosure action, a consumer may assert a violation of the ATR requirement "as a matter of defense by recoupment or setoff." There is no time limit on the use of this defense. However, the amount of recoupment or setoff is limited, with respect to the special statutory damages, to no more than three years of finance charges and fees. The Bureau has noted that the longer a consumer successfully makes timely payments, the less likely it is that the creditor's determination of ability to repay was unreasonable or not in good faith.

In finalizing the ATR requirement, the Bureau estimated that the litigation costs associated with non-qualified mortgage loans could be expected to add less than 10 basis points (0.1 percentage points) to an average consumer's mortgage rate.

[6] *See* 15 U.S.C. § 1640(a)(4), (e), (k)(2)(B).

The Dodd-Frank Act carefully cabins the conditions under which claims can be asserted and damages can be awarded. The final rule provides extensive and clear guidance on how to comply with the ATR/Qualified Mortgage (QM) rule. As done throughout the implementation periods for other mortgage rulemakings, the Bureau continues to work with industry to ensure that the ATR/QM rule is implemented as intended. The Bureau's goal is to avoid industry confusion or lack of communication.

We expect there will be plenty of responsible loans that fall outside our QM standard. There are good loans made every year – for example, loans made to a borrower with considerable other assets or whose individual circumstances and repayment ability are carefully assessed, which are non-QM because they do not meet the 43 percent debt-to-income ratio or are not eligible for purchase by the government-sponsored entities, but nonetheless are based on sound underwriting standards and routinely perform well over time.

4. We are already seeing the first signs that some smaller community financial institutions are throwing their hands up in frustration and exiting the mortgage business rather than trying to navigate the liability risk and excessive compliance costs inflicted by the CFPB's QM rule. Indeed, a recent American Banker headline has suggested that "QM" will come to stand for "Quitting Mortgages."

    a. How do you reconcile the one-size-fits-all approach taken by the CFPB in promulgating the QM rule with your statutory obligation to promote consumer choice and facilitate access and innovation in the marketplace?

*Response*:

The Consumer Financial Protection Bureau (Bureau) has not taken a one-size-fits-all approach to the Ability to Repay/Qualified Mortgage (ATR/QM) rule. Access to credit in rural communities as well as the impacts of our rules on small creditors who serve those and other communities is a matter we take very seriously. Bureau staff has undertaken numerous meetings with small creditors and their trade associations. The Bureau has also consulted our Credit Union and Community Banking advisory councils for feedback.

We have provided specialized QM rules designed to facilitate compliance and preserve access to credit from small creditors. Generally speaking, small creditors are ones that are $2 billion or less in assets, and together with their affiliates, do 500 or fewer first lien mortgage loans per year. Where a small creditor holds the loan in portfolio for at least three years, it can take advantage of these special QM rules. Such loans issued by small creditors are QMs even if they exceed the 43 percent debt-to-income (DTI) ratio, as long as the creditor considered DTI or residual income and the loans meet the basic product features for QMs. The final rule also allows small creditors to charge a higher annual percentage rate and still qualify for the Safe Harbor (Annual Percentage Rate (APR) <= 350 basis points over Average Prime Offer Rate (APOR) vs. 150 basis points over APOR).

In addition to the balloon payment QM for creditors operating predominantly in rural or underserved areas, our rules also provide a two-year temporary QM for small creditors that are making balloon loans that they hold in portfolio without regard to where the creditor operates. In other words, small creditors across the country can make balloon loans (with certain limitations such as a required loan term of at least five years) as QM loans for two years after the rule goes into effect. During this period, our staff has committed to studying the topic of small creditor balloon loans further, especially with regard to access to credit in rural or underserved communities. In so doing, the Bureau intends to review whether the definitions of rural or underserved should be further adjusted for purposes of the QM rule.

**<u>Questions for the Record Submitted by Rep. Patrick Murphy:</u>**

1. Ms. Fuchs, the Bureau has been thoughtful in its approach to protecting consumers and responsive to industry concerns about unintended consequences of regulations like QM. The thoughtfulness with which the Bureau is approaching regulation of the payday loan industry is also commendable. I believe that consumers must be protected from predatory lenders and unlawful actors. As you know, my home State of Florida combines good consumer protections with great enforcement. This protects consumers from abuse without constricting access to capital. Our well-regulated system crowds out offshore and unlawful online lenders that prey on consumers. How is the Bureau doing outreach to stakeholders and consumers in regulating this industry?

*Response*:

The Consumer Financial Protection Bureau (Bureau) engages a wide range of stakeholders and consumers in its work regarding the payday loan industry. The Bureau's approach is grounded in understanding the consumer experience in the payday loan market and data-driven evidence. Field hearings are an important engagement opportunity for the Bureau around major consumer financial issues. The Bureau, so far, has held two field hearings dedicated to the topic. One field hearing was in Birmingham, Alabama in January 2012, and the other was in Nashville, Tennessee in March 2014.

The Bureau has an open door for those interested in sharing their experiences, concerns, and recommendations. The Bureau's External Affairs division and those across the Bureau responsible for developing proposed rules impacting the payday lending market meet regularly with industry, government, and consumer stakeholders. The Bureau will continue to solicit and consider input from stakeholders as we consider how to develop proposed regulations.

Additionally, the Bureau recognizes the important role of the states in the consumer financial marketplace. As the Bureau considers appropriate regulatory action in the market for payday loans, we will carefully examine the consumer protections developed by the states.

**Questions for the Record Submitted by Rep. Robert Pittenger:**

1. I appreciated that your written statement indicated that the Bureau is, "committed to ensuring that our rules are effective at protecting consumers and making consumer financial markets work better, and that they do not unduly burden the institutions participating in those markets." Your statement also indicated that among the strategies the Bureau employ to achieve those goals is to consider input from a wide variety of stakeholders and you said that you seek targeted input on specific regulations. You mentioned the Bureau's use of Small Business Regulatory Enforcement Fairness Act (SBREFA) to solicit feedback from small businesses.

    a. Why does the Bureau provide just two weeks notice of the meetings to SBREFA participants? Some SBREFA participants have said they had to spend a lot of money to make last minute travel arrangements. Would the Bureau give small entity representatives at least one months' notice so that they can make travel arrangements to attend SBREFA panel meetings in person?

*Response:*

The Consumer Financial Protection Bureau (Bureau) recognizes that Small Business Regulatory Enforcement Fairness Act (SBREFA) small entity meeting participants need adequate time to make travel arrangements, review materials, and prepare for and participate in SBREFA meetings. The Bureau's most recent SBREFA meeting with small entity representatives was held on March 6, 2014, in connection with a proposed rulemaking under development to implement amendments to the Home Mortgage Disclosure Act (HMDA) required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and to make related changes to the Bureau's Regulation C.[7] The Bureau began communicating with potential small entity representatives for the HMDA SBREFA Panel over a month in advance of the March 6th meeting. Written materials for the Panel meeting were circulated to the selected SBREFA small entity representatives on February 7, 2014. Throughout the month of February, the Panel held three teleconferences with the SBFEFA meeting participants to provide information about the SBREFA process and discuss matters related to the Bureau's analysis and the specific proposals under consideration. All small entity representatives were provided with the option to participate in the March 6th SBREFA Panel meeting by teleconference if unable to travel or attend in person. The Bureau also provided the small entity representatives with an opportunity to submit written feedback until March 20, 2014.

    b. Why does the Bureau not consult with industry trade associations before SBREFA panels are convened to better prepare the small entity representatives for the SBREFA panels? One of the main goals of these panels is to help determine how costly a regulation will be to implement for small business and to identify less-costly alternatives. Industry groups can help the Bureau measure factors included in these cost estimates (including differences in regional practice and vendor practices) or information about alternatives that can reduce costs for small businesses. A small

[7] 12 CFR part 1003.

business owner can provide more effective information to the SBREFA process when they have the assistance from their trade association or their vendors. Conducting outreach to trade associations before holding the panel (including inviting trade associations to observe the panel meeting in person) ensures that the SBAR gets the most accurate cost data available.

*Response*:

SBREFA Panels are one part of the Bureau's broader outreach initiatives to consult with and obtain feedback from small businesses and other stakeholders. The Bureau engages in a variety of other outreach efforts to obtain information and feedback from industry stakeholders and their trade associations, representatives, and vendors, as well as from consumers and consumer advocates.

The Bureau allows and enables small business representatives to seek and obtain the assistance and support of their trade associations or vendors if they so desire. The Bureau's substantive written materials describing the proposed rule under consideration and its potential impacts are not only distributed to the participants in the meeting, but also are published and made available to all members of the public, including trade associations, vendors, and other industry representatives, on the Bureau's website. In addition, for each of the four SBREFA panel meetings held by the Bureau to date, each small entity representative was able to invite and bring at least one guest, which could be someone from their own company, a trade association, or vendor, with them to provide support and assistance during and after the SBREFA Panel meeting. As a result, trade associations and vendors are able to provide any assistance or support if a small business representative seeks such assistance during the SBREFA process.

c. Why does the Bureau not make the SBREFA panel report public once it is complete and wait until the final regulation is published? By publicizing the report earlier in the regulatory process, the Bureau can provide crucial information to industry stakeholders. This will allow industry to develop more useful data for the Bureau to consider about the impact of their proposals on small business.

*Response*:

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and the Dodd-Frank Act, requires the SBREFA Panel report be made public as part of the rulemaking record but does not specify when the report should be released to the public.[8] The Bureau does not wait until the final regulation is published before releasing the SBREFA Panel report to the public as part of the rulemaking record. Rather, the Bureau releases the SBREFA Panel report with the proposed rule so that the public, including small entities and other industry stakeholders, can consider them together and submit formal comments in response to the proposal.

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[8] *See* 5 U.S.C. 609(b)(5).

In addition, for each of the four SBREFA panel meetings held by the Bureau to date, substantive written materials describing the proposed rule under consideration and its potential impacts were not only distributed to the small entity representatives participating in the meeting, but were also made available to the public, including other industry stakeholders, on the Bureau's website. This provides an opportunity to all industry stakeholders – not just SBREFA Panel meeting participants – to review and assess the proposals under consideration and submit any data, comments, or other information related to potential impacts of the proposal to the Bureau for consideration prior to the issuance of the proposed rule.

d. Would the Bureau broaden the way it looks at the impact of a regulation on small business. The SBREFA panel focused heavily on the direct costs of this rule on small business, such as software costs, productivity and training but glanced over the parts of this rule that could have indirect but very serious costs on small business. These indirect costs can be extraordinary, including potentially preventing small business from being able to compete in the future marketplace.

*Response*:

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and the Dodd-Frank Act, requires the Bureau to consult with small entities and collect advice and recommendations regarding the projected reporting, record keeping, and other compliance requirements of the proposed rule; other rules that may duplicate, overlap, or conflict with the proposed rule; and any significant alternatives which accomplish the stated statutory objectives and minimize any significant impact of the proposed rule on small entities.[9] When assessing such impacts under the RFA, the Bureau considers both one-time and recurring costs to small entities.

In addition, pursuant to the requirements of the RFA, the Bureau consults with small entities and collects advice and recommendations regarding: (1) any projected increase in the cost of credit for small entities; and (2) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities.[10] Other statutes such as the Paperwork Reduction Act (PRA)[11] and the Dodd-Frank Act,[12] also require the Bureau to consider impacts of it regulations.

e. An example is the panel's review of the proposals related to who completes the Closing Disclosure. Under the rule, the Bureau makes the lender ultimately liable for the accuracy of the Closing Disclosure even if they partner with a settlement agent to complete the form. While the panel focused on the direct costs of their new form, the indirect costs (namely that lenders would be incentivized to limit the number of small entities with whom they work) will be much more devastating to small business. The

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[9] *See* 5 U.S.C. § 603(b).
[10] *See* 5 U.S.C. § 603(d)(2).
[11] *See* 44 U.S.C. § 3501 et. seq.
[12] *See* 12 U.S.C. § 5512(b).

Bureau should take greater care to determine whether a proposal will cause business-model shifts that could be harmful to small-business competitiveness.

*Response*:

Throughout the rulemaking process, including during SBREFA, the Bureau received and considered comments regarding concerns about lender responsibility for the accuracy of the Closing Disclosure. During the SBREFA process, the panel recommended two alternatives after hearing concerns on this issue: (1) making the lender solely responsible for the settlement disclosure, and (2) making the lender and settlement agent responsible for TILA and RESPA portions, respectively, and making the lender and seller jointly responsible for providing the disclosure to the consumer. Following the panel's recommendation, the Bureau proposed two alternatives: (1) making the creditor solely responsible for provision of the Closing Disclosure and (2) permitting the settlement agent to provide the Closing Disclosure, although requiring the creditor ensures that the disclosure was provided in accordance with Regulation Z's requirements. After notice and comment, the Bureau considered and summarized comments received in the final rule, and finalized a rule permitting the settlement agent to provide the Closing Disclosure. The Bureau acknowledges that lenders may assume greater responsibility for the disclosure of settlement cost information than they do currently; however, the Bureau also believes that lenders will continue to rely on the expertise of settlement agents in conducting closings. Lender responsibility under this rule also aligns with current practices and allows the parties to continue to work together to close home mortgage transactions in a manner that is most efficient for consumers and the market. Under the final rule, settlement agents are, however, still responsible for providing the seller's Closing Disclosure. The rule also allows lenders to contract with settlement agents, which offers lenders additional flexibility in how they choose to structure their operations.

2. SBREFA panels are a one shot event that comes late in the regulatory process. The SBAR occurs after the Bureau has decided on the need for a regulation, conducted research to support the regulation, and developed the substantive pieces of the regulation and just prior to a regulation being formally proposed in the Federal Register. This is fairly late in the game and precludes the Bureau from considering, researching and testing alternatives that will be less costly to small business before publishing their proposal. A more effective process would be to have the Bureau consult with small businesses throughout the entire regulatory process.

   While I am not asking the Bureau to endorse specific legislation, does the Bureau see a benefit in the establishment of an advisory board for small businesses that are nondepository institutions similar to those established for outreach to community banks and credit unions? If no, why not?

*Response*:

The Regulatory Flexibility Act (RFA) requires the Consumer Financial Protection Bureau (Bureau) to convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel to consult with small entities and prepare an initial regulatory flexibility analysis and final regulatory flexibility analysis for rules for which notice and comment are required unless it certifies that a rule will not have a "significant economic impact on a substantial number of small entities" (RFA impact).[13]

Small businesses have several opportunities to participate meaningfully in the SBREFA process. Prior to the SBREFA process, the Bureau generally conducts outreach through trade associations, our standing community bank and credit union advisory councils, informal roundtables, and other means to identify issues, alternatives, and impacts that will need to be assessed in the course of the rulemaking. The Bureau gathers and analyzes information as early in the rulemaking process as possible to determine whether to convene a SBREFA Panel. When a proposed rule under consideration is sufficiently developed so that small businesses can provide meaningful input and information on the potential RFA impacts and ways to minimize such impacts, the Bureau convenes the SBREFA Panel and consults with small business representatives.

In addition to the SBREFA panel, the Bureau publishes the materials on our website, creates a general email address to receive feedback, and typically, convenes several listening sessions to gather input from a broad range of stakeholders. Small businesses and their trade associations (including those consulted during the SBREFA process) get a full opportunity to submit comments on the Notice of Proposed Rulemaking once we have incorporated the earlier rounds of feedback to settle on a proposed approach.

In addition to the SBREFA process, the Bureau engages in a variety of other outreach efforts throughout all stages of development of its regulations in addition to stakeholder meetings and listening sessions, including hearings, roundtables, and advisory boards to obtain information and feedback from industry and consumers. The information and input obtained through these outreach mechanisms are also considered throughout all stages of developing and promulgating the proposed regulation at issue.

**<u>Questions for the Record Submitted by Rep. Kyrsten Sinema:</u>**

1. It is my understanding that the CFPB is going to begin a formal regulatory process aimed at pay day lending. Is the CFPB coordinating with DOJ, the OCC and the FDIC, regarding the potential interaction between Operation Choke Point and rules intended to regulate pay day lending?

*Response*:

As it develops its rulemaking proposal, the Consumer Financial Protection Bureau will consult with other Federal agencies, as provided by Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[14]

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[13] *See* 5 U.S.C. § 605(b).
[14] *See* 12 U.S.C. § 5512.