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

**“Examining the Consumer Financial Protection Bureau’s
Mass Data Collection Program”**

December 16, 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴ Government Accountability Office Study, *supra*.

¹⁵ *Id.*

¹⁶ Benjamin Goad, *GAO: Nothing Unusual in CFPB Data Collection*, The Hill, Sept. 22, 2014, <http://bit.ly/11NzCsO>.

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

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

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

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

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

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

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

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

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

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

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

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

²³ As a coalition of consumer groups pointed out, industry collection of consumer data has allowed financial marketers to target consumers for payday loans and higher interest rate credit cards. See Statement of Privacy and Consumer Groups In Support of CFPB's Use of Data, July 9, 2013, <http://bit.ly/1QKEude>.