

February 3, 2020

## Memorandum

**To:** Members, Committee on Financial Services

**From:** FSC Majority Staff

**Subject:** February 6, 2020, “Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau”

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The Committee on Financial Services will hold a hearing entitled, “Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau” at 10:00 a.m. on Thursday, February 6, 2020, in room 2128 of the Rayburn House Office Building. This will be a single hearing with the following witness:

- **The Honorable Kathy Kraninger**, Director, Consumer Financial Protection Bureau

### Overview

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Director of the Consumer Financial Protection Bureau (Consumer Bureau or CFPB) is required to testify before the Committee at semi-annual hearings regarding a report the Consumer Bureau must submit to the Committee.<sup>1</sup>

The Dodd-Frank Act specifies nine items that must be included in CFPB’s semi-annual report to Congress: (1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services; (2) a justification of the budget request of the previous year; (3) a list of the significant rules and orders adopted by the Consumer Bureau, as well as other significant initiatives conducted by the agency, during the preceding year and the plan of the agency for rules, orders, or other initiatives to be undertaken during the upcoming period; (4) an analysis of complaints about consumer financial products or services that the Consumer Bureau has received and collected in its central database on complaints during the preceding year; (5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the agency was a party during the preceding year; (6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions; (7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law; (8) an analysis of the efforts of the Consumer Bureau to fulfill the fair lending mission of the agency; and, (9) an analysis of the efforts of the Consumer Bureau to increase workforce and contracting diversity consistent with the procedures established by its Office of Minority and Women Inclusion.<sup>2</sup>

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<sup>1</sup> Dodd-Frank Act § 1016.

<sup>2</sup> Dodd-Frank Act § 1016(c)

The Committee last held a CFPB semi-annual report hearing with Director Kraninger on October 16, 2019.<sup>3</sup> The most recent semi-annual report issued by CFPB was published on October 8, 2019, which covered agency activity from October 1, 2018 to March 31, 2019.<sup>4</sup> This memo provides a review of the most recent activities of the CFPB since the last hearing.

## Background

In response to the 2007-2009 financial crisis caused in part by a period of unchecked and rampant predatory lending, Congress determined it was necessary to create a strong and independent federal agency with the ability to better protect consumers from unfair, deceptive, or abusive acts or practices in the financial marketplace.<sup>5</sup> Title X of the Dodd-Frank Act created the Consumer Bureau as an independent agency within the Federal Reserve System, led by a single director.<sup>6</sup> In establishing the Consumer Bureau, Congress explicitly laid out in statute various mandates and outlined the agency's purpose, objectives, and functions. For example, the Dodd-Frank Act states that the Consumer Bureau, "shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."<sup>7</sup>

Since opening its doors in 2011, the Consumer Bureau has investigated and uncovered egregious and illegal conduct in the financial marketplace, including discriminatory and predatory products and services offered to consumers. The agency has received over 2 million consumer complaints with a 97 percent timely response rate by financial firms to those complaints.<sup>8</sup> The Consumer Bureau has returned more than \$13 billion to over 35 million consumers that were harmed by bad actors.<sup>9</sup> This includes at least \$130 million in relief for servicemembers, veterans and their families harmed by illegal practices through CFPB enforcement actions.<sup>10</sup>

Furthermore, the Consumer Bureau has issued various rulemakings that in many instances strengthened consumer protections, including those that ensure borrowers are empowered to make the best financial decisions for themselves through clear disclosures and strong borrower safeguards. The Consumer Bureau has performed extensive research on various consumer financial products and services, and it has provided free resources to the public to better understand these financial products and services, as well as their rights and protections afforded them under the law. Below is a summary of recent Consumer Bureau activity since Director Kraninger last testified before the Committee on October 16, 2019.

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<sup>3</sup> FSC, [Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau](#), Oct. 16, 2019.

<sup>4</sup> CFPB, [Semi-Annual Report Spring 2019](#), (Oct. 8, 2019).

<sup>5</sup> FSC Democratic Staff Report, [The Consumer Financial Protection Bureau In Perspective](#), July 21, 2017.

<sup>6</sup> For more information, see CRS, [Introduction to Financial Services: The Bureau of Consumer Financial Protection \(CFPB\)](#), Jan. 8, 2019; CRS, [An Overview of Consumer Finance and Policy Issues](#), July 12, 2019; and Constitutional Accountability Center, [Constitutional and Accountable: The Consumer Financial Protection Bureau](#), October 2016.

<sup>7</sup> Dodd-Frank Act § 1021(a). Also see Dodd-Frank Act § 1021(b) and § 1022(c).

<sup>8</sup> See <https://www.consumerfinance.gov/data-research/consumer-complaints/>, last accessed February 3, 2020, and also December 10, 2019 CFPB [press release](#)

<sup>9</sup> See <https://www.consumerfinance.gov/>, last accessed on October 3, 2019. Also, in a December 10, 2019 CFPB [press release](#), the agency noted, "In FY2019, [CFPB] announced 22 public enforcement actions and settled six previously filed lawsuits, that resulted in orders requiring more than \$777 million in total consumer relief (more than \$600 million in consumer redress and more than \$174 million in other relief) and more than \$185 million in civil money penalties, before adjusting for suspended amounts."

<sup>10</sup> CFPB, [Office of Servicemember Affairs Annual Report](#), (Jan. 2019).

**Rulemaking Developments.** On November 20, 2019, the Consumer Bureau published its Fall 2019 rulemaking agenda. Director Kraninger has said publicly that the agency plans to finalize the “Payday, Vehicle Title, and Certain High-Cost Installment Loans” rule in April 2020, and plans to release a Supplemental Notice of Proposed Rulemaking related to the debt collection rule in early 2020.<sup>11</sup> After issuing an Advanced Notice of Proposed Rulemaking (ANPR) in July 2019 on the expiration of the “GSE patch,”<sup>12</sup> which is scheduled to expire on January 10, 2021, Director Kraninger indicated in a letter responding to four Senators that the Consumer Bureau would The agency will also propose an amendment to the rule to move away from using debt-to-income (DTI) ratios to an alternative measure of credit risk. The CFPB is also considering adding a “seasoning” approach to the alternative QM rule to give safe harbor to certain loans when the borrower has made payments on time for a certain period, Kraninger wrote. Director Kraninger further indicated in the letter that the GSE patch would be extended until the effective date of the alternative rule or until either Fannie or Freddie exits conservatorship, whichever comes first.<sup>13</sup>

In addition to these rulemaking developments, the Consumer Bureau also issued the following rulemaking notices:<sup>14</sup>

- On December 3, 2019, the Consumer Bureau announced that it was issuing a Notice of Proposed Rulemaking on the Remittance Rule, proposing to extend the ability of certain banks and credit unions to provide estimated costs to consumers when it is economically infeasible to provide exact disclosures. The CFPB also proposed increasing the safe harbor threshold for when a company is subject to this rule from 100 or fewer transfers annually to 500 or fewer transfers annually.
- On November 20, 2019, the Consumer Bureau requested public comment on its planned assessment of the TILA-RESPA Integrated Disclosure (TRID) rule, a Dodd-Frank requirement which created a streamlined mortgage disclosure by combining disclosure requirements from the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).
- On November 15, 2019, the Consumer Bureau issued an interpretive rule clarifying criminal history screening and training requirements for financial institutions who employ loan originators who have temporary authority to operate while they are in the process of obtaining a new loan originator license when they move to a new state.
- In late October 2019 and December 2019, the Consumer Bureau announced several inflation adjustments to asset-size or dollar thresholds, including for civil penalties within CFPB’s jurisdiction, Regulation Z (which implements TILA), Regulation C (which implements the Home Mortgage Disclosure Act), Regulation M (which implements the Consumer Leasing Act), and special appraisal exemptions for higher-priced mortgages required under TILA.

**Consumer Complaints.** The most recent Semi-Annual report notes 321,200 consumer complaints for the April 2019-September 2019 period. The report also notes that 82 percent of these complaints were received via the Bureau website, 5 percent via phone calls, 8 percent via referrals from other state and federal agencies, and the remainder via mail, email, or fax.<sup>15</sup> The Consumer Bureau estimated that about 97 percent of the complaints it sent to companies received a response. Additionally, the Consumer Bureau

<sup>11</sup> CFPB, “[Director Kraninger’s Remarks before the National Association of Attorneys General Capital Forum](#)” (Dec. 10, 2019)

<sup>12</sup> The “GSE patch” exempts certain mortgages eligible for purchase or guarantee by Fannie Mae or Freddie Mac from the requirement for a consumer’s debt-to-income (DTI) ratio to be at or below 43 percent. Fannie Mae and Freddie Mac both currently allow for DTI up to 50 percent, but they impose additional requirements for consumers with DI between 45 and 50 percent.

<sup>13</sup> Katy O’Donnell, “[Kraninger outlines QM rule plans, says agency will extend GSE patch](#),” Politico Pro (Jan. 17, 2020).

<sup>14</sup> <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/>

<sup>15</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 4.

highlighted that the most complained about consumer financial products and services were credit or consumer reporting (39 percent of all complaints), debt collection (24 percent), and mortgages (9 percent).<sup>16</sup> According to a May 2019 analysis of the CFPB's consumer complaint database since its creation in 2011, more than 223,000 complaints resulted in relief for consumers, including more than 75,000 who received monetary relief from the companies they complained about.<sup>17</sup> Furthermore, Director Kraninger recently announced her intent to keep the consumer complaint database public, though with some modifications. One such modification includes incorporating more educational resources into the process before a consumer a complaint is submitted.<sup>18</sup>

**Enforcement and other Supervisory Developments.** In 2019, the Consumer Bureau announced 24 public enforcement actions, including complaints filed, consent orders, and settlements.<sup>19</sup> This compares with 54 enforcement actions announced by the agency in 2015, 42 enforcement actions in 2016, 36 enforcement actions in 2017, and 11 enforcement actions in 2018.<sup>20</sup> In its first six years, the Consumer Bureau brought 201 enforcement actions that provided nearly \$12 billion in consumer relief.<sup>21</sup> One of the notable 2019 enforcement actions related to Equifax and its 2017 data breach, where CFPB, Federal Trade Commission (FTC), 48 states, District of Columbia, and Puerto Rico entered into a settlement with the company.<sup>22</sup>

Since Director Kraninger's last appearance before the Committee, the CFPB has published one supervisory highlights report, which focused on credit reporting issues.<sup>23</sup> In addition, on December 3, 2019, the CFPB issued a joint statement with other federal financial regulatory agencies on the use of alternative data in credit underwriting.<sup>24</sup> Furthermore, on January 24, 2020, the CFPB issued a Statement of Policy regarding prohibition on "abusive" acts or practices.<sup>25</sup> Dodd-Frank empowered the CFPB to take enforcement actions against unfair, deceptive, or abusive acts or practices in the consumer financial marketplace. The new guidance places several pre-requisites before the agency will take action against an abusive act or practice, which stakeholders have raised strong concerns will encourage consumer abuses.<sup>26</sup>

**Fair Lending Enforcement.** The Consumer Bureau, in its 2018 Fair Lending Report and the most recent Semi-Annual report noted that while it conducted investigations, it did not bring a fair lending enforcement action during the covered April 2019-September 2019 time period.<sup>27</sup> The Spring 2019 Semi-Annual Report also listed four cases in which the Bureau assisted in compliance enforcement orders initiated by federal courts or a "previous Bureau Director."<sup>28</sup> Since November 2017, the Bureau has settled only one fair lending enforcement action thus far, which involved a violation of HMDA and Regulation C.<sup>29</sup>

<sup>16</sup> *Id.*

<sup>17</sup> U.S. PIRG, "You're Not Alone: CFPB Complaints on the Rise," (May, 2019), available at <https://uspirg.org/reports/usp/youre-not-alone>.

<sup>18</sup> Kelsey Ramirez, [CFPB: Public consumer complaint database is here to stay](#), Housingwire (Sep. 2019).

<sup>19</sup> [https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?from\\_date=4%2F01%2F2019&to\\_date=01%2F26%2F2020&page=1&page=1#o-filterable-list-controls](https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?from_date=4%2F01%2F2019&to_date=01%2F26%2F2020&page=1&page=1#o-filterable-list-controls)

<sup>20</sup> <https://www.consumerfinance.gov/policy-compliance/enforcement/actions>.

<sup>21</sup> Christopher L. Peterson, [Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline](#), CFA (March 2019).

<sup>22</sup> <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/equifax-inc/>

<sup>23</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-20\\_122019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf)

<sup>24</sup> See [https://files.consumerfinance.gov/f/documents/cfpb\\_interagency-statement\\_alternative-data.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf)

<sup>25</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

<sup>26</sup> <https://www.nclc.org/media-center/advocates-decry-consumer-agencys-narrowing-of-abusive-standards-which-will-protect-dishonest-businesses-instead-of-cheated-consumers.html>

<sup>27</sup> Consumer Financial Protection Bureau, [Fair Lending Report of the Bureau of Consumer Financial Protection](#) (2019). See also CFPB Semi-Annual Report Spring 2019, *supra* note 4.

<sup>28</sup> *Id.*

<sup>29</sup> Consent Order available at [https://files.consumerfinance.gov/f/documents/cfpb\\_freedom-mortgage-corporation\\_consent-order\\_2019-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_freedom-mortgage-corporation_consent-order_2019-05.pdf). Also see [https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?title=&topics=fair-lending&from\\_date=&to\\_date=](https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?title=&topics=fair-lending&from_date=&to_date=)

**Staff Diversity.** As of September 30, 2019, the Consumer Bureau’s workforce was 49 percent female, which remained the same as the two previous reporting periods. Minorities represented 40 percent of the Consumer Bureau’s employees, which represents a one percent increase from 2017, and no change from 2018. The Bureau also notes that 3.4 percent of permanent employees identified having a “targeted disability.”<sup>30</sup> The Consumer Bureau awarded nearly \$8.6 million to Minority-owned and Women-owned businesses, representing 36.7 percent of the \$49 million in total contracts awarded.

**Spending and Staffing.** On November 15, 2019, the CFPB published its FY 2019 financial report. In FY 2019, the CFPB requested \$468 million in transfers from the Federal Reserve.<sup>31</sup> The maximum allowable funding cap was \$679 million. At the end of FY 2019, the Civil Penalty Fund had \$542.9 million in funds unallocated and available for future allocation to harmed consumers or financial education. This compares to \$553 million for fiscal year 2018, and \$594 million for fiscal year 2017.<sup>32</sup> As of September 30, 2019, the Consumer Bureau’s workforce totaled 1,430 employees, compared to 1,668 employees at the end of 2017, which is a reduction of 238 employees (14 percent decrease) over the previous two years.<sup>33</sup>

**Reports and Initiatives.** Since Director Kraninger last appeared before the Committee, the CFPB has issued several reports and publications, including: financial well-being by state; servicer size in the mortgage market; quarterly credit trends relating to public records, credit scores, and credit performance; annual report on TILA, EFTA and CARD Act; and small business lending before, during, and after the Great Recession.<sup>34</sup> The Consumer Bureau last released the Office of Minority and Women Inclusion annual report to Congress in March 2019.<sup>35</sup> The Consumer Bureau has made significant policy announcements related to (1) issuance of no-action letter to Bank of America to facilitate housing counselor services for prospective homebuyers; (2) announcing inaugural joint office hours with Utah’s Attorney General to promote responsible innovation within the consumer financial market; and (3) establishing a new Taskforce on Federal Consumer Financial Law, which will examine the current legal and regulatory framework and report recommendations on how to improve to Director Kraninger.<sup>36</sup>

**Litigation regarding the CFPB’s Independence.** To promote the independence for the agency similar to other federal regulators, Dodd-Frank provided that the Director of the Consumer Bureau may be removed by the President only for “inefficiency, neglect of duty, or malfeasance in office.”<sup>37</sup> The CFPB had previously defended this provision in prior litigation, with federal courts having ruled that the for-cause removal protection was constitutional.<sup>38</sup> On September 17, 2019, Director Kraninger notified the Speaker of the House Nancy Pelosi that the CFPB would no longer defend the constitutionality of its structure in *Seila Law LLC v. Consumer Financial Protection Bureau* (9th Cir. 2019).<sup>39</sup> On October 18, 2019, the Supreme Court agreed to hear the case. The U.S. House of Representatives and other parties have filed amicus briefs in the case.<sup>40</sup>

<sup>30</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 4.

<sup>31</sup> CFPB, “[Financial report of the Bureau of Consumer Financial Protection: Fiscal year 2019](#)” (Nov.15, 2019)

<sup>32</sup> *Id.* More budget insights are available in the Bureau’s [Strategic Plan, Budget, and Performance Plan and Report](#).

<sup>33</sup> *Id.*

<sup>34</sup> List of Consumer Financial Protection Bureau Reports, available at <https://www.consumerfinance.gov/data-research/research-reports/>.

<sup>35</sup> Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_omwi\\_annual-report\\_2018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_omwi_annual-report_2018.pdf).

<sup>36</sup> <https://www.consumerfinance.gov/about-us/taskforce-federal-consumer-financial-law/>

<sup>37</sup> See 12 U.S.C. § 5491(c)(3).

<sup>38</sup> See *PHH Corp. v. CFPB*, 881 F.3d 75, 77 (D.C. Cir. 2018) (en banc).

<sup>39</sup> See <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/09/Pelosi-letter.pdf>. Also see

[https://www.supremecourt.gov/DocketPDF/19/19-7/116040/20190917144324154\\_19-7%20Seila%20Law.pdf](https://www.supremecourt.gov/DocketPDF/19/19-7/116040/20190917144324154_19-7%20Seila%20Law.pdf).

<sup>40</sup> See <https://www.speaker.gov/newsroom/12220-2>, <https://www.supremecourt.gov/docket/docketfiles/html/public/19-7.html>, and <https://www.scotusblog.com/case-files/cases/seila-law-llc-v-consumer-financial-protection-bureau/>.