

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

July 27, 2020

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: July 30, 2020, Full Committee Hearing entitled, “Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau”

The Committee on Financial Services will hold a hearing entitled, “Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau” on Thursday, July 30, 2020 at 12:30 p.m. in room 2128 Rayburn House Office Building. Members who wish to participate remotely may do so via Cisco Webex. This will be a single-panel 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 on its semi-annual report.¹

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.²

The Committee last held a hearing on the CFPB’s semi-annual report on February 6, 2020.³ The most recent semi-annual report issued by CFPB was published on July 7, 2020, which covers agency activity

¹ Dodd-Frank Act § 1016.

² Dodd-Frank Act § 1016(c).

³ FSC, [Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau](#) (Feb. 6, 2020).

from September 30, 2019 to March 31, 2020.⁴ This memo summarizes the 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 created 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.⁵ Title X of the Dodd-Frank Act created the Consumer Bureau as an independent agency within the Federal Reserve System.⁶ In establishing the Consumer Bureau, Congress explicitly laid out in statute various mandates and outlined the agency's purpose, objectives, and functions.⁷

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.⁸ The Consumer Bureau has returned more than \$13 billion to over 35 million consumers that were harmed by bad actors.⁹ This includes returning at least \$130 million in relief for servicemembers, veterans and their families harmed by illegal practices.¹⁰ The Consumer Bureau has also issued various rulemakings since its creation related to consumer protection.¹¹ In addition, the Consumer Bureau performs research on various consumer financial products and services, and it provides 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.¹²

Rulemaking Developments

Payday Rulemaking. On July 7, 2020 the Consumer Bureau finalized the “Payday, Vehicle Title, and Certain High-Cost Installment Loans” rule.¹³ The final rule revokes the underwriting provisions of the original 2017 final rule issued by former Director Richard Cordray, that required that a borrower has the ability to repay a payday or vehicle title loan before a lender makes the loan. The Consumer Bureau under the direction of then Interim Director Mick Mulvaney and later Director Kraninger determined that the research, stakeholder engagement, field hearings, and market monitoring used to support the 2017 rulemaking was insufficient.¹⁴ Consumer organizations have expressed concerns that the 2020 final rule

⁴ CFPB, [Semi-Annual Report Spring 2020](#) (Jul. 7, 2020).

⁵ FSC Democratic Staff Report, [The Consumer Financial Protection Bureau In Perspective](#) (Jul. 21, 2017).

⁶ 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](#) (Oct. 2016).

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

⁸ See CFPB, [Consumer Complaints Database](#), last accessed Jul. 16, 2020, see also December 10, 2019 CFPB [press release](#).

⁹ See [List of CFPB Semi-Annual Reports to Congress](#), last accessed Jul. 27, 2020; see also CFPB Semi-Annual Report Spring 2020, *supra* note 4; See also, in a December 10, 2019 CFPB [press release](#), the Bureau 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.”

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

¹¹ See CFPB, Rulemaking, last accessed <https://www.consumerfinance.gov/policy-compliance/rulemaking/>.

¹² See <https://www.consumerfinance.gov/data-research/>.

¹³ CFPB, [Payday, Vehicle-title, and Certain High-Cost Installment loans final rule](#) (Jul. 7, 2020).

¹⁴ CFPB, [Payday, Vehicle Title, and Certain High-Cost Installment Loans—Revocation Rule final rule](#) (Feb. 6, 2020). See also Cheryl Cooper, [CFPB Finalizes New Payday Lending Rule, Reversing Prior Regulation](#), Congressional Review Services (Jul. 10, 2020).

does not protect consumers from predatory payday and car-title loans, especially compared to the 2017 rule.¹⁵

QM Rule/GSE Patch. On June 22, 2020, the Consumer Bureau released two Notices of Proposed Rulemakings (NPRMs) for the Qualified Mortgage (QM) rule definition and for the “QM GSE Patch.”¹⁶ The NPRM on QM definition proposes to remove the 43 percent limit on debt-to-income (DTI, which compares what consumers owe to what they earn monthly) from the current QM loan definition and use a priced-based approach instead that establishes new limits on the spread between a loan’s annual percentage rate (APR) and the average prime offer rate (APOR). This proposal also removes Appendix Q, which sets forth the current criteria for calculating DTI and replaces it with a safe harbor for creditors using other specified verification standards for determining DTI.¹⁷ The GSE QM Patch NPRM would extend the patch from January 10, 2021 until the effective date of the QM definition rule or until either Fannie or Freddie exits conservatorship, whichever comes first.

Other Rulemakings. The Consumer Bureau also noticed a final rule regarding the Home Mortgage Disclosure Act (HMDA) that will raise the threshold for reporting closed-end mortgage loans.¹⁸ Similar to its HMDA disclosure requirements, the Consumer Bureau also agreed to court-ordered deadlines in February 2020 for implementation of Section 1071 of the Dodd Frank Act, including rulemaking on how financial institutions must compile, maintain, and submit demographic data on credit applications submitted by women-, minority-owned, and small businesses.¹⁹ Other rules noticed include, but are not limited to: interpretive rule regarding loan originators, settlement agents, and real estate appraisers during the COVID-19 period; interpretive final rule determining that pandemic stimulus payments are not government benefits and therefore not subject to consumer disclosures when funds are disbursed to prepaid cards; two final rules allowing certain remittance and electronic fund/pre-paid card transfers.²⁰

Consumer Complaints The most recent Semi-Annual report notes 372,700 consumer complaints for the April 2019-March 31, 2020 period and that 84 percent of these complaints were received via the Consumer Bureau’s website, 7 percent via phone calls, 6 percent via referrals from other state and federal agencies, and the remainder via mail, email, or fax.²¹ The Consumer Bureau estimated that about 99 percent of the complaints it sent to companies received a response. Additionally, the Consumer Bureau highlighted that the most complained about consumer financial products and services were credit or consumer reporting (46 percent of all complaints), debt collection (20 percent), credit cards (8 percent), and mortgages (7 percent).²² The Consumer Bureau reported receiving a record number of complaints during the COVID-19 pandemic. The CFPB received 42,500 complaints in April and 44,100 in May, as compared to a monthly average of 29,000 in 2019. The Consumer Bureau has received over 8,000 complaints related to COVID-19.²³ Mortgage-related concerns represented the highest percentage of Covid-10 related

¹⁵ See Americans for Financial Reform, [Rollback of Payday Protections Enables Predator Profiteering Amid Health Crisis](#) (Jul. 7, 2020); Center for Responsible Lending, [CFPB Director Kraninger Strips Away Consumer Protections from Predatory Payday Loans](#) (Jul. 7, 2020); National Consumer Law Center, [CFPB Guts Curbs on Unaffordable 400% APR Payday Loans](#) (Jul. 7, 2020).

¹⁶ CFPB, [Consumer Financial Protection Bureau Takes Steps to Address GSE Patch](#) (Jun. 22, 2020).

¹⁷ Examples of these standards include: Fannie Mae’s Single Family Selling Guide, Freddie Mac’s Single-Family Seller/Servicer Guide, FHA’s Single Family Housing Policy Handbook, and the VA’s Lenders Handbook.

¹⁸ The Economic Growth, Regulatory Relief, and Consumer Protection Act, which became law in May 2018 mandated that the CFPB finalize a rulemaking that would exempt certain banks from most Home Mortgage Disclosure Act (HMDA) reporting requirements.

¹⁹ See Judea S. Davis and Christopher K. Friedman, [Dodd Frank 1071 Update: CFPB Status Report Sheds Light on Implementation](#), Financial Policy Perspectives (Jun. 25, 2020).

²⁰ CFPB, [Final Rules](#), last accessed Jul. 27, 2020.

²¹ CFPB Semi-Annual Report Spring 2020, *supra* note 4 at 59.

²² *Id.* at 60.

²³ See CFPB, [May 2020 Complaint Bulletin](#) and [July 2020 Complaint Bulletin](#).

complaints, followed by credit cards, and credit or consumer reporting complaints.²⁴ Director Kraninger recently announced some modifications to the consumer complaint database, including incorporating more educational resources into the process before a consumer complaint can be submitted, and providing more data that can be disaggregated by state and/or industry.²⁵

Enforcement. In 2020 so far, the Consumer Bureau announced 13 public enforcement actions including complaints filed, consent orders, and settlements.²⁶ This compares to 24 public enforcement actions 2019, 11 enforcement actions in 2018, 36 enforcement actions in 2017, and 42 enforcement actions in 2016.²⁷ In its first six years, the Consumer Bureau brought 201 enforcement actions that provided nearly \$12 billion in consumer relief.²⁸ One of the notable 2019 enforcement actions related to Equifax and its 2017 data breach, in which the CFPB, Federal Trade Commission (FTC), 48 states, District of Columbia, and Puerto Rico entered into a settlement with the company.²⁹

Fair Lending Enforcement. On July 15, 2020, the Consumer Bureau announced an Equal Credit and Opportunity Act (ECOA) violation lawsuit against a nonbank mortgage lender.³⁰ The Consumer Bureau in the 2020 Spring Semi-Annual report noted one fair lending public enforcement action filed.³¹ The Spring 2020 Semi-Annual Report also listed four cases involving redlining, discrimination based upon public income, and auto lending discrimination in which the Consumer Bureau made referrals to the Department of Justice (DOJ). Since November 2017, the Consumer Bureau has settled one fair lending enforcement action, which involved a violation of HMDA and Regulation C.³²

Staff Diversity. As of March 2020, the Consumer Bureau's workforce was 50 percent female, a 1 percent increase from the previous reporting period. Minorities represented 40 percent of the Consumer Bureau's employees, which is the same as the last reporting period. The Bureau also notes that 13.2 percent of the employees who identified as people with disabilities, which is an increase from 3.4 percent of permanent employees who identified as having a "targeted disability" in the previous report³³

Spending and Staffing. The 2020 Spring Semi Annual report notes as of March 31, 2020, the Consumer Bureau spent 30.1 million in FY 2020 funds, which includes \$159.5 million for 1421 employees for both compensation and benefits.³⁴ According to the Bureau's CFO update for the second quarter of fiscal year report, as of March 31, 2020 the Bureau received \$321.1 million for FY 2020 from the Federal Reserve with a maximum allowable cap at \$695.9 million.³⁵ In the CFPB FY 2019 financial report, the CFPB requested \$468 million in transfers from the Federal Reserve with a maximum allowable funding cap at \$679 million.³⁶

²⁴ Id.

²⁵ CFPB, [Consumer Financial Protection Bureau Adds Enhancements to Consumer Complaint Database](#) (Apr. 27, 2020).

²⁶ CFPB, [Enforcement Action](#) (filtered), last accessed July 27, 2020.

²⁷ CFPB, [Enforcement Actions](#), last accessed Jul. 27, 2020.

²⁸ Christopher L. Peterson, [Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline](#), CFA (March 2019).

²⁹ CFPB, [Settlement with Equifax, Inc.](#) (Jul. 22, 2020).

³⁰ See CFPB, [Complaint against Townstone Financial, Inc.](#) (Jul. 15, 2020).

³¹ CFPB Semi-Annual Report Spring 2020, *supra* note 4 at 89.

³² CFPB, [Consent Order with Freedom Mortgage Corporation](#) (Jun. 5, 2020). See also [Enforcement Action](#) (filtered), last accessed July 27, 2020.

³³ CFPB Semi-Annual Report Spring 2020, *supra* note 4 at 95-96. See also [CFPB Semi-Annual Report Fall 2019](#) (Feb. 3, 2020).

³⁴ Id. at 10.

³⁵ CFPB, [CFO Update for the Second Quarter of Fiscal Year 2020](#) (Jun. 1, 2020).

³⁶ CFPB, [Financial report of the Bureau of Consumer Financial Protection: Fiscal year 2019](#) (Nov.15, 2019).

Reports, Initiatives, and COVID-19 Response. Since Director Kraninger last appeared before the Committee, the CFPB has issued several reports and publications, including: financial literacy resources, debt collection, the consumer complaint database, meeting expenses post retirement, credit cards, credit building, and debt settlements.³⁷ The Consumer Bureau issued a number of announcements and inter-agency guidance related to the COVID-19 pandemic and its impact on consumers, including resources for consumers struggling with payments, information related to access to the Paycheck Protection Program (PPP), mortgage forbearance and modifications, among other guidance.³⁸

Litigation regarding the CFPB's Independence. On June 29, 2020 the Supreme Court held that the requirements needed to remove a Director of the CFPB³⁹ are unconstitutional, and that a CFPB Director may now be removed at-will by the President.⁴⁰ Furthermore, the Supreme Court held that a Director's removal protection is severable from the rest of the Dodd-Frank Act, which establishes the CFPB, and therefore the Consumer Bureau may therefore continue to operate.⁴¹

Legislation

- **H.R. 6361, the "Relief for Small Businesses and Nonprofits Act" (Perlmutter)** would provide for a temporary debt collection moratorium for small businesses and non-profit organizations during the COVID-19 emergency period, and for 120 days thereafter. This would also provide sustainable repayment plans when borrower payments resume and would provide creditors access to a low-interest, long-term loan from the Federal Reserve until borrower payments resume. Similar provisions were included in H.R. 6800, the Heroes Act.
- **H.R. 6370, the "Disaster Protection for Workers' Credit Act" (Sherman)** would suspend negative consumer credit reporting during the pandemic and other declared major disasters plus 120 days. Credit score furnishers would be prohibited from implementing new credit scoring models that would lower existing consumer credit scores during the pandemic or during other major disaster periods. This legislation also permanently bans the reporting of medical debt arising out of COVID-19 treatments. Similar provisions were included in H.R. 6800, the Heroes Act.
- **H.R. 6741, the "COVID-19 Mortgage Relief Act" (Clay)** would build on the foreclosure and forbearance protections in the CARES Act to provide more comprehensive relief for all homeowners, rental property owners, and mortgage servicers. This includes a provision that would extend the "GSE patch" until June 1, 2022 to help ensure market stability during the pandemic. Similar provisions were included in H.R. 6800, the Heroes Act.
- **H.R. 7793, the "Financial Compensation for CFPB Whistleblowers Act" (Green)** would establish a whistleblower program incentivizing the reporting of consumer fraud and abuse to the Consumer Bureau, while protecting the confidentiality of the whistleblower's identity.
- **H.R. _____, the "Relief for Consumers During COVID-19 Act" (Beatty)** would provide for a temporary debt collection moratorium for consumers during the COVID-19 emergency period, and for 120 days thereafter. This would also provide sustainable repayment plans when borrower payments resume and would provide creditors access to a low-interest, long-term loan from the Federal Reserve until borrower payments resume. Similar provisions were included in H.R. 6800, the Heroes Act.

³⁷ See CFPB, [Protecting your finances during the coronavirus pandemic](#), last accessed Jul. 27, 2020.

³⁸ See CFPB, [List of Consumer Financial Protection Bureau Reports](#), last accessed Jul. 27, 2020.

³⁹ 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."

⁴⁰ FSC, [Waters Statement on Supreme Court Decision to Curb Consumer Bureau's Independence](#) (Jul. 1, 2020).

⁴¹ See [Seila Law LLC. v. CFPB](#), U.S. Supreme Court (Jun. 9, 2020) at 3.