Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

"Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau,"

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I. Introduction

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me to testify today regarding the Consumer Financial Protection Bureau's semi-annual review and the need to put consumers first. My name is Linda Jun and I am Senior Policy Counsel at Americans for Financial Reform (AFR). AFR is a coalition of over 200 national, state and local groups who are working together to lay the foundation for a strong, stable, and ethical financial system that serves the economy and the nation as a whole. Members of our coalition include consumer, civil rights, labor, faith-based, investor, and business groups. Our member organizations represent the consumers, workers, seniors, servicemembers, veterans, students, people of color and underrepresented communities across our country who rely on the consumer protections that the Consumer Financial Protection Bureau ("CFPB" or "Consumer Bureau") was created to support and enforce.

Nearly eight years have passed since the Consumer Bureau first opened its doors in 2011, and the CFPB's work has confirmed the decisions Congress made in 2010 to create a strong, independent agency to protect consumers from fraud and abuse in the financial marketplace. Through its rulemaking, supervision, enforcement, consumer education, and consumer complaint system, the Consumer Bureau has taken important steps to make the financial marketplace fairer for consumers by establishing clear guard rails against abusive conduct, creating more accountability, ensuring and providing better information, and giving consumers more opportunities to share their experiences.

When Mick Mulvaney took over the helm of the Consumer Bureau in November 2017, he inherited an agency that had made significant strides in improving the financial marketplace and strengthening protections for consumers in a broad range of financial transactions. During his time at the CFPB, Acting Director Mulvaney made clear he did not stand with consumers. He focused his efforts on shifting the CFPB away from protecting consumers and towards reducing accountability for industry actors by reducing penalties and relief for harmed consumers and minimizing or eliminating consequences for illegal behavior. Acting Director Mulvaney stripped enforcement powers from the Office of Fair Lending and Equal Opportunity,[1] shuttered the Office of Students and Young Consumers,[2] and started rulemakings designed to reduce consumer protections. Rather than increase transparency and participation, Acting Director Mulvaney tried to take steps to reduce the accessibility of the Consumer Bureau to the public by threatening to end public access to the consumer complaint database[3] and firing members of the Consumer Advisory Board.[4]

In her two months on the job, new CFPB Director Kathy Kraninger unfortunately seems to be following a similar path. She has already presided over the proposed repeal of the heart of the CFPB's rule against payday and car title lending abuses and lax enforcement actions that fail to impose meaningful relief or significant penalty for illegal activities. If Director Kraninger

[1] https://www.americanbanker.com/news/cfpbs-mulvaney-strips-his-fair-lending-office-of-enforcement-powers
[2] https://www.washingtonpost.com/news/grade-point/wp/2018/05/09/mick-mulvaney-takes-aim-at-cfpbs-student-protection-unit/
[3] https://www.nytimes.com/2018/04/25/business/cfpb-complaints-database-mulvaney.html
[4] https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council

wishes to return the Consumer Bureau to its consumer protection mission, she would need to dramatically change direction, including by not finalizing the payday and 'sandbox' rules currently under consideration, and by putting a stop to decisions that leave consumers more vulnerable to harm.

Congress created the CFPB to protect all Americans from fraud and abuse in the consumer, financial, and housing markets. All of us engage with these markets day in and day out to manage our financial lives as we take out loans, deposit and withdraw money into our bank accounts and/or debit cards, charge purchases to our credit cards, finance our education, send money to family or other loved ones overseas, or buy a home or a car. Interactions with these markets can help people save money, build wealth, and expand opportunities, or they can create burdens that do tremendous harm. Wrongdoing by big banks and predatory lenders costs people – often those who are the most economically vulnerable – tens of billions of dollars a year. We ask Congress to hold the Consumer Bureau accountable to stay true to its purpose to protect consumers from harm, and hold powerful interests accountable if they break the law.

II. The Importance of the CFPB and How it Protects Consumers

In the wake of the 2008 financial crisis and the enormous losses suffered by many Americans, Congress recognized the need for an effective single regulator specifically dedicated to protecting consumers from harm. Through the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Congress created the Consumer Bureau to carry out this consumer protection mandate and gave it the "authority to issue rules applicable to all financial institutions," and "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced."[5] Congress tasked the CFPB "to exercise its authorities under Federal consumer financial law" to ensure the following:

> (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
> (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
> (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
> (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
> (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[6]

The CFPB under previous leadership made major strides in carrying out these objectives and improving the financial marketplace through its primary statutory functions:

[5] Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference at 874 (June 29, 2010), https://www.llsdc.org/assets/DoddFrankdocs/dodd-frank-act-jt-expl-statement.pdf
[6] 12 U.S.C. § 5511(b).

(1) conducting financial education programs;
(2) collecting, investigating, and responding to consumer complaints;
(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
(4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
(5) issuing rules, orders, and guidance implementing Federal consumer financial law including exemptions from rules, and updating rules to address modern technology; and
(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.[7]

The Consumer Bureau's website has provided a centralized place to find financial education resources to navigate the financial marketplace for a wide variety of financial transactions, including credit cards, debt collection, mortgages, auto loans, credit reports, and student loans. The Ask CFPB[8] feature gives consumers a direct place to ask questions, and the Find a Housing Counselor[9] tool makes it easy for consumers to locate a nonprofit housing counselor certified by the U.S. Department of Housing and Urban Development (HUD) in their area for assistance with mortgage issues.

While financial education is certainly valuable, the Consumer Bureau's role becomes far more critical when consumers run into problems with companies in the marketplace. The CFPB's consumer complaint database is an important tool that gives consumers a voice and keeps companies publicly accountable by providing the CFPB, consumers, businesses, and the public with information about the problems consumers are facing in the marketplace. In seven years, the Consumer Bureau received a total of over 1.5 million complaints from consumers through its complaint database.[10] Because the complaint database is public, it has proven to be a far more effective way to resolve disputes or get information from an unresponsive company. For example, a New York consumer had filed a complaint directly with his bank to recover $1200 that was fraudulently withdrawn from his account, but the bank denied his claim. When his attorney filed a complaint with the CFPB, he received his money back. As a legal aid attorney representing clients facing foreclosure, I often filed complaints on behalf of clients with accounting errors or other problems with their mortgage because that was the only way to get the company to respond. Attorneys representing the companies told me that their clients paid attention to how their complaints were resolved because they were public and the CFPB tracked how quickly they responded to the problems.

Research is another one of the Consumer Bureau's primary functions, and its research plays a crucial role in evaluating market trends, identifying gaps, and informing its direction on how to best protect consumers and foster a fairer marketplace. The CFPB has historically prioritized collecting and analyzing data of all kinds, including qualitative and quantitative data, to direct its

[7] 12 U.S.C. § 5511(c).
[8] https://www.consumerfinance.gov/ask-cfpb/
[9] https://www.consumerfinance.gov/find-a-housing-counselor/
[10] https://www.consumerfinance.gov/ (figures as of June 4, 2018).

decision making, which has helped the CFPB to thoroughly review financial products, marketplace trends, and consumer harm. For example, in September 2015, the CFPB published a report on student loan servicing practices, which included an analysis of 30,000 comments from the public that they received on the issue.[11] In 2012, the Consumer Bureau and the Department of Education put together a comprehensive report looking into the private student loan market using existing studies, new market data, and public input.[12] This type of extensive research has often proven useful to inform the Consumer Bureau's guidance and rulemaking processes. Data and research are particularly important to understand new products and new developments, and the CFPB should continue to extensively collect and analyze data in order to evaluate and research their impact on the marketplace.

As of June 2018, the CFPB has recovered $12.4 billion in relief for over 31 million consumers harmed by illegal practices.[13] This figure understates the amount of money CFPB actions have saved people, because it does not take into account the results of changes in practices also required by many CFPB settlements, nor the impact of setting a higher standard of accountability for other marketplace actors who have not themselves been the subjects of enforcement or supervisory actions. The CFPB's enforcement authority is a fundamentally important tool to protect consumers from unfair, deceptive, or abusive acts and practices, and use of this authority promotes a fair marketplace by holding companies that break the law accountable for the harm they cause. For example, in July 2015, the Consumer Bureau settled a case with JP Morgan Chase for trying to collect "zombie debts," including inaccurate accounts, settled debts, debts discharged in bankruptcy, and debts not owed or not collectible, selling the zombie debts to third party debt buyers, and for illegally robo-signing court documents to sue people for unverified debt. The settlement resulted in at least $50 million for consumer relief and $30 million in civil penalties, and required changes in business practices, such as requiring the company to cease collection on bad debts, stop selling zombie debts, stop robo-signing affidavits, and verify debts before initiating a debt collection lawsuit.[14]

The Consumer Bureau's supervisory authority is particularly important because the CFPB supervises many entities that were not effectively supervised on the federal level before Dodd-Frank. Under the CFPB's supervision, many financial companies are now subject to regular monitoring. Through its supervisory authority, the CFPB is able to understand market practices, identify problems, and ascertain patterns of harm or illegal practices, which it can address either through the supervisory process or through enforcement actions.

Finally, the Consumer Bureau's rulemaking has resulted in improved protections for many financial transactions. For example, in the mortgage space, the Qualified Mortgage/Ability to Repay rule requires lenders to consider a borrower's ability to repay, and protects against the kinds of unaffordable predatory mortgages that led to the foreclosure crisis. Five years after the rules went into effect, the CFPB's Assessment Report on this rule found that the Ability to Repay requirement and Qualified Mortgage rule deterred unaffordable loans and mortgages with

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[11] https://www.consumerfinance.gov/data-research/research-reports/student-loan-servicing/
[12] https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf
[13] https://www.consumerfinance.gov/ (figures as of June 4, 2018).
[14] https://www.consumerfinance.gov/about-us/newsroom/cfpb-47-states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/

risky features. The report also showed that the rule did not restrict access to credit or materially increase costs.[15]

Also in 2013, the Consumer Bureau issued the Mortgage Servicing rules, which impose new obligations on mortgage servicers in their handling of mortgage accounts, and add new consumer protections. Before the Mortgage Servicing rules went into effect, homeowners had limited recourse when they ran into loss mitigation problems with their mortgage companies. As a litigator, I found that the Mortgage Servicing rules gave me a strong additional tool to push mortgage companies to properly review my clients' loss mitigation applications through the company's required loss mitigation and error resolution procedures. As a result of the Mortgage Servicing rules, I was able to help more of my clients negotiate the loan modification for which they qualified and ultimately keep their homes. The CFPB's findings in its Assessment Report confirmed my own and my colleagues' advocacy experience: delinquent loans were less likely to proceed to foreclosure and more likely to recover from delinquency after the mortgage servicing rules went into effect.[16]

The CFPB's Prepaid Account rule is another example of improved consumer protections. In 2016, the Consumer Bureau's issued its Prepaid Account rule, which provides for clear fee disclosures, access to account information, fraud and error protection, and protection against dangerous overdraft and credit features. The CFPB wisely drafted the rule to adapt to an evolving market by not limiting the rule to physical plastic cards and by including newer mobile and Fintech transaction accounts that hold consumer deposits. As a result of this rule, consumers are able to use prepaid accounts with greater confidence knowing that they will be protected from fraud and abuse.

As the only regulator tasked fundamentally with protecting consumers in their financial transactions, the CFPB's dedication to carrying out its Congressional mandate through its primary functions has resulted in relief for harmed consumers, increased accountability, and a safer and fairer marketplace. Consumer protection remains a high necessity and Americans remain susceptible to harm in their constant interactions with the consumer financial marketplace. They need a strong, independent CFPB that does what Congress intended it to do: protect consumers.

III. The CFPB Under Current Leadership: Undermining Consumer Protections

Without a strong, independent CFPB, consumers are left vulnerable to be preyed upon by financial companies unscrupulously seeking profit at all costs – the world they faced before the 2008 crisis, where regulatory gaps, inattention to consumer protection, industry capture of regulators, and insufficient enforcement allowed companies to avoid consequences for the harm they caused. But rather than protect consumers, Acting Director Mulvaney's and Director Kraninger's decisions threaten to expose consumers to greater risk of harm by eliminating crucial protections based on extensive research, expressly permitting companies to disregard the

[15] https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf
[16] https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf

law, and drastically reducing penalties and consumer relief for unfair, deceptive, or abusive acts and practices.

Not only is consumer protection the CFPB's statutory duty, but voters across the political spectrum want a strong Consumer Bureau too. Following the 2008 financial crisis, there has been consistent, widespread, bipartisan voter support for the CFPB's mission and for tough regulation and oversight of financial services.[17] In 2018, the majority of Americans, regardless of political affiliation, disapproved of Acting Director Mulvaney's actions to weaken the agency's efforts to protect ordinary Americans.[18] So far, Director Kraninger's decisions have been in line with Acting Director Mulvaney's instead of with the interests of the American public.

a. Removing Protections: Proposed Payday Rule to Repeal Ability to Repay

It is well documented that payday and car title loans create a deliberate debt trap that locks borrowers into long-term debt because they cannot afford to repay the high-cost loan. Payday and car title lenders gain access to the borrower's bank account and/or the ability to repossess the borrower's car in exchange for a high-cost loan. Payday and car title loans have an average interest rate of over 300 percent, and some loans charge as high as 600 percent interest. Given the astronomical cost of borrowing at such a high interest rate and the lenders' extraordinary leverage over paychecks and vehicles, payday and car title lenders lack the incentive to make loans that borrowers have the ability to repay while still being able to afford basic necessities like food, rent, transportation and utilities.

Payday and car title lenders make more money when they can trap borrowers in unaffordable debt for extended periods of time. A 2013 CFPB study found that 75% of payday lending fees are generated from borrowers who take out more than 10 loans a year.[19] When the borrower receives a paycheck or public benefits like social security, the lenders swiftly grab the money from the borrower's account, leaving the borrower unable to pay for other expenses, which then creates the need for another loan shortly thereafter. This cycle repeats itself, trapping the borrower into another high-cost loan again and again, incurring exorbitant fees and interest every time, often along with overdraft and non-sufficient funds fees. This debt trap is the core of the payday and car title lender business model. It extracts billions of dollars annually from people with average incomes of about $25,000 and causes serious financial harms even beyond the billions of dollars, including bank penalty fees, lost bank accounts, reduced credit scores, and bankruptcy.

In most places in the country, a car is necessary to get to work, the grocery store, and the elementary school, but car title loans allow lenders to immediately seize and sell the car as collateral. Knowing that borrowers cannot survive, work, or pick up their children without a car, car title lenders use this power to coerce payment, forcing borrowers to continue borrowing to

[17] http://ourfinancialsecurity.org/wp-content/uploads/2018/07/LRPpublicmemo.AFR_.CRL_.PollRelease.f5.073118-for-website.pdf
[18] *Id.*
[19] https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf#page=22

maintain access to their only mode of transportation. One in five car title borrowers lose their car to repossession, often after they have been paying for months.

Given the devastating consequences of payday and car title loans, sixteen states and the District of Columbia have outlawed payday loans entirely, and car title loans are prohibited in 28 states. The payday and car title industry has fought hard against these restrictions. Despite repeated public concerns and advocacy, campaign contributions and insider lobbying have helped them prevail in several state legislatures. Many of the lending restrictions that ultimately became law were passed through citizen ballot initiatives.

In states where they are permitted, these loans continue to wreak havoc on the financial lives of many Americans. One payday borrower shared that she took out a $500 payday loan at nearly 400 percent interest when she lost hours at work, and once the payday lender garnished the wages in her bank account, she was left with less than $100 to survive each month. Because she had no money for gas, food, or emergencies, she was forced to turn back to the payday lenders for additional loans, and it took her six years to pick up the pieces.

Once the CFPB was created, faith groups, civil rights organizations, consumer advocates, working families, and others across the country urged it to take action to protect their communities from the destructive payday lending debt trap. In 2017, the CFPB released its final rule on payday and car title lending.[20] The CFPB's 2017 rule was the result of more than five years of extensive CFPB research, analysis, and stakeholder input, which included town hall meetings around the country and consideration of 1.4 million public comments from a wide variety of interested parties.[21]

The CFPB's 2017 rule represented a step forward in protecting the millions of people trapped in 300-plus percent interest rate loans. For payday or auto title loans of 45 days or less or with a balloon payment, the rule simply requires lenders to determine whether a borrower can afford to repay, based on consideration of a borrower's income and expenses. Given the debt trap business model, the ability-to-repay provisions provide an important protection to prevent payday lenders from intentionally preying on consumers by giving them loans the lenders know are unaffordable for them.

During the five and a half period before the 2017 rule was finalized, payday lenders and other market participants had many opportunities to present their views and their position was documented and considered with all of the other evidence. The final rule did not have everything that either the payday lenders or those opposed to the debt trap asked for in their comments. In early 2018, payday lenders attempted to overturn the rule through a Congressional Review Act resolution, which failed. Congress - with Republican majorities in both houses - had the opportunity to overturn the rule, and did not do so.

[20] https://files.consumerfinance.gov/f/documents/201710_cfpb_fact-sheet_payday-loans.pdf

[21] https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?font=Default&height=650&initial_zoom=2&lang=en&source=1BsTT1rwht8T2015Bz_oRyLflqIJEXv5Zov0KNXBs4tQ

Payday lenders contributed to Acting Director Mick Mulvaney's campaign while he was in Congress,[22] and during his time at the CFPB, he demonstrated his loyalty to them over the consumers trapped by their predatory practices. Under his leadership, the Consumer Bureau dropped investigations and settled cases against payday lenders with minimal consequences for the harm they caused.

Even though the 2017 rule was the result of over five and a half years of comprehensive study and examination, and there was no new evidence to consider, Acting Director Mulvaney announced his intent to rewrite the rule very early in his tenure at the Consumer Bureau. In April 2018, payday lenders sued the Consumer Bureau to prevent the rule from going into effect, and under Acting Director Mulvaney's leadership, the CFPB joined hands with the very payday lenders that were suing them to ask the Court to delay the 2017 rule indefinitely because the CFPB was going to be reconsidering the rule.[23]

After being confirmed, Director Kraninger said that she would not be automatically following Mulvaney's footsteps and that as the director, "I will be fully accountable for the decisions that I make going forward and they will be mine."[24] Although she said that she wanted to spend her first few months listening to stakeholders and bringing herself up to speed, she wasted no time in advancing her first significant proposed rule only two months into the job.

In February 2019, under Director Kraninger, the CFPB released a proposed rule to repeal the 2017 rule's ability-to-repay provisions[25] and an accompanying rule to delay the compliance date for the 2017 rule.[26] The reasoning and rationale offered for these actions are demonstrably weak, and no more than a thinly veiled effort to give the payday lenders what they want. The 2019 proposal rests on the false premise that the 2017 rule was not supported by the evidence, when in fact the CFPB has simply now chosen to listen to the payday lenders defending their own predatory business model rather than the extensive evidence gathered through its own rulemaking, supervision, and enforcement.

The CFPB's first proposed rulemaking under Director Kraninger's leadership guts essential consumer protections and would allow payday and car title lenders to continue ripping off vulnerable families. If the rule is finalized, millions of people will be caught in well-documented debt traps that cause serious and lasting harm.

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[22] https://www.usatoday.com/story/money/2017/12/04/mick-mulvaney-payday-lending-campaign-contributions-pose-no-conflicts-interest/920056001/

[23] *Community Financial Services Ass'n v. Consumer Financial Protection Bureau*, Civ. No. 1:18-cv-295 (W.D. Tx), motion filed May 31, 2018, available at https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/05/https-ecf-txwd-uscourts-gov-doc1-181120208482-6.pdf.

[24] https://www.latimes.com/business/la-fi-kathy-kraninger-cfpb-20181211-story.html

[25] https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf

[26] https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-delay.pdf

b. Exempting from Liability: Sandbox/NAL/Trial Disclosures

Under Acting Director Mulvaney's leadership, the CFPB issued a proposed trial disclosure policy in September 2018 that oversteps the CFPB's legal authority and would allow entire industries to ignore consumer protection requirements for a decade or longer with no showing of consumer benefit and no public input. Recognizing the need for limited pilots for model forms, Congress gave the Consumer Bureau limited authority to grant waivers to individual companies for improving model disclosure forms.[27] But the CFPB's proposed disclosure policy far exceeds this limited waiver authority.

The proposal is focused almost entirely on industry interests without regard for potential consumer harm. Under the proposed policy, waivers can be approved solely on the basis of industry cost savings, without consideration of consumer understanding or increased risk to consumers. Furthermore, it allows trials to go on for years on end for entire industries without data collection, oversight, or public comment. AFR and 49 public interest groups joined together to sharply criticize this proposal to gut important consumer-protection rules, emphasizing that the Consumer Bureau's waiver authority for model disclosure pilot programs is very narrow and does not give the Bureau the authority to create potentially unlimited exemptions from the disclosure laws that the CFPB is obligated to enforce.[28]

Going even further to exempt companies from their legal obligations, in Acting Director Mulvaney's final hours at the CFPB, the CFPB proposed drastic, sweeping changes to its no-action letter policy along with a new sandbox proposal.[29] To an even greater extent than the proposed trial disclosure policy, the no-action letter and project sandbox proposal oversteps the CFPB's legal authority and puts consumers at significantly increased risk of the very harms the CFPB was tasked to prevent. Going beyond disclosures, the CFPB's proposed drastic revision to its "no-action letter" policy and new "Product Sandbox" policy has the potential to exempt not only companies but entire industries from wide swaths of consumer protection laws and oversight without public input about the serious potential harm they might cause. Instead of protecting consumers from unfair, deceptive and abusive practices, the CFPB's proposal provides a pathway to guarantee companies, trade associations, and entire industries a sweeping safe harbor from liability, enforcement, or supervisory findings by the CFPB or from enforcement by other federal agencies, states or consumers that have rights under the law. Congress has not given the Consumer Bureau the authority to grant the types of broad approvals or exemptions from liability and compliance with the law that it proposes in its sandbox policy.

Like the trial disclosure policy, the proposed no-action policy and product sandbox provide companies with the possibility of indefinite relief from regulation with little or no oversight or examination of the effect of these financial products and practices are having on the very consumers the CFPB is tasked to protect. Companies that receive no-action letters have no reporting requirements to provide data on how a new product or service is affecting consumers and the marketplace. Recipients of either no-action letters or product sandbox acceptance have

[27] 15 USC § 5532(e)
[28] https://ourfinancialsecurity.org/2018/10/afr-letter-public-interest-groups-criticize-cfpb-proposal-regulatory-sandbox/
[29] https://www.govinfo.gov/content/pkg/FR-2018-12-13/pdf/2018-26873.pdf

no obligation to report to the CFPB if they discover unintended consequences that cause harm. Moreover, if the CFPB grants an exemption from supervision or enforcement, the Consumer Bureau will not be monitoring the new product or service's performance to check for any problems. Nearly 80 consumer, civil rights, legal services, labor and community groups and environmental groups, including AFR, wrote in strong opposition to these proposals and the grave dangers they pose.[30]

Predatory, unfair, deceptive, or abusive products or practices are no less harmful because they are packaged as innovation, access to credit, or consumer choice. New proposals may have hidden dark sides that may not be apparent without listening to all sides and without monitoring how new products and practices play out in the market. A company or trade association may be able to make a convincing presentation about the burden of complying with regulations for their new product, but merely introducing a new product does not justify exemption from critical consumer protections. There is no guarantee that a new product will be better for consumers because it is a new and uses technology, and certainly no guarantee that a new product will not harm consumers, either intentionally or unintentionally, simply because it is new. For example, alternative underwriting models are often touted as a new and innovative practice, but one recent study found that the use of algorithmic credit scoring in loan origination resulted in discrimination against qualified borrowers of color, who were charged higher interest rates than their white counterparts.[31]

Given the particularly unknown dangers of new products, it is even more important that the CFPB hear from consumers about their experiences with these products, and monitor their performance. But the Consumer Bureau's proposals would allow for widespread regulatory exceptions or exemptions without any consumer input or reporting requirements. In many situations, applications would not be public, so consumers and their advocates could not even know that a company or industry was seeking a no-action letter or sandbox participation until after the decision had been made. As a result, consumers would have no way of raising any concerns with a proposed product or practice. Because of the broad exemptions from supervision, enforcement, and reporting, the CFPB is unlikely to know of potential harm or unintended consequences caused by any of new product or practice until it is too late.

The history of the devastating spread of risky practices in the mortgage market that culminated in the 2008 foreclosure crisis is illustrative. At the time, the reckless pick-a-payment and exploding rate mortgages that led to the foreclosure crisis were an "innovation" with risks that were largely ignored by regulators, even though the problems were apparent to many families and consumer advocates. Loosening credit standards and predatory subprime lending were defended by those pushing them as broadening access to homeownership, even as homeowners in targeted communities began losing their homes to foreclosure and consumer advocates tried to sound the alarm about the danger they posed. The problem was allowed to multiply, and the results were devastating across the country.

[30] https://ourfinancialsecurity.org/2019/02/joint-letter-80-groups-oppose-cfpbs-no-action-letter-sandbox-proposal/

[31] https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

As we now know, the "innovations" of predatory subprime mortgages caused havoc and destruction on American households and the economy as a whole. Many consumers are still suffering from the irreparable harm of foreclosure, which particularly devastated communities of color. Black and Latinx homeowners were almost 50% more likely to face foreclosure than their white counterparts.[32] The vast majority of the clients I represented as a legal aid attorney were either black or Latinx first time homebuyers. For most of my clients, their home was their only major asset. For my immigrant clients, facing foreclosure meant watching the American dream slip through their fingers after being scammed by the false promises of brokers and loan officers. Even homeowners who were able to save their homes from foreclosure are still grappling with the loss of wealth that came from losing their equity and may never fully recover because much of the relief was insufficient to cover their losses. The absence of a tough regulator, guard rails to protect people, and lack of accountability resulted in extraordinary harm to American families and the economy as a whole. The CFPB's proposals propose a return to the vulnerable pre-2008 world without proper oversight and accountability.

There are plenty of ways to encourage innovation without abdicating the Bureau's fundamental statutory duties to enforce the law and protect consumers, but the CFPB's current proposals unjustifiably provide companies with overbroad regulatory relief without any accountability for the harm such exemptions could cause. The CFPB's proposals have little to do with fostering responsible innovation and instead demonstrate a willingness to abandon its responsibility to regulate.

c. Removing Accountability: Insufficient Enforcement and Consumer Relief

Under Mulvaney's leadership, and continuing under Director Kraninger, the CFPB has announced several settlements without requiring relief for consumers harmed by illegal practices. Several settlements also fail to impose meaningful penalties to hold companies accountable for their behavior. American consumers need a regulator that pursues tangible relief for harmed consumers and enforces the law with meaningful penalties. Many of the Consumer Bureau's settlements over the past year and a half fall short of these standards. For example:

- In the Matter of State Farm Bank FSB (File No. 2018-BCFP-0009): The Consumer Bureau's settlement with State Farm Bank provides no consumer relief and no penalties for its violations of the Fair Credit Reporting Act, including furnishing inaccurate information to the credit-reporting agencies, failing to update or correct information reported to the credit-reporting agencies, and accessing consumer credit reports without a legitimate purpose.
- In the Matter of Security Group, Inc. (File No. 2018-CFPB-0002): The Consumer Bureau's settlement with the Security Group provides no consumer relief for the company's unfair debt collection practices.
- In the Matter of National Credit Adjusters LLC and Bradley Hochstein (File No. 2018-CFPB-0004): The Consumer Bureau's settlement provides no consumer relief for the company's unfair debt collection practices.

[32] https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf

In addition to these weak settlements, under Mulvaney's leadership, the CFPB dropped several lawsuits and investigations without explanation. Against the advice of the entire enforcement staff, Mulvaney directed the Consumer Bureau to drop the lawsuit against Golden Valley, a payday lender who had made illegal payday loans at 950 percent interest to struggling families in violation of state and federal law.[33]

The Consumer Bureau also dropped its investigation against subprime lender World Acceptance, a company that had contributed to Mulvaney's political campaign,[34] and Libre by Nexus,[35] a company preying on detained immigrants.

Under Director Kraninger's leadership, the pattern of soft penalties and no consumer relief has continued:

- Consumer Financial Protection Bureau v. NDG Financial Corp, et. al. (15-cv-5211 S.D.N.Y): The Consumer Bureau's settlement provides no penalties and no consumer relief for the borrowers harmed by NDG Financial's illegal payday loans.
- In the Matter of Enova International (File No. 2019-CFPB-0003): The Consumer Bureau's settlement provides no relief for consumers harmed by Enova's practice of extracting millions of dollars in unauthorized debits from consumers' accounts.
- In the Matter of Cash Tyme (File No. 2019-CFPB -0004): The Consumer Bureau's settlement provides no relief to the consumers Cash Tyme harassed or who were injured by Cash Tyme's failure to promptly monitor, identify, correct, and refund overpayments and the CFPB imposes a limited penalty of $100,000.

By weakening its supervision and enforcement, the Consumer Bureau under Mulvaney and Kraninger have sent companies the message that they can harm consumers without being held accountable or having to redress the harm they cause. If the CFPB continues this pattern with its enforcement authority, the risk to consumers will increase because companies will be emboldened to pursue profit without careful consideration of the legality of their conduct. Inadequate settlements that do not provide for meaningful penalties and restitution leave consumers cheated out of their hard-earned money and reduce incentives for companies to treat people fairly, which ultimately will lead to a more unfair and risky marketplace.

[33] https://www.npr.org/2018/02/12/584980698/trump-administration-to-defang-consumer-protection-watchdog
[34] https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender
[35] https://www.washingtonpost.com/local/federal-consumer-watchdog-suspends-probe-into-firm-accused-of-preying-on-detained-immigrants/2017/12/05/3452f8ca-d9e3-11e7-a841-2066faf731ef_story.html?noredirect=on&utm_term=.89b389aba7ff

IV. Conclusion: Returning to Consumer Protection

The CFPB has a clear statutory mission to put consumers first, and all of its activities must be measured against that standard. In evaluating Acting Director Mulvaney's tenure and Director Kraninger's leadership thus far by this framework, the CFPB is falling woefully short of this consumer protection mandate. We thank you for holding this hearing to discuss the importance of having a Consumer Bureau that protects consumers from harm, and ask you to hold the CFPB accountable to its statutorily mandated purpose.