May 3, 2022

Dear members of the House Financial Services Committee,

Americans for Financial Reform (AFR) appreciates the opportunity to provide this statement for the record of the U.S. House Committee on Financial Services regarding the Semi-Annual Report of the Consumer Financial Protection Bureau (CFPB). It has been 10 years since the CFPB was established. Since then, the CFPB has fulfilled Congress's vision of a federal agency with "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced.[1] Through its rulemaking, supervision, enforcement, consumer education and complaint system, the CFPB has made enormous strides in ensuring that the financial marketplace is fair to consumers. Its rules and supervision have reformed the industry's conduct, making banks and other financial services companies more attentive to consumers' rights.

In this statement, AFR focuses in particular on the CFPB's recent enforcement successes, the need to retain its authority, and some of the CFPB's existing and future priorities.

Authority and Structure

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the CFPB to implement and enforce federal consumer financial law while maintaining consumer access to financial products and services. Dodd-Frank consolidated in the CFPB certain regulatory authorities related to consumer finance that were previously held by other agencies and created new powers not previously held by federal regulators. Dodd-Frank authorizes the CFPB to exercise these powers with the goal of promoting fair, transparent, and competitive markets for consumer financial products and services.[2]

Dodd-Frank charges the CFPB to implement and enforce consumer protection laws, lead financial education initiatives, collect consumer complaints, and conduct consumer finance research. The CFPB has broad regulatory authority over providers of an array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, collection of consumer reporting data, and consumer debt collection. Although the scope of the CFPB's regulatory power is considerable, it is also subject to certain statutory exceptions and limitations. The CFPB's

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[1] Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference, at 874 (June 29, 2010), http://www.llsdc.org/assets/DoddFrankdocs/dodd-frank-act-jt-expl-statement.pdf

[2] Congressional Research Service, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB),* https://sgp.fas.org/crs/misc/IF10031.pdf

regulatory authorities fall into three broad categories: supervision (including the power to examine and impose reporting requirements on financial institutions), enforcement of various consumer protection laws, and rulemaking.[3] It is clear that all action outlined in this comment letter are well within this statutory authority, and indeed, the CFPB's obligations.

The CFPB's authority and range of tools are important to its ability to succeed in its vital consumer protection mission, and its recent activity lies well within the scope of that authority. Arguments to the contrary have repeatedly reflected - and been driven by - industry interests in tying the Bureau's hands so they can continue abusive practices that transfer wealth from people and communities to their own profits.

Enforcement and Supervision

Through its enforcement and supervisory efforts, the CFPB has delivered approximately $14.4 billion in relief for consumers and $1.7 billion in civil penalties. It has delivered economic redress to more than 183 million consumers consumer accounts, the Office of Consumer Response has received and processed over 3 million consumer complaints, and over 7 million consumers have accessed the COVID-19 educational content the Bureau has created. [4]

A few examples illustrate the breadth of the CFPB's consumer protection impact since Director Chopra's swearing in:

• Sanctioning Edfinancial for lying to borrowers about student loan cancellation, resulting in a $1 million civil penalty and a requirement for the servicer to reach out to all its FFELP borrowers to provide them with an opportunity to take advantage of the Department of Education's limited PSLF waiver before it ends on October 31, 2022.[5]

• Filing suit against Moneygram for violating "the Remittance Transfer Rule and Regulation E, which implements the Electronic Fund Transfer Act (EFTA) by failing to disclose accurate fund availability dates, failing to investigate noticed errors promptly, failing to timely report the results of its error investigations to consumers, failing to provide a written explanation of its findings to consumers, failing to notify senders of their right to request documents related to their investigation, failing to provide fee refunds when required to remedy errors, failing to develop and maintain sufficient error resolution policies and procedures, and failing to sufficiently address retention of documents showing its compliance with the Remittance Transfer Rule and EFTA."[6]

• Issuing an order against the TransUnion Companies to address the Bureau's findings that they deceptively marketed credit scores and credit-related products, including credit monitoring, to consumers.[7]

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[3] Congressional Research Service, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB),* https://sgp.fas.org/crs/misc/IF10031.pdf

[4] Dave Uejio, *Celebrating 10 Years of Consumer Protection* (July 21, 2021), https://www.consumerfinance.gov/about-us/blog/celebrating-10-years-consumer-protection/

[5] https://www.consumerfinance.gov/about-us/newsroom/cfpb-sanctions-edfinancial-for-lying-about-student-loan-cancellation/

[6] https://www.consumerfinance.gov/enforcement/actions/moneygram-international-inc-and-moneygram-payment-systems-inc/

[7] https://www.consumerfinance.gov/enforcement/actions/transunion-dtc-compliance/

Policy Priorities

The CFPB must continue to move forward on many pressing priorities. Despite the agencies enormously successful initiatives, consumers continue to face unfair, deceptive, and abusive practices when accessing financial services. To that end, AFR continues to urge the CFPB to move forward on each of the priorities it has as well as in a number of other areas. We discuss several, but not all, of these priorities below.

Arbitration. Lenders and financial servicers use mandatory arbitration clauses to block consumers from joining together to seek compensation; these clauses typically force wronged consumers to individually bring their claims against large companies in a private arbitration system that is shaped by companies to favor their own interests. The empirical findings in the CFPB's comprehensive report on the use of arbitration clauses unequivocally demonstrate that forced arbitration leaves consumers effectively powerless to hold companies accountable. AFR urges the CFPB to propose a strong rule banning or restricting forced arbitration.

Auto Lending. Auto loans are the third largest consumer credit market in the United States at over $1.4 trillion in outstanding debt, double the amount from 10 years ago and expected to grow further.[8] We encourage the CFPB, through its UDAAP and other authorities, to ensure consumers are receiving fair interest rates not distorted by dangerous incentives, to prevent discrimination which charges BIPOC borrowers higher rates, to ensure affordable credit for the rising cost of automobiles, to monitor practices in auto loan servicing that aide in the wrongful repossession of consumer vehicles, and encourage auto servicers to promote finance terms in other languages.

Complaint database / information sharing. AFR has been impressed by the success and upgrade of the CFPB's complaint database. AFR appreciates that consumer complaints are now available in trend view to "build upon the existing capability to filter and search, and emphasize aggregation and analysis of information, while continuing to make all the underlying data available for closer examination."[9] The complaints tool was also updated to be more user friendly. This change was instrumental in encouraging a robust response to the Bureau's junk fee RFI, that has seen 80,000 responses and counting. We hope that the CFPB will also take steps to ensure the public disclosure of the maximum amount of information from both the Home Mortgage Disclosure Act database and the forthcoming small business lending database. We believe that it is possible to combine expansive disclosure with protecting borrowers' legitimate privacy interests.

Collection of data on lending to small businesses (1071). AFR is very pleased to see the CFPB identify meeting its responsibility to collect data on lending to small businesses and women- and minority-owned businesses as a top priority.[10] In September 1, 2021the CFPB issued a proposed rule amending Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act. Consistent with section 1071, the Bureau is proposing to require covered financial institutions to collect and report to the Bureau

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[8] CFPB, *Rising car prices means more auto loan debt* (February 24, 2022). https://www.consumerfinance.gov/about-us/blog/rising-car-prices-means-more-auto-loan-debt/

[9] CFPB, *CFPB Announces New Capability for the Consumer Complaint Database, Expands Ability to View Complaint Data Over Time* (Jul 17, 2020). https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-new-consumer-complaint-database-capability/

[10] *See* 15 U.S. § 1691c–2.

data on applications for credit for small businesses, including those that are owned by women or minorities.[11] Small businesses are critical to job creation, and the founding of a successful small business is one of the ways for people to build wealth and get ahead. Unfortunately, small businesses – especially women- and minority-owned businesses – have trouble attracting needed capital.[12] The CFPB's data collection will provided a valuable tool to address this problem, and we hope that the CFPB will move quickly to establish this statutorily-required system.

Debt collection. AFR is encouraged that the CFPB implemented its debt collection rule in November of 2021. The CFPB receives more complaints about debt collection than any other issue, and it is vital that continued abuses be addressed by the Bureau.

Junk Fees. The Bureau has been diligent in its work to explore, expose and seek tools to reduce exploitative junk fees that distort the true price of products.[13] In January, the CFPB launched an effort to save consumers billions of dollars a year by reducing the financial industry's junk fees. Some of the most notable junk fees the Bureau has drawn attention to are bank overdraft fees, which big banks made $15.47 billion off of consumers living on the margins at the height of the pandemic, Non-Sufficient Funds fees, late fees, fees to pay your bills and prepaid card fees. The CFPB's Request for Information (RFI) on junk fees yielded 80,000 consumer complaints and stories, 30,000 of which AFR facilitated consumers in reporting. We urge continuing attention including rulemaking on junk fees including overdrafts.

Medical Debt. AFR is encouraged by the CFPB's dive into medical debt, including the way it has been reported to and by the big three credit reporting agencies, and how it effects every aspect of a consumers life. Director Chopra recently stated that "many Americans feel forced to pay medical bills that they have already paid or never owed to begin with. The credit reporting system should not be used as a weapon to coerce patients into paying medical bills they do not owe."[14] This spotlight has resulted in some medical debt being stripped from credit reports altogether. Though this is a step in the right direction, especially as people continue to struggle with the impacts of the pandemic, we urge the CFPB to continue its work in removing all medical debt from credit reports as we know that this type of debt is not an indicator of consumer creditworthiness.

Payday lending. High-cost payday loans trap consumers in cycles of debt. Whether short-term or long-term, offered by banks or nonbanks, unaffordable predatory loans leave people, especially communities of color, unable to meet expenses, vulnerable to aggressive debt collection practices, unbanked, and in cycles of re-borrowing. Community members, faith leaders, veterans and other advocates from around the country have been working for many years to end these abuses. We think it is crucial for the CFPB to use all of the tools at its disposal, including rulemaking, to stop debt trap lending.

Repeat Offenders. Director Chopra stated that the Bureau would be shifting its enforcement scrutiny away from small firms and focusing on repeat offenders and large market actors engaged in widespread harm.

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[11] CFPB, *Small business lending data collection rulemaking*, https://www.consumerfinance.gov/1071-rule/

[12] Karen Gordon Mills & Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, HARVARD BUSINESS SCHOOL WORKING PAPER 15-004, at 58 (July 22, 2014), http://www.hbs.edu/faculty/Publication%20Files/15- 004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf.

[13] As The Consumer Financial Protection Bureau Works to Reduce "Exploitative Junk Fees" In The Financial Industry, Consumers Also Face Added Costs In Resort Fees, Event Ticket Fees, ATM Fees, And Criminal Justice Fees (April 20, 2022). file:///C:/Users/ecrawford-hicks/Downloads/(2022-04-20)%20Junk%20Fees%20Breakdown%20(FINAL)%20(1).pdf

[14] CFPB, *CFPB Report Spotlights Medical Billing Challenges*. (April 20, 2022). https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-spotlights-medical-billing-challenges/

The CFPB under the Director's charge has already engaged in lawsuits that exemplify this shift. The recent lawsuits against TransUnion, one of the nation's largest credit reporting agencies, First Cash, one of the nation's largest pawn lenders, and Money gram, one of the nation's largest international remittance providers illustrate the CFPB's dedication to consumer protection.

Student lending. AFR welcomes the CFPB's attention to the student loan servicing market, including its ongoing data collection on debt collection practices for both federal and private student loans. The Department of Education recently announced that it would be working closely with the CFPB to better examine whether student loan servicers are driving borrowers into expensive forbearances instead of the Income Driven Repayment plans that may serve them better in the long-term. The active litigation with Navient is an example of the CFPB's supervisory and enforcement power—a domino effect that has returned approximately 1.7 billion to borrowers and essentially wiping out student loan debt for some.[15] The CFPB has also stepped up its scrutiny of student loan servicers that deceive borrowers about public service loan forgiveness.[16] The Bureau, through its supervision of student loan servicers, has found that servicers made deceptive statements to borrowers about their ability to become eligible for PSLF.[17] We and restore borrower faith in student loan servicers.

<u>Veterans and Consumer Fair Credit Act (VCFCA)</u>

AFR has been an avid supporter of the VCFCA. This Act addresses the problems caused by unaffordable, predatory payday, auto-title, and similar forms of loans by:

- **Reestablishing a simple, common sense limit on predatory lending** by extending the Department of Defense's 36% interest rate cap to all Americans. This would reestablish usury laws effective in virtually every state throughout most of the twentieth century.
- **Preventing hidden fees and loopholes**. The 36% rate cap is based on the Pentagon's successful rules that include not just periodic interest but fees and add-ons. Loopholes in the Truth in Lending Act's annual percentage rate have undermined cost transparency and emboldened evasions.
- **Maintaining low industry compliance costs from compromise rules already in effect**. Compliance costs for industry will be low because creditors *already* know how to comply for active-duty military and their families.
- **Upholding stronger state protections**. 36% is a relatively high rate and is appropriate only as an upper limit. States like Arkansas, Colorado, North Carolina, New Jersey, New York, and West Virginia already have strong interest rate caps lower than 36%, which will not be impacted

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[15] CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment* (January 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/

[16] CFPB, *CFPB Steps Up Scrutiny of Student Loan Servicers That Deceive Borrowers About Public Service Loan Forgiveness* (Feb 18, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-steps-up-scrutiny-of-student-loan-servicers-who-deceive-borrowers-about-public-service-loan-forgiveness/

[17] CFPB, *CFPB Steps Up Scrutiny of Student Loan Servicers That Deceive Borrowers About Public Service Loan Forgiveness* (Feb 18, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-steps-up-scrutiny-of-student-loan-servicers-who-deceive-borrowers-about-public-service-loan-forgiveness/

> because the bill does not preempt any provision of State law that provides greater protections to consumers. For larger loans, in particular, rates lower than 36% are appropriate.[18]

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Thank you for the opportunity to express AFR's views on the success of the CFPB. If you have additional questions on these issues, please contact Elyse Hicks, AFR's Consumer Policy Counsel, at elyse@ourfinancialsecurity.org or 202-684-2974.

Sincerely,

Americans for Financial Reform

[18] https://ourfinancialsecurity.org/2021/05/letters-to-congress-letter-in-support-of-the-veterans-and-consumers-fair-credit-act/