

October 10, 2019

## Memorandum

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

**From:** FSC Majority Staff

**Subject:** October 16, 2019, “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau”

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The Committee on Financial Services will hold a hearing entitled, “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau,” at 10:00 a.m. on Wednesday, October 16, 2019, 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 and other witnesses testifying on March 7, 2019.<sup>3</sup> The most recent semi-annual report issued by CFPB at that time was published on February 12, 2019, which covered agency activity from April 1, 2018 to September 30, 2018.<sup>4</sup> This memo provides a review of the Consumer Bureau Spring 2019 Semi-Annual Report to Congress (covering October 1, 2018-March 31, 2019)<sup>5</sup> and a general background and a summary of recent CFPB activity based on other Consumer Bureau reports and publicly available information.

## **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>6</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>7</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>8</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. To date, the agency has received over 1.9 million consumer complaints with a 97 percent timely response rate by financial firms to those complaints.<sup>9</sup> The Consumer Bureau has returned \$13.2 billion to over 35 million consumers that were harmed by bad actors.<sup>10</sup> This includes about \$130 million in relief for servicemembers, veterans and their families harmed by illegal practices through CFPB enforcement actions.<sup>11</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.

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<sup>3</sup> FSC, [Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau](#), Mar. 7, 2019.

<sup>4</sup> CFPB, [Semi-Annual Report Fall 2018](#), (Feb. 12, 2019).

<sup>5</sup> CFPB, [Semi-Annual Report Spring 2019](#), (Oct. 8, 2019).

<sup>6</sup> FSC Democratic Staff Report, [The Consumer Financial Protection Bureau In Perspective](#), July 21, 2017.

<sup>7</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>8</sup> Dodd-Frank Act § 1021(a). Also see Dodd-Frank Act § 1021(b) and § 1022(c).

<sup>9</sup> See <https://www.consumerfinance.gov/>, last accessed on October 3, 2019.

<sup>10</sup> *Id.*

<sup>11</sup> CFPB, [Office of Servicemember Affairs Annual Report](#), (January, 2019).

## **Summary of Recent Consumer Bureau Activity**

- **Rule Proposals and Regulations:** The Consumer Bureau publishes a list of its proposed and final rules.<sup>12</sup> Recent regulatory developments include:
  - a final rule that delays implementation of the ability-to-repay provisions of the 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans for 15 months,<sup>13</sup> and a proposed rule to remove the ability-to-repay provisions from the rule;<sup>14</sup>
  - a proposed rule to implement the Fair Debt Collection Practices Act (FDCPA);<sup>15</sup>
  - an advanced notice of proposed rulemaking seeking information relating to the expiration of the temporary qualified mortgage (QM) provision applicable to certain mortgage loans eligible for purchase or guarantee by Fannie Mae and Freddie Mac – often referred to as the “QM patch” – which is scheduled to expire on January 10, 2021;<sup>16</sup> and
  - a proposed rule to adjust thresholds for reporting Home Mortgage Disclosure Act (HMDA) and a final rule to, in part, implement HMDA changes made by S.2155 (115<sup>th</sup> Congress).<sup>17</sup>
  
- **Consumer Complaints:** The most recent Semi-Annual report notes 321,200 consumer complaints for the April 2018-March 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>18</sup> The Consumer Bureau estimated that about 95 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 (39 percent of all complaints), debt collection (24 percent), and mortgages (9 percent).<sup>19</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>20</sup> Furthermore, Director Kraninger recently announced her intent to keep the consumer complaint database public, though with some modifications.<sup>21</sup>
  
- **Supervision and Enforcement:** The most recent Semi-Annual Report highlights the supervisory guidance and bulletins issued during the covered time period of April 2018-March 2019.<sup>22</sup> The

<sup>12</sup> See <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/>, see also <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/>.

<sup>13</sup> This rule delays the 2017 Payday rule’s effective date relating to ability-to-repay provisions to November 19, 2020, *available at* <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/>. Also see FSC hearing, [Ending Debt Traps in the Payday and Small Dollar Credit Industry](#), Apr. 30, 2019.

<sup>14</sup> CFPB, [CFPB Releases Notices of Proposed Rulemaking on Payday Lending](#), Feb.6, 2019.

<sup>15</sup> CFPB, [Consumer Financial Protection Bureau Proposes Regulations to Implement the Fair Debt Collection Practices Act](#), (May 7, 2019). Also see Committee hearing, [Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices](#), Sep. 26, 2019. <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404239>.

<sup>16</sup> CFPB, [Consumer Financial Protection Bureau Releases Qualified Mortgage ANPR](#), (July 25, 2019).

<sup>17</sup> CFPB, [Consumer Financial Protection Bureau Proposes Changes to HMDA Rules](#), (May 2, 2019) and CFPB, [Consumer Financial Protection Bureau Issues Final HMDA Rule to Provide Relief to Smaller Institutions](#), (Oct. 10, 2019). The Consumer Bureau also announced plans to retire the HMDA Explorer tool and Public Platform Application Programming Interface that has helped consumers, researchers, and others understand lending patterns in communities throughout the country. See <https://www.consumerfinance.gov/data-research/hmda/api-retirement/>.

<sup>18</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 5.

<sup>19</sup> *Id.*

<sup>20</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>21</sup> Kelsey Ramirez, CFPB: Public consumer complaint database is here to stay, Housingwire (September, 2019), *available at* <https://www.housingwire.com/articles/50178-cfpb-public-consumer-complaint-database-is-here-to-stay>.

<sup>22</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 5.

Consumer Bureau also published issues of its Supervisory Highlights in March and September 2019.<sup>23</sup> In addition, the Semi-Annual report provides an update on various enforcement actions taken by the Consumer Bureau.<sup>24</sup> In 2019, the Consumer Bureau has announced 20 public enforcement actions thus far. 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>25</sup> In its first six years, the Consumer Bureau brought 201 enforcement actions that provided nearly \$12 billion in consumer relief.<sup>26</sup>

- **Fair Lending Enforcement:** The Consumer Bureau in its 2018 Fair Lending Report and the most recent Semi-Annual report note that while it conducted investigations, it did not bring a fair lending enforcement action during the covered April 2018-March 2019 time period.<sup>27</sup> The Semi-Annual Report also lists 4 cases in which the Bureau assisted in compliance enforcement orders initiated by federal courts or a “previous Bureau Director.”<sup>28</sup> In June 2019, the Bureau has settled only one fair lending enforcement action thus far involving a violation of HMDA and Regulation C.<sup>29</sup>
- **Staff Diversity:** As of March 31, 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:** The Consumer Bureau reported that, by the end of the second quarter of fiscal year 2019, it spent approximately \$218.9 million. This compares to \$553 million for fiscal year 2018, and \$594 million for fiscal year 2017.<sup>31</sup> The Consumer Bureau’s workforce totaled 1,452 employees, compared to 1,689 employees at the end of the second quarter of 2017, which is a reduction of 237 employees (14 percent decrease) over the past two years.
- **Reports and Initiatives:** The Consumer Bureau released reports assessing previous rules such as the Real Estate Settlement Procedures Act (RESPA), the Remittance Rule, and the Qualified Mortgage Rule/Ability-to-Repay standard. The Consumer Bureau also released FY 2018 Office of Minority and Women Inclusion annual report<sup>32</sup> to Congress. The Bureau also released reports on

<sup>23</sup> The Consumer Bureau’s Supervisory Highlights share key examination findings to help industries limit risks to consumers and comply with federal consumer financial law; and communicate operational changes to its supervision program. These publications are available at: <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights/>.

<sup>24</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 5.

<sup>25</sup> <https://www.consumerfinance.gov/policy-compliance/enforcement/actions>.

<sup>26</sup> Christopher L. Peterson, [Dormant: The Consumer Financial Protection Bureau’s Law Enforcement Program in Decline](#), Consumer Federation of America (March 2019).

<sup>27</sup> Consumer Financial Protection Bureau, Fair Lending Report of the Bureau of Consumer Financial Protection (2019) *available at* [https://files.consumerfinance.gov/f/documents/201909\\_cfpb\\_corrected-2018-fair-lending\\_report.pdf](https://files.consumerfinance.gov/f/documents/201909_cfpb_corrected-2018-fair-lending_report.pdf). See also CFPB Semi-Annual Report Spring 2019, *supra* note 5.

<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).

<sup>30</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 5.

<sup>31</sup> More budget insights are available in the Bureau’s Strategic Plan, Budget, and Performance Plan and Report, *available at*: <https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/>.

<sup>32</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). also previous hearing [memo](#), “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau” from March 7, 2019.

elder abuse, third party debt collections, the credit card market, mortgage trends, and the updated HMDA data points. Other reports addressed above include the Fair Lending Report of 2018 discussed above and service-member finance issues.<sup>33</sup> The Bureau also made some adjustments to their “Product Sandbox” initiatives after voluntarily seeking public input on how to update the 2016 no-action letter policy.<sup>34</sup> The Consumer Bureau also announced updates to the advisory committees, including the Consumer Advisory Board.<sup>35</sup>

### **Litigation regarding the Consumer Bureau’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>36</sup> The Consumer Bureau had previously defended this provision in prior litigation, with federal courts having ruled that the for-cause removal protection was constitutional.<sup>37</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>38</sup> A petition for a writ of certiorari has been filed in the Supreme Court seeking to overturn the Ninth Circuit Court of Appeal’s decision to uphold the constitutionality of the for-cause removal provision.<sup>39</sup>

### **Legislation**

On May 22, 2019, the U.S. House of Representatives approved H.R. 1500, the Consumers First Act, which would reverse and block efforts by the Trump Administration to undermine the mission of the Consumer Bureau.<sup>40</sup> The hearing provides the Committee with the opportunity to discuss the need to enact H.R. 1500 into law, as well as explore additional legislative proposals to better protect consumers:

- **H.R. 166, the Fair Lending for All Act (Rep. Green):** This legislation would clarify and expand protections under the Equal Credit Opportunity Act’s (ECOA) so that it also applies to all people regardless of sexual orientation, gender identity, and an applicant’s location based on zip code or census tract with respect to credit transactions. H.R. 166 would establish certain criminal penalties for ECOA violations, and it would expand HMDA data collection requirements. The bill would also create an Office of Fair Lending Testing within the CFPB.
- **Empowering States to Protect Seniors from Bad Actors Act:** This discussion draft would amend Section 989A of the Dodd-Frank Act to allow the Consumer Bureau to create a program that provides grants to states in order to prevent fraud from being committed against seniors.

<sup>33</sup> List of Consumer Financial Protection Bureau Reports, available at <https://www.consumerfinance.gov/data-research/research-reports/>.

<sup>34</sup> CFPB Semi-Annual Report Spring 2019, *supra* note 5.

<sup>35</sup> *Id.*

<sup>36</sup> See 12 U.S.C. § 5491(c)(3).

<sup>37</sup> See [PHH Corp. v. CFPB](#), 881 F.3d 75, 77 (D.C. Cir. 2018) (en banc).

<sup>38</sup> See <https://www.consumerfinance.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>39</sup> See [https://www.supremecourt.gov/DocketPDF/19/19-7/104482/20190628140628272\\_18-PetitionForAWritOfCertiorari.pdf](https://www.supremecourt.gov/DocketPDF/19/19-7/104482/20190628140628272_18-PetitionForAWritOfCertiorari.pdf). On October 4, 2019, the U.S. House of Representatives filed a motion to file an amicus brief urging the Supreme Court to reject the petition and reaffirm lower court rulings upholding the constitutionality of the provision. See <https://www.speaker.gov/newsroom/10719-0>. Another party litigating against the Consumer Bureau has also filed a petition with the Supreme Court challenging the provision. See Petition for a Writ of Certiorari Before Judgment filed by petitioners in All American Check Cashing, Inc., et al., v. Consumer Financial Protection Bureau available at [https://www.supremecourt.gov/DocketPDF/19/19-432/117515/20190930164159593\\_CFPB%20Petition%20TO%20FILE.pdf](https://www.supremecourt.gov/DocketPDF/19/19-432/117515/20190930164159593_CFPB%20Petition%20TO%20FILE.pdf).

<sup>40</sup> FSC Press Release, “[House Passes Consumers First Act](#),” (May, 2019).