Foreword: Consumer Protection in the Financial Marketplace

*Richard Cordray**

Introduction

Consumer rights have taken on new significance following the financial crisis of 2008–2009, when a lack of transparency and stability in certain markets led to serious consumer harm. It has long been apparent that consumer spending is a fundamental driver of the macroeconomy. But the events of the crisis have spawned a new understanding that severe irregularities in consumer financial markets—particularly the mortgage market—can result in major dislocations in the broader economy. In particular, Congress recognized the need for stronger and more consistent oversight to ensure that the markets for consumer financial products and services are fair and transparent so they can effectively serve the welfare of consumers.

From this understanding of the crisis, the Consumer Financial Protection Bureau ("Consumer Bureau or CFPB") was born. Its mission is to protect consumers and level the playing field in the financial marketplace. I serve in a new role as the first Director of this young agency. Our vision foresees:

> [A] consumer finance marketplace where customers can see prices and risks up front and where they can easily make product comparisons; in which no [business] can build a business model around unfair, deceptive, or abusive practices; [and] that works for American consumers, responsible providers, and the economy as a whole.[1]

If we can accomplish these things, we will help avoid any repeat of the events that led this country into financial crisis. Our primary goal as we have built this agency from the ground up has been to carry out this vision as best we can.

This issue of the *Harvard Law & Policy Review* is about consumer rights and it reveals the wide range of cross-cutting legal issues encompassed by this broad category. The issue includes an article by Justin Brookman on online privacy that reviews current and proposed privacy laws to highlight existing threats to personal data about consumers. Lauren Guth

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[1] *Consumer Financial Protection Bureau Strategic Plan FY 2013–2017*, Consumer Financial Protection Bureau, http://perma.cc/E82D-G5MQ.

Barnes's piece on arbitration argues that the inclusion of arbitration clauses and class action waivers in consumer contracts undermines consumer rights—a topic that the Consumer Bureau also explored in a report that we recently submitted to Congress on the use of pre-dispute arbitration clauses in consumer finance contracts.[2] Gene Kimmelman and Mark Cooper explore how antitrust law helps maintain consumer choice in the communications sector. Maura Dundon writes about the need to view students as consumers in order to ensure they receive the benefits of consumer protection laws. Finally, Professor Rena Steinzor examines the potential criminal liability of automaker executives when defects in the products made and sold by their companies lead to consumer harm.

At the Consumer Bureau, we see that the pace of economic innovation can be the most rapid in the consumer financial services sector, where the products are often intangible objects of human creativity comprising only financial and contractual terms. Notably, that pace has accelerated dramatically in the computer age. For almost all consumer markets, the speed of innovation can outstrip existing legal norms and raise novel legal questions. While some of the resulting theories will reflect needed updates to outdated law, others might jeopardize settled legal principles long thought necessary or sufficient to protect the well-being of consumers and the proper functioning of the marketplace.

Robert F. Kennedy once said, "The challenge of politics and public service is to discover what is interfering with justice and dignity for the individual here and now, and then to decide swiftly upon the appropriate remedies."[3] Over its brief lifespan, the Consumer Bureau has observed many obstacles that interfere with justice and dignity for consumers. We are building this agency on a strong democratic foundation of public engagement and transparency. And we strive to be data-driven in our policy determinations, basing them on careful market analysis and the best, most comprehensive information available. As mentioned above, the articles in this issue similarly reflect the idea that, while consumer rights are based in the law, the evolution of those rights must reflect changing market conditions and the improved information we have about how consumers utilize these markets to improve their lives.

This foreword sets forth in more detail how our use of a versatile set of tools is already having substantial positive effects on consumers and the economy. Specifically, Part I describes how we have handled the rulemaking process to write historic regulations for the mortgage market to ensure that the irresponsible practices leading to the financial crisis can never repeat themselves. Part I also highlights our extensive efforts to support implementation of these new rules. Part II describes how we have taken supervisory

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[2] *See generally* Consumer Financial Protection Bureau, Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a) (2015), *available at* http://perma.cc/LUV6-RP5M.

[3] Robert F. Kennedy, Remarks in Athens, Georgia (May 6, 1961), http://perma.cc/P2ZE-AHVU.

and enforcement actions against a range of banks, financial services companies, and individuals that have put more than $5 billion back into the pockets of consumers so far and halted or prevented many practices that would have led to future consumer harm. Part III then gives an overview of our consumer response function, which has become so central to the Consumer Bureau's work. To date, we have handled over 600,000 complaints from consumers, leading to relief and changed behavior in many instances and leading to investigations or examinations of harmful practices where such action is warranted. Part IV details some of the projects we have underway around the country—with partners ranging from the military to students to libraries to nonprofits to state and local officials—that are building financial education and financial capacity to help empower people as they navigate consumer financial markets. Finally, Part V describes how we have made it a point to assemble and publish information and share data with the public that sheds new light on existing practices and exerts further influence to ensure that consumers are treated fairly.

We are doing this work with constant input from our sister agencies, consumer advocates, affected industries, individual consumers, and many others. What we learn from the authors in this issue will further inform our approach, bringing new perspectives and analyses to the vibrant conversations now happening around consumer rights in the financial marketplace.

I. Rulemaking and Regulatory Implementation

For a new agency, even the most traditional tasks offer the opportunity to do some things differently. The Administrative Procedure Act ("APA") lays out a defined process for standard agency rulemakings,[4] and under the Dodd-Frank Act ("DFA"), the Consumer Bureau has additional steps to follow for certain rules.[5] Specifically, the DFA requires us to consult with our fellow regulators at various steps in the rulemaking process.[6] We believe that the seemingly formulaic processes laid out in the APA and the DFA merely create a floor on collaboration and public input, not a ceiling. As discussed in more detail below, we have therefore also sought to apply principles we consider vital in our rulemaking work, including innovative approaches to transparency, public engagement, and data-driven policy making.

In the DFA, Congress significantly amended the statutory requirements governing mortgage practices, with the intent to restrict certain troublesome

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[4] Administrative Procedure Act, 5 U.S.C. § 553 (2006) [hereinafter APA].

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C.A. § 5512 (2010) [hereinafter DFA].

[6] *Id.* § 5512(b)(2)(B) (2010) ("[T]he Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with the prudential, market, or systemic objectives administered by such agencies."); *see also id.* § 5512(b)(2)(C) (noting that for any written objection to a proposed rule, the Bureau must include a description of the objection and the basis for the Bureau's decision).

lending practices.[7] From the perspective of consumer protection, this was a clear priority since irregularities in the mortgage market were a primary cause of the financial crisis.[8] The Act established several new requirements for the consumer mortgage market, and the Consumer Bureau was tasked with implementing these changes through rulemaking. A key requirement is to ensure that lenders will only offer mortgages that consumers can actually afford, through the Ability-to-Repay rule.[9] The Consumer Bureau was also directed to consolidate federal mortgage disclosures in order to facilitate compliance with the disclosure requirements and to improve borrower understanding by simplifying the technical language of the disclosures.[10] These formidable tasks occupied the Consumer Bureau during the early part of our existence and offered us the opportunity to begin to apply some of the vital principles, mentioned above, to the rulemaking process.

First and foremost, the Consumer Bureau became keenly aware of the importance of balancing protections for consumers with access to credit. Mortgage lending had been sharply curtailed by the collapse of the market and the steep economic downturn, and concerns were raised that implementing the statutory Ability-to-Repay requirement could constrain credit further or increase prices, leading to adverse effects on our recovering economy.[11] Although lenders had already retreated from some of the worst forms of lending that led to the crisis, including loans for which lenders did not require any documentation of income or assets, our rules were intended to erect lasting guardrails to ensure that risky loans could not lawfully reappear in the market.[12] To ensure that the Consumer Bureau heard and understood the diverse concerns raised by different parts of industry as well as different consumers, we engaged in rigorous analytical research and received extensive input from stakeholders on all sides before finalizing the Ability-to-Repay rule.

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[7] Mortgage Reform and Anti-Predatory Lending Act, DFA, 12 U.S.C.A. §§ 1400–98 (2010); *see also id.* § 1083 (amending the Alternative Mortgage Transaction Parity Act of 1982); *id.* § 1094 (amending the Home Mortgage Disclosure Act of 1975); *id.* § 1097 (amending the Omnibus Appropriations Act, 2009); *id.* § 1098 (amending the Real Estate Settlement Procedures Act of 1974); *id.* § 1100 (amending the Secure and Fair Enforcement for Mortgage Licensing Act of 2008); *id.* § 1100A (amending the Truth in Lending Act).

[8] *See, e.g.*, Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report 67, 101–02, 125–26 (2011), *available at* http://perma.cc/3TKA-5YCP.

[9] DFA, 12 U.S.C.A. §§ 1411–12, 1414 (2010); 15 U.S.C.A. § 1639(c) (2010); 12 C.F.R. § 1026.43(c) (2014).

[10] DFA, 12 U.S.C.A. § 2603(a) (2010) (section 1098(2)(A) of the DFA as enacted); *Id.* 15 U.S.C.A. § 1604(b) (2010) (section 1100A(5) of the DFA as enacted); 12 C.F.R. § 1026.18 (2014).

[11] *See, e.g.*, Anne C. Canfield, Executive Director, Consumer Mortgage Coalition, Comment on Proposed Rules, CFPB-2012-0022-0121 (April 20, 2012), *available at* http://perma.cc/YAA3-RNJ6; Steven Alan Bennett, General Counsel, United States Automobile Association, Comment on Proposed Rules, CFPB-2012-0022-0074 (July 9, 2012), *available at* http://perma.cc/339M-PYNH.

[12] *See* Richard Cordray, CFPB Director, Remarks at the Brookings Institution (Jan. 13, 2015), http://perma.cc/JT3Q-XUY4.

As part of this outreach, we determined that it would be appropriate to take account of the different circumstances of smaller lenders that had experienced much lower default rates through the worst of the crisis.[13] And so, the Consumer Bureau wrote (and later amended) the Ability-to-Repay rule to create more latitude for smaller lenders such as community banks and credit unions to engage in their traditional forms of relationship lending to their residential mortgage customers.[14] More specifically, the rule allows small lenders to offer loans pursuant to more flexible underwriting requirements that will be deemed "Qualified Mortgages."[15] A two-tiered approach to regulation is at times the most sensible one, and here it reflected our recognition that most small lenders have served people well around the country, especially in rural areas and small towns like the one in Ohio where I was born and raised, even during the worst financial crisis of our lifetimes.

Ever since our major mortgage rules were issued, the Consumer Bureau has strongly supported their implementation by responding to specific inquiries, publishing helpful plain language guides, conducting webinars, and more. Our robust regulatory implementation program is designed to ensure that all mortgage lenders and servicers have the tools they need to comply with the law and to reduce the burdens associated with the transition to a new regulatory regime.[16] We believe that consumer protection is best served if these regulations are implemented fully and well by the industry. All this time, the mortgage market continues to heal from the great damage done by the financial crisis—foreclosures and delinquencies continue to decline, home values are rising, the number of homes that are "underwater" is steadily decreasing, and we and other policymakers have finally begun to anticipate increased demand among first-time homebuyers.[17]

Another important congressional directive was to integrate the federal disclosures required for consumer mortgage loans by the Truth in Lending

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[13] Much research indicates that default rates on residential mortgages are historically lower for smaller creditors such as community banks and credit unions, and this divergence was especially pronounced through the recent financial crisis. *See, e.g.*, FDIC Community Banking Study 4-5–4-6 (Table 4-4) (2012), *available at* https://perma.cc/P9R9-AB2H; Elizabeth A. Duke, Remarks at the Community Bankers Symposium: Community Banks and Mortgage Lending (Nov. 9, 2012) (transcript available at http://perma.cc/EVN5-YN52).

[14] *See* 12 C.F.R. §§ 1026.43(c), 1026.35(b)(2)(iii)(A)–(D), 1026.35(b)(2)(iv)(A)–(B) (2014); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6407 (Jan. 30, 2013); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 35,429 (June 12, 2013); Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth In Lending Act (Regulation Z), 80 Fed. Reg. 7769 (proposed Feb. 11, 2015) (to be codified at 12 C.F.R. § 1026).

[15] 12 C.F.R. § 1026.43(e)(5)(B) (2014).

[16] The Consumer Bureau's regulatory implementation resources are available at http://perma.cc/9N7E-TVYC.

[17] *See, e.g.*, CFPB, Consumers' Mortgage Shopping Experience 3–7 (2015), *available at* http://perma.cc/K6DT-LS9U; Office of the Comptroller of the Currency, OCC Mortgage Metrics Report: Third Quarter 2014 4, 12 (2014) *available at* http://perma.cc/5U97-DZHY.

Act and by the Real Estate Settlement Procedures Act. Congress and federal regulators had contemplated this task for decades.[18] The process leading up to the proposal and the final rule reflects the transparency, public engagement, and data-driven decision making that we think leads to more effective policies that minimize both costs and unintended consequences for market participants.[19]

We first conducted a multidimensional information-gathering campaign with the understanding that simplification of complex and technical information is itself a tricky task. We came to realize that consumers experience great risk of "information overload" from disclosures where the sheer density of the information undermines the decision-making process.[20] Researchers suggest that effective disclosures must strike a balance between the utility and volume of the information to be disclosed.[21] Thus, the Consumer Bureau focused on a graphic design that stood out from other forms and presented the key loan and cost information in a laconic manner. For the sake of brevity and to ensure that the newly designed forms truly do stand out, we decided to take some educational materials required under applicable law and present them to consumers through other means.[22]

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[18] *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys. & Dep't of Hous. & Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act 35 (1998).

[19] *See generally* Kleimann Commc'n Grp. Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures (2012) (presentation to the Consumer Financial Protection Bureau on testing of disclosure prototypes prior to proposed rule), *available at* http://perma.cc/M3E5-9WMX; Kleimann Commc'n Grp., Inc., Know Before You Owe: Post-Proposal Consumer Testing of the Spanish and Refinance Integrated TILA-RESPA Disclosures (2013) (presentation to the Consumer Financial Protection Bureau on qualitative testing of proposed disclosures), *available at* http://perma.cc/63U8-KYEG; Small Bus. Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortg. Disclosure Requirements, Final Report (2012), *available at* http://perma.cc/938H-4WKF.

[20] "Information overload" has long and often been cited as a problem with financial disclosures. *See e.g.*, Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System,* 34 Fla. St. U. L. Rev. 1089, 1115 (2007); William N. Eskridge, Jr., *One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction,* 70 Va. L. Rev. 1083, 1133 (1984); Patricia A. McCoy, *The Middle-Class Crunch: Rethinking Disclosure in a World of Risk-Based Pricing,* 44 Harv. J. on Legis. 123, 133 (2007); Troy A. Paredes, *Blinded by the Light: Information Overload and its Consequences for Securities Regulation,* 81 Wash. U. L.Q. 417, 418–19 (2003); Debra Pogrund Stark & Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending,* 16 Psychol. Pub. Pol'y & L. 85, 96 (2010); Lauren E. Willis, *Decisionmaking and The Limits of Disclosure: The Problem of Predatory Lending: Price,* 65 Md. L. Rev. 707, 766 (2006).

[21] John Kozup & Jeanne M. Hogarth, *Financial Literacy, Public Policy, and Consumers' Self-Protection-More Questions, Fewer Answers,* 42 J. Consumer Ass. 127, 129 (2008); George Loewenstein, Cass R. Sunstein, & Russell Golman, *Disclosure: Psychology Changes Everything*, 6 Ann. Rev. Econ. 391, 405–06 (2014).

[22] *See*, *e.g.*, *Shopping for Your Home Loan: Settlement Cost Booklet*, Consumer Financial Protection Bureau (Jan. 2014), http://perma.cc/HXH8-V6YP (the Homebuyer Information Booklet required by section 5 of RESPA).

We conducted iterative qualitative testing to evaluate disclosures prior to issuing a proposal, and we included an array of participants from depository institutions, non-depository institutions, settlement agents, and consumers.[23] In addition, we received over 150,000 visits to the "Know Before You Owe" website that we designed to supplement the consumer testing of the integrated disclosure forms and over 27,000 public comments and emails about the prototype disclosures. Before issuing the proposed rule, we solicited even more feedback from software providers, appraisers, consumer groups, housing groups, and government agencies. And we conducted quantitative research to test the new forms against the old forms.[24]

Once the proposal was finalized as a rule, we did not consider our mandate to be fulfilled just yet; instead, we have continued to work persistently on regulatory implementation. Again, we believe that providing such support can ease the burdens of compliance and ensure that the rules are interpreted and followed as intended. This includes publishing plain language compliance and readiness guides, conducting webinars, publishing a disclosure timeline, holding roundtable meetings with diverse stakeholders, participating in forums and conferences, and collaborating with state and federal regulators on consistent examination procedures.[25]

Mortgages are just one area where the Consumer Bureau continues to invest considerable resources to improve and update the regulatory landscape on behalf of consumers and responsible providers. The first major rule we finalized was the Remittance Transfer Rule, which adopted first-time federal consumer protections for people who send money internationally.[26] This rulemaking process reflected the same degree of openness and accessibility, including a major course correction: after we judged from our regulatory implementation efforts that our initial conclusions about certain issues—including the feasibility of disclosing foreign taxes that vary by country or even by political subdivision—would be impractical to implement, we revised the rule.[27] Although we were reluctant to revise a rule so quickly, we

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[23] KLEIMANN COMMC'N GRP., KNOW BEFORE YOU OWE: EVOLUTION OF THE INTEGRATED TILA-RESPA DISCLOSURES, *supra* note 19, at 50, 72, 158, 180 (presentation on disclosure prototypes prior to proposed rule).

[24] *See generally* KLEIMANN COMMC'N GRP., KNOW BEFORE YOU OWE: QUANTITATIVE STUDY OF THE CURRENT AND INTEGRATED TILA-RESPA DISCLOSURES (2013), *available at* http://perma.cc/5UEV-AAKS.

[25] *See, e.g.*, *TILA-RESPA Integrated Disclosure Rule Implementation*, CONSUMER FIN. PROT. BUREAU, http://perma.cc/P3KY-3LFK; CONSUMER FIN. PRPT. BUREAU, *TILA-RESPA Integrated Disclosure Rule: Small Entity Compliance Guide* (2014), http://perma.cc/B4W4-LJJN; Outlook Live Webinar: *TILA-RESPA Integrated Disclosures, Part I – Overview of the Rule*, FED. RESERVE SYS. (June 17, 2014), https://perma.cc/HS8N-EJ4X.

[26] 12 C.F.R. §§ 1005.30-36 (2013).

[27] In particular, we made key changes to address foreign fees and taxes and sender liability for consumer errors. Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6193 (Feb. 7, 2012); Electronic Funds Transfers (Regulation E); Correction, 77 Fed. Reg. 40,459 (July 10, 2012); Electronic Funds Transfers (Regulation E), 77 Fed. Reg. 50,243 (Aug. 20, 2012) (amending final rule). The rule was also amended in more minor ways on Jan. 29, 2013, May

bowed to Justice Frankfurter's observation that "[w]isdom too often never comes, and so one ought not to reject it merely because it comes late."[28]

Another important aspect of our approach to rulemaking is our commitment to evidence-based decision making. Our rule-writing team is part of a broader division called Research, Markets, and Regulations because we believe that research and market analysis are an integral part of the rulemaking process. Thus, for example, before we began outlining a proposal for regulations on payday lending, we spent over two years studying that market, drawing upon data we obtained through our examinations of payday lenders and other sources. We published two reports on the payday lending market in order to build a shared understanding of the risks that consumers face.[29] Similarly, we launched our process for considering new rules on debt collection by issuing an Advance Notice of Proposed Rulemaking to seek public input and data on a host of topics, as well as by surveying consumers who have experienced debt collections to better understand their experiences.[30]

II. Supervision and Enforcement Activity

Another key agency role goes beyond drafting and adopting regulations to making certain they are properly followed to accomplish their intended effect. Without effective oversight, it is well known that rules are not worth even the paper they are printed on. In the context of regulating financial institutions in American law, these agency responsibilities have long encompassed two distinct tools: supervision and enforcement. The supervisory authority evolved out of the granting and monitoring of corporate charters and the explicit power to rescind that privilege; enforcement activity grew out of the legal processes that originated in public prosecutions but later branched into civil as well as criminal law enforcement.[31] Although these two tools for achieving legal compliance are historically distinct, their objectives now tend to overlap. Through either means, public agencies seek to ensure backward-looking relief for consumers who were harmed and forward-looking relief to deter violations and secure compliance with the law. As an agency that is committed to utilizing both the supervision and enforcement tools to achieve our objectives, the Consumer Bureau regularly confronts interesting

22, 2013, Aug. 14, 2013, and Aug. 22, 2014. *Remittance Transfer Rule (subpart B of Regulation E)*, Consumer Fin. Prot. Bureau, http://perma.cc/4V7M-YGT8.

[28] Henslee v. Union Planters Nat'l Bank & Trust Co., 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting).

[29] Consumer Fin. Prot. Bureau, Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings (2013), *available at* http://perma.cc/5TVY-4LBQ; Consumer Fin. Prot. Bureau, CFPB Data Point: Payday Lending (2014), *available at* http://perma.cc/Z5HJ-B9KT.

[30] *See* Advance Notice of Proposed Rulemaking, 78 Fed. Reg. 67,848 (Nov. 12, 2013); *Survey of Consumer Views on Debt*, Consumer Fin. Prot. Bureau, http://perma.cc/ZKB2-QCQA.

[31] *See* Richard Scott Carnell, et al., The Law of Banking and Financial Institutions 631–47 (4th ed. 2009); 12 U.S.C.A. §§ 481, 1813(u), 1820(d) (2010).

questions about which approach will best serve to motivate and produce behavior that complies with consumer financial law. The ultimate goal is to drive lasting cultural change that leads to accountability for treating consumers in a fair and honest manner.

The Consumer Bureau's supervision program has been built, developed, and increasingly refined over our first few years of operation. The program, which is designed to be risk-based, is grounded in a number of prioritizing factors that focus attention on individual product lines at the largest banks. And in a historic first at the federal level, the program also focuses on a significant number of nonbank firms in the consumer financial marketplace.[32] We take care to coordinate closely with the federal prudential banking regulators and also with the state banking and financial service regulators, who often have authority over various nonbank financial providers as well, depending on the details of their state laws. One key objective that was envisioned by Congress is developing a supervisory program that diminishes the perils of regulatory arbitrage and provides a more level playing field for those that compete in consumer financial markets, regardless of corporate charter or other legal forms.[33] A conscious focus on consumer compliance management is now tending to converge across the bank-nonbank divide, generating much more systematic attention to these issues across the corporate hierarchy in the entities thus affected. This convergence also tends to more accurately reflect the consumer's perspective, since people rarely draw a distinction about whether they are being mistreated by a chartered entity such as a bank, a credit union, or a thrift, or instead by some kind of nonbank corporation, partnership, or other type of venture.

Our enforcement arm, by contrast, is more akin to the work done by state attorneys general and by other enforcement attorneys, such as those at the Justice Department or the Securities and Exchange Commission. We strategize our work for preventive and deterrent value, and the more public nature of this work also ensures public accountability. An enforcement matter typically begins by opening an investigation, which is not yet a public matter and which proceeds according to our procedural rules for investigations and the issuance of civil investigative demands.[34] A Consumer Bureau investigation tends to spur involvement by lawyers on the side of the financial institutions, who engage in the customary combat of pre-litigation to fight over the disclosure of documents and other information relevant to the investigation. These processes can be time-consuming, particularly when they have to be coordinated with third parties, which is often the case in our area of authority. This enforcement space is co-habited by state attorneys

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[32] Steven Antonakes, Deputy Director, Consumer Financial Protection Bureau, Prepared Remarks at the Exchequer Club (Feb. 18, 2015) (transcript available at http://perma.cc/6YWQ-AVH6).

[33] *See* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. LAW 321, 329–32 (2013).

[34] *See* 12 C.F.R. § 1080 (2012).

general, by the Federal Trade Commission, and by other federal agencies that range from housing agencies to banking agencies to various others. Some of those agencies may directly overlap our authority to address consumer financial issues, whereas others may focus their attention on the substantive side of transactions and activities rather than the financing aspects of those same transactions and activities.

A. A Hybrid Approach

One major difference between the supervisory and enforcement tools is that our supervisory work is confidential by tradition, custom, and Consumer Bureau regulations, whereas enforcement actions play out in the public arena, including in lawsuits and formal administrative proceedings that lead to public orders. Although by its nature supervisory activity cannot be completely transparent, we have sought to heighten its deterrent effect beyond the individual institution by providing guidance to other actors in the marketplace through our "Supervisory Highlights."[35] This is a periodic publication that describes our aggregate supervisory activity over multiple months and thereby identifies problematic practices and remedial actions to the rest of the market without identifying the underlying institutions involved. We also send public signals through our enforcement actions, in which either the Consumer Bureau or a court issues detailed orders against named institutions; these orders make plain what the problem was and what was done to remedy it.[36] By these means, we are seeking to provide a clear road map to all market participants in order to foster more immediate industry-wide compliance and deterrence of violations.

Another major difference between the tools lies in the approach they take to securing the kinds of information necessary to assess compliance. Supervisory work involves an initial scoping of what we will look for during the examination, review of information, data analysis, off-site and on-site review, and monitoring.[37] Enforcement actions, by contrast, commence with investigations that will ultimately lead either to closure—in the event no legal action turns out to be justified on the fuller factual record—or to the filing of a legal action after enough information has been produced and analyzed to establish the grounds for bringing such an action. If a lawsuit or notice of charges is filed, the matter will proceed further through the civil discovery process provided in judicial proceedings or the formal stages of an administrative adjudication, including a potential trial or hearing. A public enforcement action also carries the potential for civil penalties imposed ac-

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[35] *See Supervision and Examination Manual*, *Supervisory Highlights*, CONSUMER FIN. PROT. BUREAU, http://perma.cc/EE2D-TYUS.

[36] *See, e.g.*, First Investors Fin. Servs. Grp., Inc., 2014 C.F.P.B. 0012 (2014), *available at* http://perma.cc/Q8N8-5EPA; Flagstar Bank, F.S.B., 2014 C.F.P.B. 0014 (2014), *available at* http://perma.cc/3YZL-LQ2P; Stipulated Final Judgment & Order, CFPB v. Freedom Stores, Inc., No. 2:14-CV-643-AWA/TEM (E.D. Va. Dec. 18, 2014).

[37] Antonakes, *supra* note 32.

cording to a framework created by the DFA, which includes criteria for determining penalty amounts as a means of further deterring illegal conduct.[38]

We have been generating a growing body of experience with these distinct tools and, over time, learning when one tool may be superior to the other. In the meantime, it is also notable that many significant enforcement actions have originated in supervisory activity.[39] When information uncovered by an examination indicates legal violations that are more significant, such as those involving more substantial consumer harm, the Consumer Bureau will often determine that the matter warrants a public resolution.

The intersection between the supervisory and enforcement tools also plays out in interesting ways in the Consumer Bureau's fair lending program. Here our team employs both tools, depending on their assessment of the issues and context, and depending at times on their judgments about how to coordinate most effectively with external partners such as the Justice Department, which has related and overlapping authority in this area.[40] A notable example of this hybrid approach has been our fair lending work on auto lending discrimination, which has resulted in both public enforcement actions and confidential supervisory resolutions directing institutions to provide over $136 million in relief to consumers to date.[41]

B. The Scope of Liability

As we continue to work out the optimal relationship between our supervision and enforcement programs, several other observations are in order. First, in addition to focusing on companies that were parties to consumer financial transactions, we will also scrutinize the conduct of individuals who had the authority to make decisions related to, or were in some other way connected with, such transactions. As a result, we have brought actions against a company's executives when appropriate.[42] The law provides that such actions can include both individuals who directly violate federal consumer financial laws and those who knowingly or recklessly provide substantial assistance to financial service providers engaging in unfair, deceptive, or abusive practices.[43] A corporate executive who has "manage-

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[38] *See* 12 U.S.C.A. § 5565(c) (2010).

[39] *See, e.g.*, Capital One Bank, (USA) N.A., 2012 C.F.P.B 0001 (2012), *available at* http://perma.cc/86D5-L4VT; JPMorgan Chase Bank, N.A., 2013 C.F.P.B. 0007 (2013), *available at* http://perma.cc/44ML-KU4N; Bank of Am., N.A., 2014 C.F.P.B. 0004 (2014), *available at* http://perma.cc/AS2P-WYT5.

[40] *See, e.g.*, Consumer Fin. Prot. Bureau, CFPB Supervision and Examination Manual Overview 8–9 (Oct. 2012), *available at* http://perma.cc/T86H-MEA2.

[41] Consumer Fin. Prot. Bureau, Supervisory Highlights 4 (Summer 2014), *available at* http://perma.cc/A3FT-JMNV; *see also, e.g.*, Ally Financial Inc., 2013 C.F.P.B. 0010 (2013), *available at* http://perma.cc/RAS3-9EAC.

[42] *See, e.g.*, Complaint at 4–5, CFPB v. Wells Fargo Bank, No. 1:15-CV-00179-RDB (D. Md. Jan. 22, 2015); Complaint at 4, CFPB v. Freedom Stores, Inc., No. 2:14-CV-643-AWA/TEM (E.D. Va. Dec. 18, 2014); Complaint at 3, CFPB v. Global Client Solutions, LLC, No. 2:14-CV-6643 (C.D. Cal. Aug. 25, 2014).

[43] 12 U.S.C.A. § 5536 (2010).

rial responsibility" or who "materially participates in conduct of [company] affairs" can also be held liable.[44] Such a finding of liability might compel the executive to finance restitution to consumers, among other conditions, or even bar them from offering certain kinds of financial products or services. In some cases, we have referred culpable individuals to the Justice Department or other prosecutors for criminal investigation. All of these accountability measures are important supplements to imposing responsibility solely on the entity, but they may vary in the relevant threshold that must be met to trigger the use of any particular measure. Determining which response is best will inevitably depend on the facts and circumstances of each case.

Second, we have stated that a company can be liable for the actions of a third party who is an agent or acts in concert with or at the direction of the company. A bulletin we published in 2012 made clear that when a service provider violates a consumer financial law, not only can it be held liable, but banks and other financial institutions can also be held liable for the same violation in certain instances.[45] By defining the term "service provider" broadly, our statute allows us to hold accountable a range of persons or firms connected to transactions between consumers and a bank or other financial firm.[46] This broad coverage is needed because the variety of actors and complicated corporate structures in the financial marketplace can make it difficult to determine precisely what relationships exist between related parties, none of which may be very visible to the public. These factors can make it especially challenging to assign proper responsibility to those whose actions may have harmed consumers.

Our bulletin also clarified that institutions must have "an effective process for managing the risks of service provider relationships."[47] The prudential banking regulatory agencies have made similar statements.[48] Since releasing the bulletin, we have used our enforcement and supervision tools to target service providers in connection with such areas as loan servicing relationships, the marketing of credit card add-on products, the use of third-party debt collectors, and payment processing services. We believe that a company generally remains legally accountable when someone designated to act on its behalf has harmed consumers, particularly because consumers often have no role in selecting such service providers and may be entirely unaware of the nature of these relationships. Indeed, under these arrangements, consumers lose the important ability to "vote with their feet" and terminate a relationship with a third party that is not satisfactory.[49] Thus, we

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[44] *Id.* § 5481(25).

[45] CFPB Bulletin 2012-03 (Apr. 13, 2012), *available at* http://perma.cc/8JEP-5HB6.

[46] *See* 12 U.S.C.A. §§ 5481(26), 5514–16 (2010).

[47] CFPB Bulletin 2012-03, *supra* note 45.

[48] *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys., Guidance on Managing Outsourcing Risk (Dec. 5, 2013), *available at* http://perma.cc/MY6Q-HANL; Fed. Deposit Ins. Agency, Guidance for Managing Third-Party Risk (June 6, 2008), *available at* https://perma.cc/G453-T8AE; Office of the Comptroller of the Currency, OCC Bulletin 2013-29 (Oct. 30, 2013), *available at* http://perma.cc/BGU2-KHFB.

[49] *See generally* Albert O. Hirschman, Exit, Voice, and Loyalty (1970).

believe it is quite important to hold these parties accountable for violations of law that harm consumers.

We also have encouraged institutions to focus more closely on their own compliance efforts through our "responsible conduct" bulletin.[50] We have made a real effort to show that when an institution self-reports a problem and self-initiates a program of remediation and mitigation, we will reward such efforts by taking them into consideration as we determine the appropriate response. When institutions take the initiative to report and correct the error, we are more likely to believe that the problem will be resolved informally, and therefore we are more apt to rely on our supervisory tool rather than our enforcement tool to address it. By contrast, when institutions make no effort to remedy specific problems or fail to take note of our public disclosures that have identified similar conduct as legally problematic, we are more likely to conclude that a public enforcement action is needed to address the situation and that the imposition of civil penalties may be justified.

III. Consumer Complaints and Response

Another fascinating and important responsibility of the Consumer Bureau, as laid out by Congress in the DFA, is the extensive work we are doing to collect, investigate, and respond to consumer complaints.[51] The Consumer Bureau's consumer complaint and response function brings us in direct contact with consumers. Consumer complaints are an opportunity for the Consumer Bureau to hear directly from the public and to fulfill our mission of fostering a fair, transparent, and dynamic market for consumer financial products and services. We use these complaints in three distinct and important ways.

First, each complaint offers a chance to evaluate a perceived problem and determine if it can be resolved successfully. Once a consumer submits a complaint to the Consumer Bureau, it is transmitted via a secure web portal to the appropriate company, which reviews it, reaches out to the consumer as needed, and decides how to respond. The company reports back to us and to the consumer. We invite the consumer to review the company's response and provide any further feedback. We consider this feedback, along with other information such as the timeliness of the company's response, to help prioritize complaints for investigation.[52]

Each complaint vividly illustrates the kinds of real-life situations that people confront in the consumer financial marketplace. As with our "Tell

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[50] CFPB Bulletin 2013-06 (June 25, 2013), *available at* http://perma.cc/8KNG-YDVU.

[51] *See* DFA, 12 U.S.C.A. § 5511(c)(2) (2010).

[52] *See The Complaint Process*, Consumer Fin. Prot. Bureau, http://perma.cc/6U5D-XYV5.

Your Story" function,[53] complaints show us the tangible impact these issues have on individual lives and families. So far, the Consumer Bureau has handled over 600,000 complaints about a wide range of products and services, including mortgages, credit cards, student loans, auto loans, bank accounts and services, credit reporting, debt collection, payday loans, other consumer loans, remittance transfers, and prepaid cards.[54] This process has become a particular category of alternative dispute resolution, with consumers securing millions of dollars in monetary relief from financial providers. Many complaints also result in some sort of non-monetary relief, such as correcting disputed items on credit reports, which can improve people's financial well-being and stability. Sometimes even just an explanation is appreciated, in that it provides people with the dignity and respect many of them have been seeking all along.

Second, as we analyze complaints in the aggregate, they begin to reveal insights that transcend the particular situation of the individual consumer—taking a first step from the micro to the macro. Evaluating the broader pattern of complaints enables us to identify notable issues and prioritize problems. We consult complaints in approaching our supervisory work, we find insight and leads for our enforcement work, and we take this data into account as we determine when and how to craft regulations. Complaints also help guide our efforts to understand and address concerns through consumer education and engagement. In this manner, even complaints made by consumers who may not obtain an individualized solution are still making a difference. For example, hearing from students who cannot afford to repay their private student loans simply because they may have graduated into a challenging job market sheds light on the kinds of information that future students may need *before* they take out those loans. This is an area of focus for the Consumer Bureau.

Each of the individual complaints is like a pixel, and when they are merged together in the aggregate, the composite picture brings the main issues of consumer finance into sharper and more focused definition. To allow others to generate insights into what this data may teach us, the Consumer Bureau has made information about consumer complaints available to the public through our Consumer Complaint Database.[55] Anyone can download

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[53] *See Everyone Has a Story*, Consumer Fin. Prot. Bureau, http://perma.cc/Y9P8-KJQL. Consumers can tell us about their experiences with consumer financial products at https://help.consumerfinance.gov/app/tellyourstory, https://perma.cc/EL28-ZYHF.

[54] The Consumer Bureau also currently accepts complaints about money transfers, additional nonbank products (including debt settlement services, credit repair services, and pawn and title loans), and digital currency. *See Submit a Complaint*, Consumer Fin. Prot. Bureau, http://www.consumerfinance.gov/complaint/, http://perma.cc/8BFS-Z4E4.

[55] *See Consumer Complaint Database*, Consumer Fin. Prot. Bureau, http://perma.cc/C33T-8PXG (personal or identifying information is not included). As of March 2015, when consumers submit a complaint, they have the option to check a box and opt-in to share the narrative of their complaint on the public database as well. Narratives, scrubbed of any personal information, will be published in the database as of July 2015.

the dataset, reconfigure it, and break it out by specific search criteria, such as by complaint type, company, zip code, date, or any other combination of available variables. From my tenure as the Ohio Attorney General, I can see how this information could help guide state policymakers in their strategic approach to these issues, because it enables them both to discern more granular patterns within their communities and to see how their state is faring compared to other states.

We believe the disclosure of this type of information gives anyone an opportunity to use the database and to figure out what he or she can learn from it. Notably, financial companies may benefit from this information because it can reveal specific problems in the rest of the marketplace and allow them to benchmark their performance against their peers, all of which is ordinarily beyond their line of sight. In this manner, good analysis may help them detect and reduce regulatory, enforcement, litigation, and reputational risks. We have clearly seen that institutions are making efforts to reduce the number of complaints we receive about them and improve their handling of complaints. Disclosure of positive data might also help. Companies boost their reputation by paying attention to customer concerns and resolving problems effectively. On the other side of the table, consumers could use this information as a factor in making shopping decisions among different financial providers. Finally, as the database is increasingly populated with more extensive information, third parties could use it as a valuable source to aggregate the data and rate the performance of different financial products and services. Ultimately, the contrasting assessments can be judged in the court of public opinion, which is an appropriate forum for monitoring how consumers are treated in the economic marketplace.

IV. Consumer Education and Engagement

In the aftermath of the financial crisis, the role of financial education, or more often the lack thereof, has become a hot topic. While no one aspect of consumer protection will be a panacea for the economic ills that cause financial crises, we know that to foster a successful marketplace, consumers have to be able to climb the economic ladder on their own. We are committed to understanding how we can put individual consumers in a position to make informed choices for themselves that enhance their lives and empower them to succeed. Financial education has immediate appeal as a potential solution to problems of consumer harm, but it is hard going to effectuate systemic and lasting change that will raise the financial capability of over 300 million Americans.[56]

To this end, the Consumer Bureau is endeavoring to find innovative ways to make financial education as much a part of people's lives as finan-

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[56] *See generally* Consumer Fin. Prot. Bureau, Financial Well-Being: The Goal of Financial Education (2015), *available at* http://perma.cc/7FV5-GN32.

cial products themselves. That is leading to a focus on financial education in the home, as we offer a new website with age-appropriate resources to help parents engage with their children on financial topics and build their confidence in providing solid guidance.[57] We also have published a report that sets out our strategy for how to incorporate financial education into the K-12 classroom, with five main emphases.[58] Along with the Federal Deposit Insurance Corporation ("FDIC"), we are organizing materials by creating an online self-service resource center that features easy-to-use videos, tools, practical tips, and other resources that teachers can use in the classroom.[59] And we are building partnerships with hundreds of library systems all over the country to make financial education resources available to their patrons, along with training and other support for librarians and other personnel.[60]

We are working to provide consumers with tools and information directly to develop practical skills and support sound financial decision-making. These skills include being able to ask questions and to plan ahead. One way we are doing this is with our online tool "Ask CFPB."[61] It provides expert answers to more than a thousand frequently asked questions on topics like mortgages, credit cards, student loans, auto loans, bank account products, payday loans, credit reports, and debt collection. It includes both general answers and answers that are targeted to specific groups, such as parents. And we have found that consumers are very interested. So far, "Ask CFPB" has provided clear, authoritative financial information to more than 2,000,000 visitors, and it receives 300,000 visits each month.

We also are developing specialized tools to help consumers make the infrequent and momentous decisions about major financial milestones that can be crucial to their long-term financial success. For families pondering decisions about how best to finance higher education, our "Paying for College" resource is a set of online tools that aid in evaluating their higher education financing options.[62] This resource offers students and their families a wealth of information about public and private loans, banking, financial aid, and repayment of student loan debt. It also goes further by allowing students to comparison shop among their own particular options. Specifically, it allows students to enter information about schools and financial aid packages to get tailored information that will allow them to compare impor-

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[57] *Help Your Children Grow Their Money Skills*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/parents, http://perma.cc/9YF2-S3BR.

[58] *See* CONSUMER FIN. PROT. BUREAU, TRANSFORMING THE FINANCIAL LIVES OF A GENERATION OF YOUNG AMERICANS: POLICY RECOMMENDATIONS FOR ADVANCING K-12 FINANCIAL EDUCATION (2013), *available at* http://perma.cc/PX8S-54M8.

[59] *Teacher Online Resource Center*, FED. DEPOSIT INS. CORP. (Sept. 30, 2014), https://fdic.gov/consumers/education/teachers.html, https://perma.cc/R8YC-D4TW.

[60] *See generally Library Resources*, CONSUMER FIN. PROT. BUREAU, http://perma.cc/Q9V6-ETPP.

[61] *Ask CFPB*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/askcfpb, http://perma.cc/F359-JTX4.

[62] *Paying for College*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/paying-for-college, http://perma.cc/Q2BP-JRLG.

tant information like first year out-of-pocket costs, total projected debt, and the expected amount of monthly payments due at graduation—all *before* they have to decide among their available options.

A similar tool known as "Owning a Home" has the goal, not only of providing crucial information about a particular mortgage product, but also of providing help and guidance to encourage consumers to comparison shop and find the deal that is best for their own circumstances.[63] Although consumers typically do take the time to shop among various possible homes, our first survey of new mortgage borrowers performed last year found that nearly half of all consumers do not shop around for a mortgage when buying a home; instead they make their financing decisions based on very limited research.[64] In this instance, consumers' behavior seems to be inconsistent with their self-interest; this may be because consumers do not fully understand or appreciate mortgage pricing or they do not recognize that very different options are potentially available to them. Extensive research demonstrates the importance of smart decisions about homeownership, which remains the single greatest avenue to building wealth in our society.[65] Thus, closing the information gap between consumers and lenders is a priority. The "Owning a Home" initiative takes consumers through the entire home-buying experience, from a plain language guide of loan options to a closing checklist. One critical feature helps people see the range of interest rates that may be available to borrowers like them.[66] Showing homebuyers that lenders offer rates along a continuum, and that lower rates translate into dollars saved, encourages consumers to engage actively in finding a mortgage that is right for them.[67]

The Consumer Bureau's work to empower consumers throughout the life cycle and across the economic spectrum also includes a nationwide effort to provide financial education and resources to low-income consumers. "Your Money, Your Goals" is a toolkit that social services organizations are using to help their clients with topics like budgeting daily expenses, manag-

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[63] *Owning a Home*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/owning-a-home, http://perma.cc/JB78-C79R.

[64] The basis for this discussion rests upon the National Survey of Mortgage Borrowers, which is conducted jointly with the Federal Housing Finance Agency. *See* CONSUMER FIN. PROT. BUREAU, CONSUMERS' MORTGAGE SHOPPING EXPERIENCE (2015), *available at* http://perma.cc/U4CD-3MLS.

[65] *See, e.g.*, Christopher Herbert et al., *Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households?* (Harvard University Joint Center for Housing Studies, Working Paper, 2013), *available at* http://perma.cc/E49C-F8WW ("[T]here continues to be strong support for the association between owning a home and accumulating wealth."); *see also* Editorial, *Homeownership and Wealth Creation*, N.Y. TIMES, Nov. 29, 2014, http://www.nytimes.com/2014/11/30/opinion/sunday/homeownership-and-wealth-creation.html, http://perma.cc/B3BY-ZJFE ("Homeownership long has been central to Americans' ability to amass wealth . . . .").

[66] *Explore Interest Rates*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/owning-a-home/check-rates/, http://perma.cc/EQV2-RFGC (underlying database incorporates the pricing variables on lenders' rate sheets).

[67] *Id.*

ing debt, and avoiding financial tricks and traps.[68] This "Train the Trainer" program was rigorously field-tested in a pilot program with 1,400 case managers and other front-line staff across the country. It enables trusted social service providers to help their low- and moderate-income clients navigate financial situations, ranging from basic to complex and sometimes overwhelming. The Consumer Bureau plans to expand the reach of this work by offering specific toolkits for providers who serve workers or those seeking work, for legal service providers, for labor unions, and for community volunteers.

In all of these ways, the Consumer Bureau is committed not only to educating consumers but to empowering them, by which we mean providing the foundation for consumers to develop the confidence, knowledge, and skills they need to have control over their financial lives and meet their financial goals.

V. The Publication of Information

Interwoven in much of the Consumer Bureau's work is confidence in the power of information and how it can improve the financial marketplace. As already noted, we make efforts to target some of the information that we compile or generate for very specific audiences. Other information, like our research reports, white papers, "Data Points," and the Consumer Complaint Database discussed earlier, are intended to speak more broadly to anyone who is interested, be it consumers, industry, advocates, policymakers, journalists, academics, and more. The publication of information provides an opportunity to signal what we judge to be important and worthy of prioritization. It can also reveal gaps or shortcomings in the status quo that can influence market participants as well as other policymakers.

In addition, the manner in which information is presented to the public can influence consumer behavior in positive ways. One of the Consumer Bureau's first tasks, as described above, was to figure out how to combine the mortgage disclosures required by the Truth in Lending Act and the Real Estate Settlement Procedures Act. We dubbed this our "Know Before You Owe" project, in keeping with the overall goal of helping consumers digest the most essential information quickly and easily. Of course, the same concept is applicable to many other consumer financial products and services. Congress has taken a similar approach with the "Schumer box" by encapsulating a shorthand version of key information about credit card accounts in an easy-to-use format.[69]

The Consumer Bureau has continued to expand its "Know Before You Owe" efforts in areas such as student loans and prepaid cards as well. Work-

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[68] *Your Money, Your Goals*, Consumer Fin. Prot. Bureau, http://www.consumerfinance.gov/your-money-your-goals/, http://perma.cc/XA9K-5B2F.

[69] *See* 15 U.S.C.A. § 1632(c) (2010).

ing with the Department of Education, we created a financial aid shopping sheet (now part of the "Paying for College" tools) that colleges and universities could use to help students better understand the grants and loans for which they qualify and to compare aid packages offered by different institutions. With input from thousands of students, parents, guidance counselors, and college officials, the form was finalized in time for the 2013–2014 school year. Although schools are not required to use the forms, more than 2,000 schools have now adopted the shopping sheet and the feedback from students and parents has been overwhelmingly positive. For prepaid cards, we have undertaken consumer testing to help us decide how best to allocate the precious real estate on the product packaging to create succinct, comparable disclosures that will facilitate consumer shopping among competing products. All of these efforts are complementary to our financial education work, since anything that simplifies complexity and makes choices more accessible to consumers should decrease the gap between the level of consumer comprehension and the threshold people need to be able to meet in order to navigate the consumer financial marketplace successfully.

Similarly, the Consumer Bureau's mandate involves a commitment to data compilation, rigorous analysis, and the public release of data that is useful to the public when doing so is legally permissible and appropriate. Merely doing so can motivate changes in market behavior by industry, consumers, or both. Most significantly, that is true of the Consumer Complaint Database. To take a few more examples, a report we issued in June 2012 on reverse mortgages paved the way for important changes in that market. The same was true of our 2013 report on the credit reporting industry. And in May 2014 the Consumer Bureau published a "data point" addressing medical debt and credit scores.[70] After analyzing credit records for a representative sample of consumers, the report concluded that medical debt was less predictive of default than other kinds of debt. This is consistent with what we have heard from consumers, who often are unaware of medical debts that end up on their credit report or believe their insurance should have covered the cost. Three months later, FICO announced that it was changing its scoring system to ensure that "medical collections have a lower impact on the [credit] score, commensurate with the credit risk they represent."[71] It noted that the median FICO score for consumers whose only major negative references are medical collections will increase by twenty-five points.[72] As these examples illustrate, there is no doubt that persuasive research and analysis

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[70] *See generally* Consumer Fin. Prot. Bureau, Data Point: Medical Debt and Credit Scores (2014), *available at* http://perma.cc/6H7K-NU74.

[71] Press Release, FICO, FICO Score 9 Introduces Refined Analysis of Medical Collections (Aug. 7, 2014), *available at* http://perma.cc/4CGN-B9XH. FICO is an analytics company that produces the FICO® Score, which is one of the most widely used credit scores or measures of consumer credit risk in the United States.

[72] *Id.*

can either prompt change or reinforce the justifications for it, leading to better outcomes without the need to modify the law or threaten legal action.

Our complaint data also provides the raw material for analytical reports where the publication of the information itself can affect markets. For example, in an April 2014 report on student loans, the Consumer Bureau highlighted an issue that rose to the surface from student loan consumer complaints. Many student loan borrowers with co-signers reported that if their co-signer died or declared bankruptcy, the lender would automatically exercise its right to declare the loan in default and the entire balance due, even where the borrower had been faithfully paying in full and on time. The report received significant press attention, allowing borrowers to tell their stories, causing some student lenders to disavow the practice, and spotlighting the injustice of the situation.[73]

Collaboration through the publication and sharing of expertise and information with other agencies is also an important element of our work. The Consumer Bureau is not the lone federal agency with interest in or authority over consumer financial products or services. We work with the Federal Trade Commission to complete an annual report to Congress on the debt collection industry.[74] Together with the Federal Housing Finance Agency, we are developing a national mortgage database to provide line of sight on this important market that was lacking before the financial crisis.[75] We are also coordinating with the Federal Reserve Board to transition over to the Consumer Bureau the responsibility for data gathering under the Home Mortgage Disclosure Act, as well as considering how we can update and improve the data, which is widely used by policymakers and the public.[76]

The Consumer Bureau's Office of Servicemember Affairs also shares information and works closely with several departments and agencies to achieve pro-consumer results. For example, it identified a pattern of complaints that indicated violations of the Servicemembers Civil Relief Act, where a student-loan servicer had failed to provide servicemembers with the six percent interest rate cap to which they were entitled. We shared this in-

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[73] *See* Danielle Douglas, *House Democrats Introduce Bill to End Automatic Default Rules on Student Loans*, WASH. POST (May 9, 2014), http://perma.cc/3VJB-PBDT; Shahien Nasiripour, *Sallie Mae Torments Faithful Student Borrowers After Co-Signers Die*, HUFFINGTON POST (May 21, 2014), http://perma.cc/J5P7-XHXY.

[74] *See* 15 U.S.C.A. § 1692m (2010); *see, e.g.*, CONSUMER FIN. PROT. BUREAU, FAIR DEBT COLLECTION PRACTICES ACT: CFPB ANNUAL REPORT 2014 (2014), *available at* http://perma.cc/9R96-EGYE.

[75] Press Release, Consumer Financial Protection Bureau, Federal Housing Finance Agency and Consumer Financial Protection Bureau to Partner on Development of National Mortgage Database (Nov. 1, 2012), *available at* http://perma.cc/YZH2-766U; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-758, CONSUMER FINANCIAL PROTECTION BUREAU: SOME PRIVACY AND SECURITY PROCEDURES FOR DATA COLLECTION SHOULD CONTINUE TO BE ENHANCED 28–29 (2014), *available at* http://perma.cc/T9SA-E5VC.

[76] *See generally* Home Mortgage Disclosure, 79 Fed. Reg. 51,732 (Aug. 29, 2014).

formation in a public report[77] and with the FDIC and the Justice Department, which led to a resolution in which an estimated $60 million was paid out to about 60,000 servicemembers.[78] We also drew attention to the issue of military allotments—a longstanding payment method where funds are taken directly from servicemember salaries—in a public enforcement action.[79] Misuse of this method of payment had allowed lenders to impose a variety of questionable fees and charges.[80] The announcement of the Consumer Bureau's enforcement action triggered a dialogue with the Secretary of Defense, who created a working group to examine the effects of the military discretionary allotment system on the financial circumstances of servicemembers.[81] After the working group issued its recommendations, the Department of Defense amended its policy to ban new allotments to buy, lease, or rent personal property, which will protect servicemembers against this tactic that was being employed by predatory lenders.[82]

Conclusion

All of the Consumer Bureau's everyday work is set against our long-term goal of making broad-based improvements in consumer financial markets. Americans deserve a marketplace where consumer protections and business opportunities work in tandem; where financial firms lead through responsible business practices; and where educated consumers can make well-informed decisions. We believe that is the right outcome for all involved, and that it will lead to more stable and sustainable financial conditions that strengthen the future of this country. In all of our work, we consciously seek to facilitate both consumer protection and access to the credit and services that consumers need. There is such a thing as doing too little, and there is such a thing as doing too much. We are aiming instead at doing justice. The authors here each grapple with the same mix of risks and rewards as they focus on some of the hottest topics in consumer protection. We look forward to considering their insights, their concerns, and their advice.

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[77] Consumer Fin. Prot. Bureau, The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform 8 (2012), *available at* http://perma.cc/CBN9-CBXY.

[78] Press Release, Department of Justice, Justice Department Reaches $60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), *available at* http://perma.cc/UNA4-BQX2.

[79] *See* Dealers' Financial Services, LLC, 2013 C.F.P.B. 0004 (2013), *available at* http://perma.cc/4DWD-S6CZ.

[80] Press Release, Consumer Financial Protection Bureau, CFPB Issues Statement on Department of Defense's Military Allotment System Reforms to Protect Servicemembers (Nov. 21, 2014), *available at* http://perma.cc/LW9L-FPN5.

[81] Press Release, Department of Defense, Department of Defense Announces New Policy on Service Member Allotments (Nov. 21, 2014), *available at* http://perma.cc/HYE8-Y2F2.

[82] Military Pay Allotment, 79 Fed. Reg. 70,858 (Nov. 28, 2014).