

Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau
House Financial Services Committee
December 14, 2022

Legislation

- [H.R. 2069](#), the “Home Loan Quality Transparency Act” (Rep. Velázquez)
- [H.R. 6054](#), the “Small Business Lending Disclosure Act” (Rep. Velázquez)
- [H.R. 7351](#), the “Promoting Fair Lending to Small Businesses Act” (Rep. Velázquez)
- [H.R. _____](#), the “Repeat Offenders, Megabanks, and Credit Bureaus Accountability Act” (Rep. Waters)
- [H.R. _____](#), the “Financial Data and Reproductive Justice Act”
- [H.R. _____](#), the “Preventing Unfair Foreclosures Act”
- [H.R. _____](#), the “Promoting Equity in Mortgage Underwriting Act”
- [H.R. _____](#), the “Protecting Consumers from Payment Scams Act”

Semi-Annual Report of the Consumer Financial Protection Bureau - Spring 2022

Opening Statements

Chairwoman Waters (D-CA) started by highlighting the accomplishments of the CFPB and applauded the agency for putting consumers first. Chairwoman Waters stated that FSC Democrats are monitoring the deeply flawed ruling from the 5th circuit focusing on the CFPB’s funding that would disrupt the economy and leave consumers with fewer protections than pre-crisis days. Chairwoman Waters said that she was going to eliminate the criticisms she had of Republicans in terms of how they handled the CFPB and Director Chopra, not only to recognize that this was their last hearing but also because she was looking forward to working with the Ranking Member and she wanted to give the Republicans an opportunity to say what they like and appreciate about the CFPB.

Ranking Member McHenry (R-NC) said it has been an honor to collaborate with Chairwoman Waters and congratulated her for her time as Chair. He also highlighted the ways that they had worked together over the past four years and said he hoped they could continue their bipartisan work on the Committee. McHenry said the CFPB’s lack of transparency is of grave concern, citing the more than 10 letters sent by HFSC Republicans and noted how the answers to the questions in those letters were not sufficient. He noted that Chopra has only put one real rule through the notice and comment process, and that action was directed by Congress. McHenry added that the CFPB is implementing progressive policies that are expensive for the consumers and market participants trying to abide by the law, and that they are doing this without consideration of the consequences of their actions. McHenry turned to the 5th circuit’s ruling that the CFPB’s funding mechanism is unconstitutional, adding that the US Solicitor General filed a petition for the US Supreme Court to review the 5th circuit’s decision. He said that

Chopra has set a dangerous precedent with his lack of accountability and transparency as head of the CFPB.

Rep. Luetkemeyer (R-MO) started by saying that under the direction of Chopra, the CFPB has shown a willingness to regulate and operate by any means other than those that are legally appropriate. He added that instead of meeting with consumers, Chopra spends his time undermining other regulators to increase his own perceived power. He said the courts have already begun to chip away at the illegal actions and that it is past time for Congress to intervene.

Witness Testimony

The Honorable Rohit Chopra, *Director, Consumer Financial Protection Bureau*, started by saying that the amount of household debt has increased rapidly, adding that the rise in household payment burdens from auto loans and credit cards has been especially bad, given rising interest rates, the cost of vehicles, and the impact of inflation. Chopra noted that the Consumer Financial Protection Bureau (CFPB) has seen a notable increase in Buy Now, Pay Later (BNPL) products over the past few years, highlighting the increase in use of these products to fund essential goods or services. He said the CFPB is working to ensure that BNPL lenders adhere to the same protocols and protections as other similar financial products to avoid regulatory arbitrage. Chopra turned to home buying, saying that weekly mortgage applications for purchases are down 40 percent from the same time last year. Chopra then said that the CFPB is looking to promote competition in a decentralized market, noting how Big Tech companies' entry into banking and finance raises concerns about competition and consumer choice. He added that the CFPB has specifically been looking at these firms' expansion into finance markets, particularly with respect to payment systems. Chopra continued that Big Tech firms can tie their payment platforms to social media offerings, which could make it less advantageous for consumers to use another payment system. He said the CFPB has requested a number of these firms to determine what data they are extracting from transactions and whether they can use that data to preference their other business lines. Additionally, Chopra said the CFPB launched the rulemaking process in October and that the proposals under consideration would require financial firms to provide consumers access to their own financial data on deposit accounts, credit cards, and other transaction accounts, which would help give consumers more control over their personal financial data. Chopra also encouraged congressional reform to ensure that payments systems are neutral and nondiscriminatory, by eliminating the incentive for firms to use their control over payments to favor their other interests. Chopra also expressed the need to strengthen financial privacy protections, given the amount of data and sensitive information that many firms have on its consumers in today's climate. Chopra said that he hopes Congress can explore limitations on the collection, use, and sharing of personal financial data as well.

Member Questions

Chairwoman Waters (D-CA) started by discussing how consumers have complained of rampant fraud and said she has concerns over cases of fraud in the fintech industry. Waters asked Director Chopra about the CFPB inquiry looking into Big Tech payment platforms and asked him to share the status of the inquiry and any areas of risk or concern they have identified. He said he thought big tech and other payment platforms entering the payment system raised a host of questions about how banks and others will fairly participate. He said they have heard concerns about their accounts getting frozen or suspended because of their speech or their other activities and said this was a new concept that is unheard of and raises a lot of concerns about people and the payments system. He said there is an extraordinary amount of data being collected about individuals and their transactions. The CFPB has heard from banks themselves about their inability to understand fraud when it comes to these apps and their technologies. He said they would be releasing a report offering a series of analyses and looked forward to working with the Committee on how to deal with these issues. Chair Waters said there had been various proposals to improve payments and cited the Biden Administration raising concerns with non-bank payment providers. She asked what issues Chopra would recommend Congress prioritize with respect to legislation to strengthen consumer protection with respect to payments and digital payments. Chopra said stablecoins is the number one issue that would affect consumers and consumer protection. They are not being used for consumer payments right now. He said we need to make sure there are no runs, that fraud protections are in place, and, we want to have a modern payment system with real time payments that scales in ways that helps everyone. Chair Waters said she looked forward to working with Chopra to craft legislation to protect consumers.

Ranking Member McHenry (R-NC) raised the issue of regulation by press release. He said he wanted to understand the internal processes at CFPB. He asked how Chopra makes a distinction between what gets a blog post, what gets a press release, and what goes through the Administrative Procedures Act. Chopra said that one of the things they have tried to do is to issue a lot more guidance, which is feedback and requests from industry and from Congress. They try to reveal that enforcement is just one vehicle, but to promote compliance and clarity, they want to provide more transparency as to how they interpret rules. None of the guidance documents commit institutions to new obligations. He said guidance does not create any obligations under the law. McHenry asked if he would tell folks to look at guidance as “just” guidance. Chopra said the things that have obligations under the law are statutes and regulations. A blog post is supposed to communicate and be transparent and is meant to publish more information about what they are doing. McHenry said the approach the CFPB was taking was novel and we did not see this from other agencies. Chopra said the Treasury does this, as does DOL, DOE, DHS. McHenry asked about the rule for nonbank supervision and whether it was going through the APA. Chopra said this was about the procedures that the CFPB will use to define that; it was not required to do a rule. They published a procedural rule so institutions could know how it would work and asked for comment on it. The CFPB received comments and

they published an update to respond to those comments. McHenry again asked if guidance was legally binding. Chopra said no guidance is supposed to provide interpretation.

Rep. Velazquez (D-NY): Asked about the CFPB's 1071 rulemaking, stating that according to publicly available material, they are on track to issue a final rule by March 31, 2023. Chopra said that was right, and that the CFPB was sued a few years ago for not completing it and they plan to complete it by that date. Velazquez pivoted, saying that in 2012, the CFPB created the remittance rule, which was a monumental step in protecting the millions of Americans utilizing remittances from hidden fees. While the rule requires providers to disclose certain fees, consumer and immigration groups have found that remittances still lack full transparency and said that providers can still hide fees in exchange rates and force consumers to unknowingly pay higher costs, resulting in consumers paying \$8.7 million in hidden fees every year. She asked if the CFPB has considered strengthening the remittance rule to better protect consumers from hidden fees. Chopra said that when someone is sending a remittance, the cost to them is a mix of any immediate fee plus any exchange rate delta and in many cases, consumers cannot know how much money is going to end up on the other side. He added that this is a place where they are starting to see some more digital apps and others try to compete more, which is a good thing but, the exchange rate opacity is a concern, and they will continue to look at all the players and what would be ways the exchange rate transparency could be better. Velazquez said she would like to continue working with Director Chopra going forward. Velazquez went on to say she had written Chopra a letter on Puerto Rico and asked how Chopra was planning to carry this out. Chopra said that PR, if ranked by population, would be the 30th or 31st largest state. He said that in their analysis of credit reporting and other loan data, they were trying to see whether every territory has some specific information just like we have 50 state information. He said sometimes it's a challenge because they rely on census bureau data and other data published by other agencies. He said he could not speak to what discussions there have been on an interagency basis about more data being publicly available on the territories, but the spirit of it is that they want to understand more about what's going on with the territories.

Rep. Wagner (R-MO) said that the CFPB has clearly chosen to regulate by press release guidance and enforcement action instead of through the Administrative Procedure Act (APA). She said these actions show an intent to subvert the notice and comment procedures of the APA. She said since the CFPB's guidance is not legally binding, does Chopra agree that financial institutions are within their right not to adhere to the CFPB's proclamations. Chopra said those are existing obligations under the law. He said they have increased transparency around potential enforcement actions/interpretations for how they believe existing situations in the marketplace would apply to existing law. Wagner asked again if financial institutions are within their right not to adhere. Wagner asked Chopra if he would commit to not bring enforcement actions that do not adhere to any decree other than APA rules. Chopra said statutes are developed by Congress and that when there's additional requirements to conduct rulemakings, they go through that

process. Wagner asked if the Bureau's communications department has a role in shaping policy through press releases or on the record comments. Chopra said he did not know; all sorts of individuals make the interpretations of policy. Wagner said Chopra recently indicated through a blog post that he would pursue simple and straight forward terms, basic bright line guidance and rules and clarity in rulemakings. Wagner asked if he could give specific examples of how he has implemented that change so far. Chopra cited that they have received questions from industry participants about algorithms and automated decision making and said that they have made clear that those are usable when you can comply with the adverse action notice under Regulation B. Wagner interrupted and asked him to just provide a list. Wagner then asked about the small business data collection rule and its unintended result of increasing origination costs and decreasing access to credit for businesses that need loans the most. Wagner asked about how the CFPB is adhering to these principles when working to finalize the small business data collection rulemaking. Chopra said in the case of section 1071, Congress specified a host of what data should be collected.

Rep. Green (D-TX) complimented Chopra on the work he has done and said he was here in 2008 when they had the downturn in the economy, and he remembered how banks would not lend to one another and when the yield spread premium was the norm. He said it was a time of open season on consumers, but the CFPB has made a difference. He said therefore he supports an independent CFPB that does not have to depend upon the vagaries of Congress for its funding, a Congress that has difficulty funding its own government. Green said independence is what makes the difference. He said giving Congress the purse strings will result in the CFPB seeing a change in its ability to move forward with its actions to protect consumers. He continued that assuming Congress controls the purse strings and there is a sharp cut in funding to the CFPB, he asked how it will impact consumers. Chopra said a CFPB that is robust and reliable is the best way to avoid the horrible things Green referred to. It is also critical for industry participants because they provide the framework that serves as safe harbors in mortgages and what they can rely on in debt collection. It would be chaos if there was not an orderly way in which these critical rules are administered. The mortgage crisis was a lesson in what happens when you do not have an orderly system to protect consumers. Green focused on the potential for this framework to be dismantled and asked how it would affect people trying to get a loan. Chopra said the mortgage industry has said it publicly about the real problems about not having the CFPB and how throwing huge amounts of uncertainty into this. Green said we have done remarkable things under Chopra's leadership, and he complimented him on what he has done.

Rep. Sessions (R-TX) said the Chairwoman asked the Republicans to offer feedback on the things which we disagree with and one of them is the 5th Circuit opinion that the CFPB is unconstitutionally constructed. He said he heard Chopra refer to the CFPB in the same context as other Boards, but they are constructed differently. He said they want to get into how the CFPB has been a toxic workplace too. He said he found Chopra's words about the "critical role" and

“orderly system” and “avoiding chaos” interesting because he thinks the CFPB using the internet as a platform to give advice and consent as opposed to the law is detrimental. He said in Chopra’s testimony he pointed out that big tech and other digital giants have leveraged their platforms to expand into banking and finance. He asked what Chopra’s definition of big tech is and asked when he is deciding which of these tech companies he has in mind, it allows Congress to know more about what he is thinking. Chopra said the CFPB has in many ways a similar structure to the OCC and the Fed. He said this has been addressed in the Supreme Court. With respect to big tech, it is meant to convey the very largest tech conglomerates that operate globally but that have scale and network effects whether it is in social media or mobile operating systems. When there is the intro of these firms into the payments system – banks are not allowed to have side businesses or ancillary businesses and do not harvest enormous amounts of information to preference their other businesses. He added that tech firms have enormous power to elevate or suppress some users over others, which is very scary. He said that payments are not supposed to be about elevating someone or the other. He added that there is room for detection of fraud and preventing money laundering, but we have a lot of tough questions to deal with. There is a host of issues about how they make decisions and how they are using our data and how it is disadvantageous to banks, merchants, and consumers.

Rep. Cleaver (D-MO) followed up on Green’s statement that they were here in 2008 following the financial crisis and said that FSC held the fate of the U.S. economy in its hand. The CFPB was not created out of partisanship, it was created because they wanted an agency that would protect consumers. Cleaver said they had the dollar backed by gold, then in the 1970s the dollar was backed by fiat currency. Cleaver continued, asking what these digital assets are backed by. Chopra said the CFPB thinks about this in terms of payments and while these digital assets are not used as a payment instruments now, we have to ask questions about what that will look like and consider whether it will have the right liquidity, if there is a run risk or if there is a risk of fire sales. When people cannot access their money, it is hugely catastrophic to an individual family. To the extent to which people are relying on that safety and security, apps like PayPal and Venmo are very heavily used, and consumers are not aware that the funds they have there are not insured by the FDIC. There is a lot of work for Congress and the regulators to do across the board. Cleaver referred to crypto as “Creepy Dough” and said they are dangerous and asked for ideas for what they should do. Chopra said they are focused on payments and right now it is not being used for payments, but that they would be willing to work with them if it ever were to be used in payments.

Rep. Luetkemeyer (R-MO) asked Chopra about the guidance they issued on overdraft fees. He said the guidance seemed to say that something that was legal yesterday is illegal tomorrow. He said Chopra was trying to use guidance to determine whether something was legal or not and said the CFPB had no authority over overdraft fees. He asked Chopra to tell him what was going on there. Chopra said with respect to those guidance docs, there was no change in obligation

whatsoever. Luetkemeyer said 30 days before he issued that, they issued an enforcement action. Chopra said that was against Regions Bank, which was repeatedly on notice. He said the enforcement action and the complaint outlines the violations of law and noted the entity was already aware of the issues expressed by the regulators. Luetkemeyer said in Chopra's statement he talks about "junk fees" and said there is no such word in financial services lexicon. He said Chopra is not a legislator and should not be making up a word and using it to enforce something that does not exist. Chopra said Luetkemeyer mentioned the CFPB does not have authority with respect to overdraft fees and that all the rules related to overdraft rules the Fed promulgated are under Congressional mandate, enforceable. Luetkemeyer said he would argue against that point. Luetkemeyer said there is a huge lack of transparency with regards to Chopra's schedule. Chopra said that was not true and he had met with more people than his predecessors. Luetkemeyer showed him a copy of his schedule and said there was no transparency. Luetkemeyer cited an article about Chair Gensler scrubbing his meetings to ensure people did not know who he was meeting with. He asked if Chopra was doing the same thing. Chopra said he was happy to look at any specific days, but meetings about enforcement actions and supervisory meetings are protected. Luetkemeyer said he would request an entire year's worth of meeting descriptions. Chopra said he has personally met with 21 state bankers' associations and said he has done more industry outreach than both of his predecessors. Luetkemeyer continued to say his meeting schedule did not show that Chopra was meeting with the people that he serves.

Rep. Sherman (D-CA) commented that he did not release a complete schedule of who he meets with, and he doubted most members of the Committee did. He said Cleaver pointed out that "Creepy Dough" had a value of over \$6,000 apparently and he said he had previously indicated that crypto was silly. Sherman said a lot of the discussion about crypto is about payment systems and they need to improve the payments system, but it should be a system where you pay in dollars and small businesses should not be paying 3-4 percent when you use a credit card. Sherman said they talked privately about Sec. 1071, which requires financial institutions to compile and maintain and submit data to you and Chopra said the final rule on 1071 would be issued no later than March 31st. Sherman said often the auto dealer is acting as an agent for a lender but the auto dealer isn't under CFPB jurisdiction and said the lender may be required to compile this information but the auto dealer may be prohibited from asking, so he hoped Chopra would work this out. Sherman asked about a potential rule regarding PACE loans and when that might come. Chopra said he is planning to propose the rule this Spring, hopefully by April or May. The goal would be to finalize it within a reasonable amount of time. Sherman asked about appraisal management companies, noting how appraisers determine different values on the home based on the perceived race of the owner. Sherman asked about what oversight there was over them and if they plan to look at this area. Chopra said it is complicated how the appraisal process works and said they needed to work with Congress to ensure there are enough appraisers in rural and urban areas and that they focus on accuracy with appraisals. He said that it is important to ensure that there are good, robust appraisals to the whole housing system.

Rep. Lucas (R-OK) asked Chopra to describe how the CFPB engages with the Fed, OCC and NCUA to ensure regulations are in line with their safety and soundness objectives. Chopra said there are formal ways in which the CFPB gathers their input. Those formal consultations occur in the context of rules and other similar policymaking, but also, as it is related to official votes the CFPB is required to make on different bodies, the FSOC itself can overturn CFPB rules if any of those rules pose a threat to safety and soundness. Lucas turned to the results of the Fed and FDIC's resolution plan review of the largest US financial institutions. He referenced Chopra's comments on this that it is highly unlikely that any of these institutions could be resolved in a rapid and orderly manner under bankruptcy code. He asked Chopra to elaborate on this and asked if his statement should be viewed as a criticism of the Fed and FDIC for not identifying shortcomings in all the resolution plans. Chopra alluded to Congress not wanting to do bailouts anymore and pointed to how large financial institutions can resolve themselves through chapter 11 of the bankruptcy. Chopra said he agrees with the FDIC and the FED that there was an institution that was deficient but added that he was more broadly questioning some of the assumptions. He continued that an orderly resolution that avoids bailouts is ideal and that they want bankruptcy cases to be resolved in a way that does not interrupt the entire capital markets or access to credit, adding that this is an unfair subsidy that small banks do not get. Lucas then asked about Chopra's interaction with the FDIC and Fed after his comments and asked how they have responded. Chopra said it is an ongoing question. Lucas then asked Chopra about the recent CFPB budget request and why this request is much larger than previous fourth quarter requests. Chopra said there is seasonality to their spending and that he would be willing to look at the numbers.

Rep. Perlmutter (D-CO) started by talking about enforcement versus guidance. He said the CFPB is trying to provide guidance on enforcement actions and asked Chopra to talk about why the CFPB is providing guidance to different industries to give notice as to what they are thinking about particular regulations and statutes. Chopra said that the CFPB is not strong-arming small businesses anymore and that they are focusing on repeat offenders and the largest players that have the resources to fight the CFPB. He added that regulators should not be in the business of increasing the cost of lawyers and said that the CFPB wants to provide clarity on guidance. Perlmutter then noted how the CFPB has settled nearly 50 cases and asked Chopra about that. Chopra said this is correct and said that their enforcement emphasis on bigger players. Chopra added that them being transparent about what they are finding in their examinations is allowing other firms to check their own systems. He pointed to auto repossessions specifically, saying that they found there are a number of places where there are unlawful repossessions and are hearing firms saying that after the CFPB issued their bulletin, the firms are looking at their systems to see how they can reduce that and stay in compliance. He said the CFPB is trying to do its best by responding to concerns about enforcement and about clarity.

Rep. Barr (R-KY) expressed skepticism to Chopra's claim that the CFPB is going after the big firms. Barr turned to the 5th circuit's decision, asking Chopra if the funds of the CFPB are congressionally appropriated. Barr cited the 5th circuit's decision that a law alone does not suffice for funds to be withdrawn from the Fed, but that an appropriation is required. He asked the question again. Chopra said he should look at the US Solicitor General's opinion, saying that it is the best and most authoritative view. He said the CFPB funding is the same funding as the Federal Reserve Board. Barr responded that they are double-insulted because they get funding from the Federal Reserve. Barr then referenced the words of the CFPB's first director and how he testified that the revenues were non-appropriated funds, and that the bureau has released three different reports that state the funding for the bureau happens outside of the appropriations process. He pointed to Chopra's previous testimony that the base level of funding is guaranteed by statute, which Barr said does not sound like the appropriations process. Chopra continued to point to the US Solicitor General's words and said they would comply with whatever the Supreme Court rules. Barr turned to the CFPB exam manual updating the interplay between UDAAP and anti-discrimination statutes and asked Chopra if the manual fills gaps where there is presently no anti-discrimination law like the Fair Housing and Equal Credit Opportunity Act. Barr asked if examiners looked for disparate impact in conduct not covered by fair lending laws before his order. Barr accused Chopra of changing the law without Congress. Chopra denied these claims.

Rep. Beatty (D-OH) said she was honored to have someone who understands protecting our consumers and putting them first. She said they have had a lot of work to do in the past and she commended the CFPB for boosting contracts with minority and women-owned businesses. She said she has emphasized the value of the OMWI offices to each of the Directors of various agencies and she said it was good to see a director who valued the OMWI office. She said she was pleased to see they implemented the persons with disability action plan last year. She said that according to a recent report from April 2021-2022, over 1.1 million complaints and 73 percent of those complaints pertained to credit reporting. She asked if that was because people did not know how to get their credit reports and said she was asking because many of her colleagues had legislation dealing with credit reporting and credit scores. Chopra said one of the things that is important for this Committee to know is that it is not just the three major credit reporting conglomerates; others are developing scores and background dossiers on all of us and that raises questions about protecting data privacy. He said we had to work together on this and would continue to use their FCRA authorities but said he was worried we are shifting to a more social scoring environment, and we want to avoid that backroom data collection on all of us. He said accuracy and disputes is a core issue. Beatty said she assumed that meant he would work with them on legislation and Chopra said of course. Beatty took the last 20 seconds of her time to thank Chairwoman Waters for all her hard work.

Rep. Williams (R-TX) said he regularly speaks with community bankers and said they were all terrified of the CFPB's 1071 small business data collection rulemaking. He said they were concerned that complicated reporting requirements will tie up loan officers and increase the cost of credit. He said they are concerned that this would push the industry to a standardized small business loan product that would kill relationship banking, which is community banks. He said they are concerned this will force employees to consider factors outside of credit worthiness. He said the Biden SBA office raised questions about how harmful 1071 will be and how unnecessarily burdensome it will be and how it will lead to a decrease in lending to minority-owned and women-owned businesses. Williams asked how Chopra has been working to accommodate the concerns of small businesses within rulemaking. Chopra said they need to implement the Congressional requirement in ways they can simplify the systems as much as possible. He said they know many businesses will have to bank with the largest banks rather than local banks, which are much more agile. Chopra said they are taking very seriously what their feedback is. They must implement it in accordance with what the law and the Court says. He said they should have an implementation period that gives smaller firms more time and said he heard Williams' concerns loud and clear. Williams said CFPB regulations trickle down. Chopra said he would protect the interests of small businesses, but he could not think of one example of that. He hoped he would be proven wrong on that with respect to 1071. He moved on to auto lending, stating that when the CFPB was created, auto dealers were exempt from the CFPB's purview. He said the threat of increased regulation from the CFPB was not needed at this time. Williams asked Chopra if the CFPB has any authority over auto dealers, which Chopra replied that it does not. Williams asked what information they wanted to collect from them. Chopra said they have not proposed any information on them and said that the challenges were that there was a very disparate set of data about what is happening in auto lending. Chopra added that they had a meeting with industry groups to figure out what the public data is that they can look at to entice their entry. Chopra clarified that there is no proposal to collect information from auto dealers though.

Rep. Vargas (D-CA) quoted Director Chopra saying they need an orderly, strong, and independent CFPB and said he felt that they had that with Chopra. Vargas said one of the things he found odd today was the issue of guidance vs. enforcement. Vargas said he thinks guidance is a good idea and did not understand why the other side was so upset about it. Chopra said when he talks to investors and new entrants, when they are raising capital, they do not have money to burn on lawyers, so they like to have in-house counsel and some outside law firms. Finding plain language guidance is helpful to them and they do their best to publish that so people can know what their expectations are. Chopra said he did think it was pro-competitive to create more clarity. Vargas said when he was at a large company, they did try to follow the law; the larger companies are not always the bad guys. Vargas moved on to cryptocurrency and how people are getting ripped off. He said he did not get the point of the whole cryptocurrency system because people are losing money. Chopra said most of the activity right now in digital assets is on

speculative trading, which has come to a tumble. The markets regulators are the ones who focus on this, but they have done an enforcement action against Loan Doctor which was baiting people into a high yield savings account and then investing in speculative things like crypto. He said that was an example of how crypto intersects with traditional financial products and he said they want to make sure the regulators are ready if some of these digital currencies really scale like on a big tech platform or a card network.

Rep. Huizenga (R-MI) commented that in constant dollars, car and truck costs have increased dramatically. He said it was a combination of a lot of factors, so it was no wonder people are borrowing more. Returning to crypto, he referenced the CFPB bulletin that was released in November about the rise of crypto asset complaints and asked if he anticipated expanding their enforcement in this area. Chopra said no and said crypto is not a product. Huizenga asked if they have received any criminal complaints or enforcement actions regarding Sam Bankman-Fried, FTX, his parents or anyone involved. Chopra said no. Huizenga moved on to BNPL and noted the CFPB study in September on BNPL and how the CFPB said it was planning to release interpretative guidance. Chopra said they are considering it but do not have any final plans on it yet. Huizenga continued that as an interpretative rule exempt from the APA, he asked if it was Chopra's intent to avoid a lengthy rulemaking process. Chopra said no. Huizenga said the CFPB tends to follow a pattern of avoiding the rulemaking process and said he found it strange given Chopra's most recent budget request. He wondered what Chopra was using their budget for if it was not going into rulemaking. He asked why they needed additional dollars. Chopra said they would be happy to give him additional information and said there was seasonality to their expenditures. Huizenga yielded to Barr who revisited the March UDAAP exam manual revision, stating that one analysis said his action vastly expands its discrimination enforcement beyond ECOA and asked Chopra if he agreed. Chopra said no. Barr then asked Chopra why he said they are breaking new ground. Chopra said in the way they are articulating what examiners will look at with more specificity they are. Barr asked where Congress authorized Chopra to expand UDAAP authority to anti-discrimination. Chopra said the law prohibits unfair practices, some of which are discriminatory practices. Barr said Chopra was at the FTC and said he knows history. Barr said when Congress gave unfairness authority to the FTC in 1938, it did not intend to give them authority over antidiscrimination. That is why it passed ECOA. Barr and Chopra continued to argue about this, and Barr said he wanted to talk to Chopra offline about it.

Rep. Maloney (D-NY) said Congress passed the Credit Card Bill of Rights but under the former President they stopped keeping records on the savings this was making for people and said it was important that they continue to track that. Maloney asked if the CFPB was keeping records on the effectiveness of the Credit Card Bill of Rights. Chopra said they are gearing up to conduct their statutory Credit Card Report and he would do his best to keep track of it. Maloney said the CFPB issued a report on overdraft fees and showed it was roughly \$15 billion that had been taken from consumers through unfair, deceptive practices. Chopra said they released an analysis

of the total amount of charges, which was \$15 billion. He said many banks are lowering their fees and some are eliminating them and said they are continuing to look at the institutions that are most dependent on these fees. He said they want to make sure when there is any overdraft or other charges that it meets the requirements of the law and he hoped to see banks continue to compete in this area. Maloney said that it was true that many had begun to eliminate them, but it would be less confusing to consumers to have one standard across the board and asked if Chopra agreed. Chopra said they would continue to work on it but that he was encouraged to see where the market had moved. Chopra said overdraft and credit cards are linked in many ways and said they want people to get the lowest cost way to get credit.

Rep. Hill (R-AR) echoed the concerns about 1071 and said under President Obama and Trump, it was put in the “too hard” pile. He said while 1071 is well-intended, it is not implementable in a cost-effective way. He thinks it will result in fewer participants in small business lending and higher prices. He said he thinks Chopra could be the Director that puts an end to it by saying it is unworkable and making a recommendation for something different. He said Chopra should take a pass. Hill shifted to 1033, which the CFPB released in October. Hill said he thought it was notable that the CFPB’s proposal would only cover deposit accounts and would not apply to services provided by nonbanks which the CFPB acknowledges offer numerous consumer services. He asked why the scope of the rulemaking was so narrow. Chopra said the proposal is all transaction and deposit accounts at first, but they would keep going. This was based on what they heard from industry on where the most valuable data was to help people underwrite products. Hill said the CFPB does not address data breaches and asked whether it was the CFPB’s assumption that banks have the liability for security breaches while nonbanks have no oversight. Chopra said that was not at all where they wanted to go and he said they wanted to make sure if there was more data moving around about people, that it is safe and secure from end to end. He said a lot of the nonbanks do not have the same supervision for data security as the banks. Hill said he agreed with him, and he hoped they could have a bipartisan data privacy bill in the new Congress. Hill moved on to the CFPB’s statute and cited the Fed should transfer the “combined earnings,” but the Fed has no earnings; they are negative, so a plain reading means the CFPB should be under the appropriations process. Chopra said their views are in the petition to the Courts on the 5th circuit decision.

Rep. Casten (D-IL) said he had asked Chopra last April about creditors and social media companies like Facebook and how their algorithms might violate fair lending laws. He said he was happy to see that Chopra released a statement of policy confirming that federal antidiscrimination law would require companies to explain to applicants’ specific reasons for denying credit. He said he was curious since the guidance was issued had they seen any changes in financial institutions who were using blackbox algorithms to make lending decisions. Chopra said that entities who use advanced computation methods like algorithms are working to make sure they can explain clearly why someone got an adverse action because that is what law

requires. Chopra said they are still trying to see where there might be additional questions around this but, they have seen a lot of progress, like the AI Bill of Rights, which puts a premium on the ability to explain. Casten asked if the CFPB had the authority to look inside blackbox algorithms if not held by the bank. Chopra said in as much as they are a service provider, they would be subject to their authority. Casten posed a hypothetical and asked if he was a credit card issuer and he put an ad on a Facebook site, which targeted rich white people, does Chopra have the authority to query Facebook in that example. Chopra said yes if it was providing a material service to the firm. Casten cited his bill to give the FTC the authority to query social media companies. Casten asked if they were to do that, is there information Chopra would like to get about that blackbox that they might be limited to because of trade secrets that would be helpful to have some agency with the authority to ask how the algorithms work. Chopra said the CFPB seeks to protect confidential information, but they worry when that is cloaking necessary information to obtain compliance. He added that he does not have any immediate concerns.

Rep. Norman (R-SC) asked if Chopra would agree that small medical providers in underserved areas deserve to be paid for their medical care. Chopra said of course. Norman asked why medical debt and student loan debt is different from other kinds of debt and he said he was frustrated with the CFPB rewriting rules, like the contract law. Chopra asked him to explain “contract law” and said they have focused more on medical debt in credit card debt. He said he wants to make sure that medical providers can get paid but that debt collectors are not putting inaccurate information on credit reports. Norman asked what has changed that allows the CFPB to pick certain types of debt to not be accurately reported. Chopra said accuracy is the standard that is put forth in FCRA and said there is an obligation to make sure the information on credit reports is correct. Norman said per the CFPB’s website, the office is collecting information about the auto lending market and held a non-public meeting with stakeholders on the subject but not all the relevant stakeholders were invited. Norman asked how they picked the stakeholders. Chopra said most were industry groups, and they had one meeting but they would have more. Norman asked if independent auto dealers were involved in meetings when it comes to car repos. Chopra said he has met with a number of dealer associations, though they do not have any authority over them, because there are issues in the broader auto market that they will be interested in. Norman said according to his background the first 10 months Chopra has been in office met with industry 28 times, but his predecessors met with them far more. Chopra said their industry outreach to small financial institutions far exceeds his predecessors.

Rep. Adams (D-NC) said she was extremely concerned with the levels of student debt in this country and said she believed they needed to cancel \$50,000 of student debt for student loan borrowers. Adams said she agreed with Chopra that they needed a concrete plan on student loan relief before repayments start in September. She asked Chopra why it is so critical to have a plan in place. Chopra said their role is oversight of the financial firms who are engaging in practices implicated by the laws they administer. They are making sure that when payments restart,

whenever that happens, that everyone is ready; they do not want a messy return to payments. He said they were working productively with industry and others to ensure people know what their options are if they cannot pay and said they have done analysis to see where student borrowers are struggling now and have released a report on that. He said they do not want to see a huge spike of defaults but want to see servicers work with borrowers so they know their options if they cannot make the full payments to get on a payment plan. Adams said the OMWI at CFPB released a report a year ago examining diversity and inclusion across their regulated entities including both depository and non-depository institutions and asked why it was important to share this data publicly. Chopra said Section 342 establishes the OMWI programs and said they take what is in that statute very seriously. He said they have published a set of reports and they want to make sure they are fulfilling all those obligations. He said they are actively fulfilling those mandates. Adams asked if he was aware of any specific impacts on the credit reports and scores of the consumers who utilize the company's debt relief services. Chopra said over the course of many years, both of his predecessors did work on debt relief and said sometimes there's phantom debt relief or outright fraud and that even when you catch these guys, they often do not have the money, or it is too late. He said they have proposed a registry of these nonbank firms that have one of these law enforcement orders under them. Debt relief providers are a big space where this occurs. He said they are working through that process now.

Rep. Davidson (R-OH) said it is important that where they can find common ground, they ought to appreciate it, like with data privacy and the importance of protecting it for consumers. He said he appreciates the distinction of how tech firms are monetizing data and how it was an arbitrage where they are taking value for any one consumer does not really mean a lot, but they are giving it a way and it has minted quite a few billionaires. He said we need a comprehensive data privacy law. He said he appreciates the 1033 undertaking and asked about the rule being finalized in 2024 and that during the process the CFPB will convene panels comprised of smaller entities to seek feedback. He asked how Chopra will decide who will participate in the panels and asked him to talk about the process of getting to the final rule. Chopra said the SBA is very involved and said they will produce the report with the CFPB about what small entities are saying. He said they have tried to hit the broad set of stakeholders from fintech companies to small banks and credit unions and have worked through their industry associations to make sure it is very inclusive. He said in terms of finalizing a rule, the goal is to make sure they figure out how to protect data while also giving more competition and innovation for new players. He said he would love to see a market where there is more competition for privacy protection. Davidson said he would like to see a big shift in surveillance capitalism, and he appreciated the perspective he brings to this. He added that he was rooting for a major law from his colleagues and hoped Republicans made H.R. 4 a major privacy bill that recognized a property right in data that was individual. He said he looked forward to collaborating with Chopra on this. Davidson said they had had feedback that looking at Chopra's calendar, he does not meet directly with fintech firms. He asked what the primary sources of information as he goes about overseeing this rulemaking

that gives him information on the state of innovation, etc. Chopra said they make it a point to go to the industry associations that represent a lot of fintechs. He said they went to the main fintech conference, but he takes the feedback that they should continue to find ways to get new players in the business. Chopra said they were tech-forward and had set up a technology office. He wanted to ensure all the fintechs and all the banks can benefit and compete against one another. Davidson asked what all of this was driving at. Chopra said as we have gotten out of the pandemic, people want more digital services, and we want to see it being fulfilled. We want a lot of decentralization with small players, not just having the big tech firms dominating.

Rep. Foster (D-IL) started by saying that he was impressed with the fact that over 70 percent of all consumer complaints filed with the CFPB relate to credit reporting. He noted the Wall Street Journal's reporting that Equifax provided incorrect credit scores in applications for credit. He asked Chopra if Equifax's actions are in violation of the Fair Credit Reporting Act. Chopra did not answer the question directly. Foster asked if he agrees that all credit errors are benign. Chopra said he does not and added that these errors can be severe and have extremely significant consequences for consumers. Foster then turned to a CFPB advisory opinion that was published in October of this year, the FCRA was enacted to protect consumers from the transmission of inaccurate information about them. Foster added that the opinion continued that consumer reporting agencies are held to legal standards to ensure accuracy of information about the individuals they are dealing with. Foster asked about what the standard is to prevent cases of people suffering from errors in customer information. Chopra said that the CFPB will take their role very seriously and said this is a huge issue. He said consumers are not the customer of these companies but are the product, adding that can be drastically impacted by what is in these reports. He said accuracy is the goal here. Foster then asked if we have set the correct balance in regulatory action to make sure we minimize consumer suffering from bad credit scoring information. Chopra agreed, saying that this is a classic example of a market failure, and he welcomes working on mitigating modern problems with credit reporting.

Rep. Loudermilk (R-GA) started by talking about P2P payments and how the CFPB has already begun exploring ways to expand its authority to address P2P payment platforms by changing its interpretation of the Electronic Fund Transfer Act and the CFPB Regulation E. He noted that confidence in consumers is required by criminals to perpetuate scams. He asked if Chopra agreed that consumer education is the most effective way to protect consumers from scams. Chopra did agree and said that as we have shifted to P2P payments, so much money is moving, which increases likelihood of fraud. Loudermilk turned to liability protections and how criminals are aware of this. He asked if the bureau shifts its liability so banks must refund consumers, then would not this create an additional hazard. Chopra said they have not made any changes and that they do not want to create a situation where there is risk of different fraud or more fraud. Loudermilk asked if they have considered exploring consumer education as a key element of this. Chopra said yes and that they have investigated which customer bases are most

prone to cases of fraud. He added that they are doing to determine the best channels to reach people to teach about how they can avoid scams. Loudermilk then asked if they had considered the half billion dollars under the Civil Penalty Fund to compensate consumers. Chopra said they are only using it for redress currently.

Rep. Gottheimer (D-NJ) said earlier this year he announced his Senior Security Strategy and said he was very proud to have had two bipartisan bicameral seniors' protection bills pass the House this Congress. He turned to Chopra and said the CFPB stood up its Office of Financial Protection for Older Americans in 2011 to ensure the Bureau is serving seniors effectively. He asked how the Office helped the CFPB protect seniors from financial abuse. Chopra said the office has been a huge success and he thanked Rep. Gottheimer for his support of this work. He said one of the things they had done this year is to identify nursing home debt collection where someone may be in a nursing home, but their family members are chased after and coerced into paying things they may not even owe. He said they have also looked at financial certifications and designations and how that might affect seniors. He said they have looked at housing and what happens to seniors when they are targeted in certain neighborhoods. He said they strongly support looking more at older Americans. Rep. Gottheimer asked if there were additional resources, they would need to increase the number of cases reported. Chopra said yes, they need to do more to get some of this fraud addressed criminally and that one of the things they have seen is that these bad actors bounce from state to state, which is why they have proposed the idea of a registry. He said they also need more enforcement cooperation they need when it comes to swindling seniors out of their retirement savings, which is not an area where they have enforcement authority. Gottheimer then turned to the public-facing consumer complaint database and how it could be used for firms to publish unmerited complaints about their competitors. He asked what steps Chopra has taken since they last spoke to ensure the complaints published have merit and are not misleading. Chopra said he did look into whether they think there is an issue there and one of the things that is important is that they limit the set of complaints that go into the database, and it includes a company's response, including where the company can say someone is not their customer. Gottheimer asked if the company says it is not their customer, is the complaint removed? Chopra said he would need to look at the protocols, but he said he thinks the complaint would not be published if it was attributed to the wrong company.

Rep Mooney (R-WV) said the CFPB has lacked transparency and accountability and has taken actions that raised the cost of credit while reducing access to credit. He said that Chopra and the CFPB had ignored the traditional rulemaking process and instead regulated by press release and blog post. He noted that Chopra and the CFPB is trying to expand the definition of 'unfair' to include disparate impact, or unintentional discrimination, which is not found in statute. Mooney said that this potential change will hurt the people they are trying to help. He asked Chopra to affirm his claim that he does not recall whether anyone in the bureau has advised him to seek APA rulemaking with respect to this exam manual change. Chopra answered no that it was in a

manual and not a rulemaking. He said the exam manual is guidance for their examiners so that they can consistently conduct supervisory exams and does not create any new obligations. He added that they are trying to put out more information and that their goal is transparency. Mooney said that unlike other financial regulators, the CFPB is under a sole director and not a bipartisan board and asked if a bipartisan board of directors with diverse opinions would better serve consumers. Chopra said that for about 150 years, the OCC, which has far more employees and a far bigger budget, has been led by a single director and that this is part of the reason Congress modeled the CFPB after that. He went on to say Congress decides how it wants to create the governance of its agencies. He noted that there are cons to multi-member boards but said that it is up to Congress to decide that. Mooney then asked if Chopra would vow to not bring any enforcement action against any financial institution for violation not expressly laid out in statute or APA rule. Chopra said they cannot bring enforcement actions unless they plead a violation of law or regulation that must have specific reference to what Congress has enacted. Chopra said that is how enforcement works.

Rep. Pressley (D-MA) said she is grateful for his leadership as it pertains to the issue of medical debt. Pressley asked if medical debt ending up on an individual's credit report will impact their ability to get credit. Chopra responded yes. Pressley continued by asking if this could lead to an individual forgoing medical care in the future even if it is needed. Chopra replied yes. Pressley then asked if this medical debt would make it more difficult to secure future employment. Chopra said yes and that they have seen how background checks have a significant impact on people. Pressley followed by asking if the medical bill is inaccurate, would the person be punished with a lower credit score. Chopra said that it would and that it is a huge problem. He said this is why the CFPB has focused on medical debt, especially credit reporting because of the impact it could potentially have on people's lives. Pressley said this is the reality for tens of millions of people and that they not only carry medical debt, but also suffer financial hardship. She claimed this is disproportionately affecting low-income individuals. Pressley then asked if the CFPB is taking any additional steps to protect these vulnerable consumers. Chopra said they are considering rulemaking under the FCRA to address the issue of medical debt. He said he is worried that credit reports can be used as a tool of coercion for getting people to pay debt they already paid or pay debt that is not theirs.

Rep. Budd (R-NC) said he wanted to touch on an issue related to transparency and encouraging innovation and competition. He said previous CFPB directors recognized the importance of fintech innovation for providers and consumers. He said in contrast, Chopra terminated the fintech sandbox program that issued no-action letters and instead he is asking startups to file rulemaking petitions to ask for clarity. He asked how this provides consumers with more choices and allows new firms to enter the market to give us greater competition. Chopra said the biggest thing we are thinking about is letting new players in. He said the old program was about picking winners and losers. He said the key is it is applicable; we want to make sure it is not just one firm

that is becoming the winner, but many of them. He said they have put a lot of attention on proposing Sec. 1033 rules about how they will be able to compete against the big guys and challenge the incumbents. He said they have talked to investors and analysts about what is the way that there can be consumer-friendly innovation and how do we invite them in. Chopra said they are working on all fronts and trying not to pick winners and losers. Budd went back to the fintech sandbox and asked if in Chopra's view a regulatory sandbox can reduce barriers to innovation while providing the necessary guardrails. Chopra said there is lots of ways that the regulators can work with those who are creating new products. Sandboxes need to have a real goal – what are the obstacles we need to topple over and how might a product structure need additional information about how to comply with the rules of the road. He said the CFPB embraces that and looks carefully about how the sandboxes are working overseas and how they are doing in the states. He said they are trying to reinvent how they are promoting innovation. Budd cited the letter that Republicans sent Chopra today expressing the Bureau's recent actions over non-bank entities that exceeds the CFPB's statutory authority and harms the consumers it is supposed to protect. Budd asked him to commit to a substantive response by December 30th and Chopra said he would give a substantive response.

Rep. Lynch (D-MA) said the last time Chopra was here, he discussed the urgent need for policy changes to protect consumer data. He said they had had a number of hearings on this topic and had considerable agreement from the Republican side as well. He said he was pleased the CFPB published an outline of proposals that would implement Sec. 1033 of the Dodd-Frank Act in October and asked if he would expand on some of those proposals and if there were certain avenues he favored. Chopra said they were looking to propose a rule that would require financial firms to provide, in a secure way, people's personal ledger data and that people could permission that to other entities that they want products or services from. Chopra said the goal is to enable people to switch more seamlessly so they can get better pricing and better customer service. He added that data privacy must be part of that, and they are looking to ensure this rulemaking does not create an underworld or surveillance type market. He said they need to update financial privacy laws; they can be much more robust, and they can create issues with discrimination. Lynch cited the Gramm-Leach-Bliley Act and asked how they could enhance or supplement what the CFPB is doing. Chopra said there are two main pieces of the GLBA: privacy and security. The privacy framework is where the CFPB has rulemaking authority. He said that Congress requires financial institutions to provide a notice of what they are collecting, and consumers can opt out, but consumers do not understand the point because everyone is collecting data. Lynch asked if there is a way to "right-size" the demand, citing the example of a consumer wanting to buy something simple like a pair of socks, versus a mortgage, and asked if there was a way to modulate what a business can ask for. Chopra said exactly, including their social map and said the key was thinking about substantive limitations and how we get there. Lynch said he appreciated working with Chopra's staff in terms of finding the contours of where the outlines of that and where the guardrails might be.

Rep. Rose (R-TN) said the CFPB has been operating at warp speed, having proposed an extensive rulemaking on nonbank financial firms, taking numerous enforcement actions, issuing guidance on junk fees, publishing reports on crypto, and much more. Rose said it has come to his attention that CFPB has demanded that nonbank financial companies turn over attorney client privileged information. He said Chopra should know that that is one of the oldest protections that exists and asked what Chopra's statutory authority is to demand this. Chopra said his understanding was that there were some publication years ago about privileged logs, but he did not know of anything recent. He said he was happy to investigate it and Rose said please do. Rose then followed up on a statement Chopra made earlier to Rep. Lucas being subject to adequate oversight because FSOC can overturn CFPB rulemakings and asked how many rulemakings the FSOC has vacated. Chopra said no because none of the CFPB's rules have met the standard for threatening the safety and soundness of the financial system. Part of what they are required to do under the statute is consult with the other agencies before promulgating any sort of rule and that is an important check. Rose asked if it took a two-thirds vote to overturn a CFPB rulemaking. Chopra said that was correct. Rose asked if Chopra would be surprised to learn that before today the Democratic majority has only held one hearing with government officials in the last 146 days. Chopra said he does not track that closely but that he has appeared five times since he has taken office. Rose asked if he expected that to change when Republicans take the majority. Chopra said he did not want to guess at future hearings. Rose said Mulvaney frequently used his testimony to highlight ways the CFPB could be improved, particularly when it came to its funding mechanism. Rose asked Chopra to provide suggestions for improving the CFPB. Chopra said the number one issue is that they do not have an equivalent whistleblower protection system in terms of rewards and protections, and he thinks that would be a good improvement.

Rep. Tlaib (D-MI) said she appreciated how Director Chopra has made it a priority to address the medical debt crisis in our country and that they decided to issue a report highlighting the complicated and burdensome nature of medical billing in our country. Tlaib said Equifax provided incorrect credit scores affecting millions of customers filing for credit and that after the report, Equifax decided to take out some of the medical debt, which she appreciated. However, she also read that 40 percent of Americans file bankruptcy because of medical debt and asked Chopra to verify that. Chopra said that was right and Tlaib said more needed to be done with medical debt. Chopra said the Equifax data breach was an egregious violation of law and that they are concentrating on actors that cause widespread harm, not little players, and the extent to which the market mechanism does not work. He said a core part of the issue was that consumers do not choose Equifax; it is chosen for them. Tlaib said they are controlling who becomes a homeowner or who gets a car to go to work and that these three major agencies control whether people survive and thrive. Chopra said they have enormous power over all of us and that is why

we need consumer rights to be enforced. Tlaib said she wanted to continue to work with Chair Waters on this in the next Congress.

Rep. Timmons (R-SC) said in April he asked Chopra about the CFPB's fellow program and that he still had a number of questions about it. He said the CFPB had 21 fellows, all of whom made more than Chopra. He thanked Chopra for his response to his letter and information regarding the ethics requirements the fellows were subjected to. He asked Chopra why he took the website down for the fellow program. Chopra said he thought it was a job posting and that is why it came down. Timmons said the House and Senate have financial disclosure requirements for them and their spouses and staffers making over \$135,000 because they have inside information that could impact publicly traded companies' values and they could theoretically profit off them. He said there was talk of banning ownership over publicly traded companies entirely. He said that is not true for the CFPB's 21 fellows. Chopra said they must adhere to the same exact requirements on their prohibited holdings list. Timmons said that does not apply to their spouses. Chopra said he would investigate it but there is no difference in employee types between those that are hired and those that are fellows. Timmons said it does not apply to spouses and that they have no way of knowing the fellows are not trading off the information to which they are privy. Timmons said they wanted to give the public maximum confidence that their fellows and their spouses are not trading off advanced notice of guidance to make money. Chopra agreed and said they have gone above and beyond to make sure their folks are not engaged in this activity, and he wants to look into this issue of spousal coverage. Chopra said he would report any of their employees to appropriate civil and criminal authorities if they were using nonpublic information, but Timmons said they would never know whether they were doing that because they do not have to disclose.

Rep. Dean (D-PA) started with household finances and said that high deposit amounts due to pandemic relief programs had begun to decrease especially for low-income Americans. Dean asked Chopra how concerned he was about the state of finances for average Americans given current economic conditions. Chopra said they have started to see a return to normalcy for some American households. He noted that auto loans and credit card loans have gone up; delinquencies have returned, and, in some segments, they are above pre-pandemic levels, and they were working with the Fed to look at the data to understand what was happening. He added that overall, the volume of deposits in the system has not gone down as much as we would have anticipated because of the strong labor market. Dean asked Chopra in which segments they are seeing increased delinquencies. Chopra said there is a place where they have seen at the lowest credit tier in auto that is elevated relative to pre-pandemic. He said they are also looking at where student loan borrowers, who are not currently in repayment, are currently faring with credit card and auto loans and noted they are having some issues. Chopra said they want to make sure when it comes to housing and mortgages, which is the biggest impact, and said refinancing and borrowing has gone down. Dean said that one issue that has come up is homebuyers renewed interest in adjustable-rate mortgages, which gives all of us some pause when you consider their

role in the 2008 financial crisis. She said the ARM share has increased to 10 percent from 3 percent since January and asked how concerned we need to be about this. Chopra said as of right now, he would not be too concerned because they have looked at this. Most ARM being originated are still following the ability to repay rule, but he does worry that people are not shocked by the payments that they must make. He said fortunately the reforms Congress has made to the ARMs market has made things safer.

Rep. Steil (R-WI) started by expressing his concern with the CFPB ombudsman's independent review that showed that CFPB press releases may include misleading language and asked Chopra if they have instituted any policies or practices since the review and asked him to confirm if they are following those. Chopra said the ombudsman's review was several years ago and they try to make sure they publish the complaint and all information of an enforcement action, and they absolutely use plain language to explain what has happened. Chopra said in many cases the conduct is egregious and they need to explain that. Steil turned to Chopra's speeches and asked if attorneys reviewed them. Chopra said they are in some cases but that he does not know if every single set of remarks he has made have been reviewed by an attorney. Steil continued to push Chopra on his word choice in many cases, including where he referred to medical debt as a "doom loop." Chopra said medical professionals do use that term. Steil then said he had referred to the credit bureaus as a "cartel." Chopra said the bureaus came together and made a uniform decision and that he said they were acting in a "cartel" manner. Chopra said he would take the feedback and that he thinks it is important to balance precision and understandability with the information they are conveying. Steil said it would be good practice to have Chopra's remarks be reviewed. Steil said the word choice Chopra is using with the power he has is significant.

Rep. Garcia (D-TX) said that last time they spoke she had asked Chopra about language access and that Chopra had agreed it was important, so she asked Chopra if he had an update on this. He said one thing is to look at how people are communicating with consumers from financial providers. He said they have started the process of publishing officially translated disclosures that providers can use. With respect to their own materials, Chopra said the CFPB has started the process of feasibility testing so they can provide all the digital tools in languages other than English. He noted that a big development was adding language preference collection to the Universe Uniform Residential Loan application. Garcia turned to the role of home ownership in building wealth, noting the recent CFPB actions to hold two mortgage lenders accountable for redlining and housing discrimination. She asked how they will make sure the folks that suffered consequences of redlining and other barriers will receive the benefits of the settlements that have been reached. Chopra said their orders are not suggestions and that their orders outline how they will be administered. He added that orders in redlining need to be rethought to ensure the victims of redlining receive benefits.

Rep. Garcia (D-IL) thanked the director for testifying and for his leadership. Garcia referenced Congress-elect Maxwell Frost's experience in not getting an apartment because he had poor credit. He added that his application fee was not refunded. Garcia said his experience is not unique and that tenant background checks make it harder for families to secure housing, especially for those who have been evicted in the past or have criminal convictions. He turned to the recent CFPB reports that highlighted that in addition to contributing to higher costs and barriers, tenant background checks are also riddled with errors. He asked Chopra to expand on his main findings from these reports. Chopra said that tenant screening reports are covered by the FCRA and that they must have reasonable procedures to ensure accuracy of information. Chopra noted that an issue they are seeing is that people are being falsely matched with someone who is not them and it is disqualifying them from obtaining rental housing in the location of their choice. Chopra said we must be careful when it comes to employee and tenant screening because if they are not accurate, then we are systematically making it so that people cannot get a job or housing, which severely impacts their lives. Garcia asked if the CFPB is working on any rulemaking to address the harm caused by these background checks. Chopra said the CFPB, and the FTC have been undertaking a number of pieces of work to address this and expects there will be more of this going forward. He said they are deliberating whether they will pursue more rulemaking on the FCRA. Garcia asked what Congress can do to help. Chopra said there are a number of issues related to data protection and privacy that we must address. He said that we need to work on whether there are ways to limit the types of information financial services firms are collecting. Garcia pivoted to the discriminatory practices in lending services, saying he was happy to see the CFPB holding mortgage lenders accountable for engaging in these practices.

Chairwoman Waters (D-CA) thanked Chopra for his testimony and for coming before the Committee.

The Consumer Financial Protection Bureau's Semi-Annual Report to Congress
Senate Committee on Banking, Housing, and Urban Affairs
December 15, 2022

Opening Statements

Chairman Brown (D-OH) recognized Ranking Member Toomey and Sen. Shelby ahead of their retirements at the end of this Congress. Brown turned to the hearing and noted the change to the Senate Banking Committee, which was previously all about Wall Street, and highlighted that it is now the Senate Committee on Banking, Housing, and Urban Affairs, and thought it was fitting that the last hearing was focused on the CFPB. Brown discussed the money that has been returned to consumers since the CFPB was created and said that when financial institutions illegally took consumers' hard-earned money through unlawful late fees, too high interest rates, unauthorized fees, and improper garnishment, the CFPB cracked down and ensured that consumers keep their hard-earned money. He said that it is no wonder why Wall Street hates the CFPB along with Republican legislation to weaken the agency. Brown believed that the public continues to support the CFPB. He recognized the CFPB's work to fight against redlining and other discriminatory practices.

Ranking Member Toomey (R-PA) remarked on his time in the Senate, on the Committee, and his staff. He said that the last time Chopra testified, Toomey spoke about the CFPB's politicized agenda and thought the CFPB has continued its overreach, saying that the CFPB is out of control. Toomey pointed to the CFPB being insulated from congressional control and said it is indisputable that Congress has zero leverage over the CFPB. He went on that the CFPB unilaterally decided that UDAP now includes the controversial disparate impact liability and that the CFPB willfully ignored that Congress never contemplated that UDAP would encompass disparate impact. He added that the CFPB willfully ignored that Congress overturned the CFPB's disparate impact guidance for auto lending in 2018. In addition, Toomey said that the CFPB has targeted financial institutions regarding overdraft fees and noted that it has a new proposed rule that creates a public database of enforcement orders, judgements, and settlements against nonbank financial institutions, obtained by federal and state regulators and Attorneys General, including under state consumer laws that are not applicable nationwide. Toomey took issue with the fact that the database would be public. He referred to his legislation that would require the CFPB to go through the appropriations process. Toomey added that the legislation would replace a single director with a 5-person commission. He thought that these accountability measures would make the bureau more accountable. Toomey noted that if legislation does not control the CFPB, the courts may do it for Congress.

Sen. Shelby (R-AL) talked briefly about his historical 36 years on the Committee.

Witness Testimony

The Honorable Rohit Chopra, *Director, Consumer Financial Protection Bureau*, started by saying that the amount of household debt has increased rapidly, adding that the rise in household payment burdens from auto loans and credit cards has been especially bad, given rising interest rates, the cost of vehicles, and the impact of inflation. Chopra noted that the Consumer Financial Protection Bureau (CFPB) has seen a notable increase in Buy Now, Pay Later (BNPL) products over the past few years, highlighting the increase in use of these products to fund essential goods or services. He said the CFPB is working to ensure that BNPL lenders adhere to the same protocols and protections as other similar financial products to avoid regulatory arbitrage. Chopra turned to home buying, saying that weekly mortgage applications for purchases are down 40 percent from the same time last year. He stated that a key priority for the CFPB is to expand personal financial data rights through rulemaking under section 1033 of the Consumer Financial Protection Act. Chopra explained that long dormant authority, once implemented, can give consumers more control over their personal financial data and that in October, the CFPB launched the rulemaking process. Chopra then said that the CFPB is looking to promote competition in a decentralized market, noting how Big Tech companies' entry into banking and finance raises concerns about competition and consumer choice. He added that the CFPB has specifically been looking at these firms' expansion into finance markets, particularly with respect to payment systems. Chopra continued that Big Tech firms can tie their payment platforms to social media offerings, which could make it less advantageous for consumers to use another payment system. He said the CFPB has requested a number of these firms to determine what data they are extracting from transactions and whether they can use that data to preference their other business lines. Additionally, Chopra said the CFPB launched the rulemaking process in October and that the proposals under consideration would require financial firms to provide consumers access to their own financial data on deposit accounts, credit cards, and other transaction accounts, which would help give consumers more control over their personal financial data. Chopra also encouraged congressional reform to ensure that payments systems are neutral and nondiscriminatory, by eliminating the incentive for firms to use their control over payments to favor their other interests. Chopra also expressed the need to strengthen financial privacy protections, given the amount of data and sensitive information that many firms have on its consumers in today's climate. Chopra said that he hopes Congress can explore limitations on the collection, use, and sharing of personal financial data as well.

Member Questions

Chairman Brown (D-OH) discussed protecting consumers from harmful medical debt and pointed to how Equifax, TransUnion, and Experian said they would no longer include some forms of medical debt on credit reports but noted that a CFPB report determined this change will not be as meaningful as expected. Brown asked how to ensure that medical debt on credit reports does not cripple Americans. Chopra replied that medical debt is a major challenge when it comes to accuracy on credit reports and said that consumers are likely being asked to pay something they already paid or do not owe. He said that the CFPB will continue to look at ways that

medical debt does not harm a person's ability to participate in the economy. Brown continued on CFPB guidance on overdraft fees and asked how consumers are harmed by these fees. Chopra replied that consumers usually expect just one overdraft fee but are charged multiple and said that the CFPB and other regulators have taken action. Brown asked if the industry requested additional guidelines here. Chopra replied that industry is always looking for more guidance, which the bureau will continue to provide. Brown said that Chopra has tried to form cooperative relationships. Chopra addressed regulation by enforcement and thought that providing guidance is important and recognized that industry might not always like what is being provided. Brown turned to redlining and said that more borrowers will have access to a mortgage because of CFPB and asked how the CFPB is ensuring equal access to credit with the DOJ. Chopra answered that the DOJ and AG have a redlining initiative and added that there is an online redlining initiative as well that the bureau will continue to work on.

Ranking Member Toomey (R-PA) took issue with Chopra believing that the CFPB should not go through the appropriations process and said that the CFPB is more radical than ever. He asked Chopra if he believes that Congress should change the CFPB's governing structure to a multi-member commission. Chopra replied that there are pros and cons to a single director and multiple member commission. Toomey thought that there was no accountability with the CFPB. Chopra interjected, saying that the CFPB takes congressional oversight very seriously. Toomey turned to the new rule the CFPB released this week directed at nonbanks and how a senior executive of the nonbank would have to attest as to whether their institution was complying with the order submitted to the CFPB database. Chopra replied that it is only for certain entities that attestation would be required and said that this is really for states to coordinate and help detect fraudsters. Toomey was concerned that this could be used as a hook for the CFPB to regulate in the states. He said that the CFPB is implementing disparate impact without saying it. Chopra did not think this was accurate. Toomey noted that in the CFPB press releases and in the exam manual they refer to the UDAAP authority providing a prohibition on unfair practices and that it does not require an element of intent. Toomey continued that this sounds like the definition of disparate impact without using the phrase, and he expressed concern that the application of disparate impact is constrained by the Supreme Court and that he should follow that constraint.

Sen. Reed (D-RI) said that the decision by the Fifth Circuit also calls validity to the Fed and asked if this is correct. Chopra replied that it applies to the Fed as it has the same financial structure as the CFPB. Reed turned to the Military Lending Act (MLA) and asked Chopra to give an update on supervision and enforcement of the MLA. Chopra replied that the CFPB has taken action against repeat offenders of the MLA and said when this law is not properly enforced, the impact is real. Reed shifted to the Servicemembers Civil Relief Act, which provides a maximum interest rate of 6 percent and asked what the CFPB found here. Chopra replied that the CFPB identified that there are millions of dollars in extra interest that servicemembers are paying and said that as interest rates go up in the economy, it impacts families. Reed said that this is an issue

of military readiness and turned to BNPL and asked if these loans are being structured to avoid the MLA. Chopra replied that the applicability of the MLA gets trickier with BNPL and said that the CFPB is working with BNPL to get certainty in the market and thought that we have seen when there is no credibility in the market. He thought that BNPL will continue to be a way people borrow and said that we have to keep service members in mind here.

Sen. Tester (D-MT) discussed holding Big Tech accountable when using consumer data and asked what Chopra is seeing with Big Tech and where they are trying to skirt the law. Chopra replied that Big Tech is collecting very detailed and personal information when it comes to payments and that big financial institutions are starting to do this as well. He added that much of the supervisory attention is to the nonbanks who are not subject to the same supervisory expectations. Tester turned to the MLA and asked about the issues Chopra was seeing. Chopra replied that there are serious issues with economic instability with our veterans. He added that the MLA does not apply to those out of service and that they see medical debt being pretty severe. He added that the CFPB works with the VA on this and worried that this issue may be growing. Tester asked if there was anything Congress could do. Chopra discussed veterans not passing a veteran screening or employment check because of coding in their credit and wanted to make sure that if there are changes in the mortgage markets and housing prices, the VA plays a huge role to ensure that veterans can get loan modifications. Tester asked if the CFPB is in regular contact with the VA. Chopra replied yes.

Sen. Hagerty (R-TN) directed his comments toward Toomey recognizing his service in the Senate and on the Committee. *(audio cut out)*

Sen. Menendez (D-NJ) *(audio cut out)* discussed the 2021 report by the Financial Health Network and its conclusion that nearly 60 percent of overdraft fees in 2020 were paid by low and moderate-income households and that 25 percent were paid by Latino households specifically. Menendez noted that according to the CFPB, the banks made \$15 billion per year on overdraft and non-sufficient funds. Menendez then asked if overdraft fees appear to be major revenue for banks. Chopra replied that overdraft fees certainly have been but noted they are seeing a shift in the market where they are finally starting to compete, and some banks are drastically reducing and even eliminating overdraft fees. He added that a key consumer problem is when the consumer expects one overdraft fee but is then hit with multiple fees, even though they had enough money. Chopra added that the CFPB is taking action against illegal overdraft practices and that there is compliance with the law. Menendez thought that banks would be financially successful without overdraft fees and urged continued engagement on this. He discussed scams with Zelle and consumers not getting their money back and asked where the CFPB is working on this. Chopra replied that the CFPB is working to address all P2P applications with financial institutions. *(audio cut out)* Menendez noted the bipartisan work to shepherd the Debt Bondage Repair Act into law, which addresses human trafficking. He thanked Chopra for the work the

CFPB has done to address this as well. Chopra stated that he is also concerned with victims of domestic violence and their credit reporting is impacted.

Sen. Scott (R-SC) thanked Toomey for being a mentor and reflected on all their past work together. He looked forward to the work on the Committee next year.

Sen. Warren (D-MA) thanked Toomey for his many years of public service. She continued that big businesses have spent the last decade trying to end the CFPB and through it all, the CFPB has stayed strong and added that she was not surprised by the new campaign to attack the CFPB. Warren turned to the CFPB on addressing junk fees including overdraft fees, hotel fees, and other random fees people cannot see until it is too late. She asked how much consumers will save if you can get rid of these fees. Chopra replied that about a billion has already been returned with overdraft fees and said that if you believe in a market system, when you hide fees, it is not really a market system. *(audio cut out)* Warren asked how much the CFPB recovered for consumers from Regents Bank. Chopra replied that they received \$141 million in victim restitution and a \$50 million civil penalty and added that this bank is a repeat offender, so they had to take it seriously. Warren turned to student loan servicers and loan forgiveness and asked if the CFPB is going to put the money back in the pockets of public servants. *(Chopra answer inaudible)* Warren turned to housing on shotty tenant screening services and the CFPB guidance warning tenant screening services and asked how this will help reduce barriers to affordable housing. Chopra replied *(audio cut out)* and said that this also helps landlords find a tenant that works with them. *(Warren asked something about medical debt and credit reporting but her question and Chopra's answer was inaudible)*. Chopra said inaccurate credit reporting on medical debt can be a blockade.

Sen. Daines (R-MT) discussed the 5th Circuit Appeals Ruling on the CFPB funding and governing structure. He thought that it is likely the Supreme Court will review this and uphold the 5th Circuit's decision. Daines referred to Chopra's last appearance before the Committee and asked what steps the CFPB has taken to create an open and competitive market to ensure access to small dollar loans and financing products. Chopra replied that the CFPB has made efforts to ensure that the credit card market is extremely vibrant and believed that credit cards are the biggest source of small dollar loans. He added that they allow people to afford items, even though they do not have the liquidity. Additionally, he said they are looking at ways for small banks and credit unions to play a larger role in the credit card market to be able to help refinance credit card debt. He added that they have also proposed implementing a long dormant authority under Sec. 1033, which is how fintechs and nonbanks can access customers at lower customer acquisition costs by allowing permission data, which would allow customers to move data and use it as a way to get a lower cost loan elsewhere. He thought this technology would create more opportunities for new entrants into the market and more opportunities for small players. He noted that currently, small dollar lending and credit cards are dominated by the big players and said

that local banks would be good at serving people in this market. Daines turned to abusive practices and UDAAP and felt that the CFPB has decided without oversight that UDAAP includes disparate impact liability. He said that instead of implementing these changes transparently, the CFPB did this through a press release. Daines noted that disparate impact in auto lending was overturned by Congress and aside from its legality, he asked if the implementation of disparate impact without Congress' permission is a transparent way to make policy changes. Chopra rejected that this was a disparate impact issue and addressed transparency saying that the worry is around regulation by enforcement, so the CFPB has found different ways to issue guidance without the force of law. In the exam manual, he said that it was about consistent examination. Daines appreciated Chopra's interest in community and smaller banks and competition. He thought it was important to get feedback early on the rule making process from all entities including community and smaller banks.

Sen. Smith (D-MN) said that it seems that there are new scams constantly popping up and used an example of targeted practices against the Somali people in Minnesota that has resulted in many being at risk of losing their homes. She asked if Chopra was aware of this and what the CFPB can do to protect consumers here. Chopra replied that the issue of exploiting religious beliefs is pernicious and while he did not know all the facts, this raises red flags. He said that the CFPB is not in the business of predicting the economic future but that they are worried about what could come, noting housing and deceptive housing practices. Smith continued that she was also concerned about another deceptive practice related to contracts and providing upfront cash. She said that this upfront cash is described as a loan alternative and another example of how housing is being taken advantage of. Chopra worried about older homeowners here and said he saw state AGs take action here. He said that this is why the CFPB wants more state AG coordination here.

Sen. Cortez Masto (D-NV) emphasized the importance of relationships with the state AGs and specifically talked about servicemembers and their complaints of debt collection and billing errors. She noted that in 2021, servicemembers and their families submitted more than 42,000 complaints to the CFPB and that 60 percent of those had to do with credit reporting and debt collection. She asked how the bureau has protected servicemembers from unfair practices. Chopra replied that the CFPB said that the impact of the credit report for a service member is different from civilians and said that credit reporting issues are really tough. He worried that service members are more likely to be victims of identity theft. Chopra said that the DOD has been a good partner to the bureau. Cortez Masto continued on credit reporting and inaccuracies and asked Chopra to talk about the improvements made by credit reporting companies on this and asked what Congress can do. Chopra replied that the credit reporting conglomerates see consumers as a product and thought this was a fundamental market failure that requires the bureau and Congress to make sure these companies are taking inaccuracies and disputes

seriously. He worried about the new generation of data brokers and said that we need to make sure that individuals have rights and can dispute errors.

Sen. Ossoff (D-GA) continued on adverse credit reports and the impact, specifically talking about veterans and medical debt. He discussed community care providers that veterans are referred to by the VA and then are sent to collections due to billing. Ossoff asked what the CFPB can do to protect veterans who are at risk of being trapped by medical debt or having adverse credit reports due to the failure of health care providers to properly bill the VA. Chopra replied that the CFPB has put focus on nursing home debt collection and said that on the issue of outpatient referrals, the CFPB is working with the VA on credit reporting. He said they have updated some of their rules about when medical debts will be reported. Chopra said this will reduce the number that are reported and said that we do not want to penalize veterans for getting medical care. Ossoff turned to new mothers and the cost of pregnancy and childbirth, saying that one in five parents receive an unexpected charge on their bill following birth. He knew about the impact of medical debt and asked how the CFPB addresses the impact this can have on pregnant women and new moms. Chopra thought that there are big concerns on how big medical events can trigger personal bankruptcy and thought that the last thing we would want is new moms dealing with surprise billing. He said that the CFPB's role is on credit reporting and debt collection, but he was happy to talk with Ossoff further. Ossoff then discussed service members undergoing clearance investigations and how credit reporting potentially negatively impacts this. He asked what more the CFPB can do to ensure that credit reporting agencies respond quickly here. Chopra replied that credit reporting has legal compliance here to be quick and accurate and will continue to ensure that agencies meet their legal compliance.

Ranking Member Toomey (R-PA) reminded his colleagues of his legislation with Hagerty on changing the governance structure and funding of the CFPB, which would not end the CFPB but would restore much more accountability than there is today. He believed that the Constitution is unambiguously clear about all legislative powers being vested in Congress.

Director Chopra thanked Toomey and Shelby's service.

Chairman Brown (D-OH) said that the CFPB is subject to independent audits to government agencies and believed that there are multiple accountability efforts that the CFPB is required to take part in, despite belief that the CFPB is not accountable. Brown noted that this is the 87th hearing with Toomey.

