Consumer Financial Protection Bureau: Ripe for Reform
Subcommittee on Financial Institutions and Monetary Policy
House Financial Services Committee
March 9, 2023

Legislation

- **H.R. ___, the "CFPB Dual Mandate and Economic Analysis Act" (Rep. Emmer)**
- **H.R. ___, the "Taking Account of Bureaucrats' Spending (TABS) Act" (Rep. Barr)**
- **H.R. ___, the "CFPB–IG Reform Act" (Rep. Luetkemeyer)**
- **H.R. ___, the "Transparency in CFPB Cost-Benefit Analysis Act" (Rep. Mooney)**
- **H.R. ___, the "CFPB Whistleblower Incentives and Protection Act" (Rep. Emmer)**
- **H.R. ___, the "Consumer Financial Protection Commission Act" (Rep. Luetkemeyer)**
- **H.R. ___, the "Encouraging Innovation and Protecting Consumers Act"**
- **H.R. ___, the "Making the CFPB Accountable to Small Businesses Act" (Rep. Fitzgerald)**
- **H.R. ___, the "Federal Reserve Loss Transparency Act" (Rep. Hill)**

Opening Statements

Chairman Barr (R-KY) said that they would look at the CFPB's structure and noted that the CFPB has no true oversight of the Director. He pointed to how Chopra has often acted unilaterally without engaging in the APA process. Barr said that this has led to the CFPB becoming the most unaccountable agency. He said that the CFPB operates outside the appropriations process and his legislation would give Congress control over the CFPB's budget. Barr noted the Fifth Circuit ruling and how the Supreme Court will be reviewing this decision this fall. He said that his bill provides a commonsense solution and hoped that it would gain bipartisan support. Barr added that the Fed does not control the budget of the CFPB and they rubber stamp their requests each time. He pointed to how under Chopra, the CFPB has begun regulating without rules and regulated through enforcement, blog posts, and press releases. He said that this goes around the APA process and does not promote lasting policy directives which is harmful to consumer's access to financial services. Barr pointed to the SBREFA process and how the CFPB has been avoiding this statutory obligation which hurts small institutions. He noted that they would look at other bills, like having an independent IG for the CFPB and having a more quantitative rulemaking process. Barr looked forward to hearing what would be beneficial to the agency and consumers.

Ranking Member Foster (D-IL) said that they are here to look at how they might 'reform' the CFPB and he thought this was an interesting word to use. He said that many in the Republican party have fought against the CFPB since its inception and have looked to abolish the agency entirely. Foster said that this is an attack on one of our most important regulators. He said that the CFPB funding structure is not unique, pointing to the funding structures at the Fed and FDIC. Foster said that the Fifth Circuit has crafted a theory that would strike down funding on crucial programs. He said that this radical reading of the constitution could threaten many things, including social security. Foster pointed to how this Supreme Court case threatens consumers and the CFPB has a decade long track record of fighting for consumers, saying that the CFPB has returned billions to harmed consumers.

Rep. Beatty (D-OH) welcomed Ellison back to the Committee. She said that he is the right person to help address the issues they are discussing. Beatty then submitted a letter to the record from organizations who want to maintain the CFPB's current structure.

Witness Testimony

Bill Himpler, ***CEO, American Financial Services Association,*** stated that the CFPB's refusal to operate in its congressional mandate harms consumers and creditors. He shared examples of how the Bureau's overreach has detrimental effects on how Americans access credit. Himpler pointed to their attempts to limit arbitration, noting their nonbank registry on these types of agreements. He noted their focus on press releases instead of rules on things such as 'junk fees.' Himpler said that this leads to greater uncertainty and ends up limiting access to credit for consumers. He noted the CFPB press release on SCRA and how if creditors followed this, it could have dire consequences for servicemembers. Himpler stated that the CFPB is using regulation by enforcement to change TILA and pointed to the impact on the auto credit market. He noted the CFPB's work on MLA and how the CFPB is attempting to bring vehicle financing under the MLA. Himpler said that this could limit service member's access to credit going forward. He thought that the CFPB should go after credit repair organizations that can hurt consumers.

Brian Johnson, ***Managing Director, Patomak Global Partners LLC,*** said that we have a track record to judge this agency since it has been around for 12 years. He said that measuring the extent to which the CFPB has complied with the law is a good way to judge it. Johnson noted the Bureau's disregard for due process and how they have aggressively used powers not given to it by statute. He said that they also sought to regulate auto dealers which are outside their authority. Johnson thought this demonstrated that the agency is in need of reform and pointed to how it should be subject to the appropriations process as it would refocus their efforts. He added that Congress should also determine the Bureau's primary purpose and see what structure best achieves their objectives. Johnson thought basic reforms could help the Bureau achieve its promise and regain credibility.

Jessica Thompson, ***Attorney, Pacific Legal Foundation,*** said that the CFPB's current funding structure is unconstitutional and the Bureau ignores the APA process. She said that without the accountability that comes with appropriations, the CFPB can evade the APA process. She said that this undermines the rule of law and will limit consumer access to financial services. Thompson said that her practice helps businesses who are hurt by the CFPB's overreach and used her client, Townstone Financial, as an example. She closed by urging Congress to bring the CFPB under the appropriations process to protect consumers and the rule of law.

Devin Watkins, ***Attorney, Competitive Enterprise Institute,*** said that CEI believes that government agencies should face accountability. He pointed to how the most critical reform is ensuring that the CFPB falls under the appropriations process. Watkins said that Congress alone is responsible for determining the budget of government agencies. He then pointed to the need to prohibit regulation by enforcement because it contradicts the rule of law. Watkins said that this leads to arbitrary punishment and added that rules should not be laid out by press release, but rather by Congress or through rulemakings. He said that the CFPB should also end the practice of fines without jury findings of wrongdoing, saying that this current practice violates the 7th Amendment. Watkins pointed to the CFPB's use of administrative law judges (ALJ) and questioned how any ALJ can be impartial. He said that the time to reform the CFPB is now and if they do not, it will result in more harm to consumers and to industry.

The Honorable Keith Ellison, ***Attorney General, State of Minnesota,*** said that the CFPB was part of their response to the financial crisis and they have been a partner to state AGs and American families. He pointed to the CFPB's work against student loan companies that defrauded consumers and said that this is an example of why we need the CFPB. Ellison specifically noted the CFPB's work against mortgage companies for unfair and deceptive practices. He said that the CFPB has served as a critical enforcement partner for AGs and noted that Congress intended to create the CFPB in response to the 2008 financial crisis and it should remain.

Member Questions

Chairman Barr (R-KY) noted that he has introduced the TABS Act to place the CFPB under the appropriations process. He asked Johnson and Watkins how the CFPB's double insulated funding mechanism is unconstitutional and how it allows them to evade proper oversight. He also asked them to address the concerns that the court case will call into question the funding of other agencies. Watkins pointed to the constitution and said that Congress needs to appropriate that money. He said that this is critical from an oversight standpoint and thought that Congress should review other agencies that are not subject to appropriations and possibly subject them to appropriations. Johnson pointed to arguments in the certiorari and thought that the CFPB's funding is unique from other self-funding agencies as it is double insulated. He said that the Fed, FDIC, and OCC are prudential regulators and they provide a service to banks through deposit insurance and they guard against risk to taxpayers. Johnson suggested that Congress might come up with a way to recoup the costs of this to taxpayers. He said that the CFPB has no safety and soundness mission and it is there to supervise institutions for compliance with a discrete set of federal consumer laws. Barr pointed to how Chopra has done regulation without proper rulemakings and pointed to how he failed to use SBREFA with the credit card late fees proposals. He asked how the CFPB's recent rogue behavior is harmful to consumers' access to financial services and does not promote lasting regulation. Johnson said that there are a lot of downstream consequences when the rulemaking process is not followed. Barr thought this showed that guidance and interpretive rules should not create new obligations.

Ranking Member Foster (D-IL) said that Republicans seem to want to go against the intent of Dodd-Frank and subject the agency to appropriations. Foster pointed back to their discussions on Dodd- Frank and how they questioned how the SEC missed Madoff and they faulted the power of the purse. He asked if Ellison had concerns about alternative approaches to funding. Ellison said that the CFPB does things every day and folks with powerful financial interests try to impact what they are doing. He said that it is wrong that the appropriations process is the only way Congress can do oversight and said that Congress can change the statutory scheme of the CFPB anytime it wants. Ellison said that it is set up this way because if the CFPB is subject to the appropriations process, it will change from session to session and people cannot rely on the guidance. Foster thought that Johnson made a tortured attempt to separate consumer protection from safety and soundness and thought he was wrong and that the CFPB provides a service to all actors in the financial services sector. He pointed to how Watkins said that other agencies' funding should be looked at and said that before the CFPB, the Fed was responsible for consumer protection and asked if this was unconstitutional. Watkins said that the Fed should go through the appropriations process. Foster asked if he thought it was a good idea to not give the Fed money if they do not do what Congress wants on interest rates. Watkins disagreed and said Congress should give them the funding it wants.

Rep. Posey (R-FL) said agencies are supposed to make rules that are enforceable as laws. He turned to cost-benefit analysis progress under Kraninger and was happy that there were bills to address this attached to the hearing. Posey asked Watkins how providing cost-benefit analysis could be used to improve rulemaking at the CFPB. Watkins said that the rules can end up providing more benefit to consumers and cause less harm. Posey said that the CFPB is arrogant and petulant and said that current management at the CFPB believes that most fees charged by financial services institutions are junk fees. He asked Himpler why most 'junk fees' represent an illegitimate reflection of the economic opportunity cost of the funds tied up in the consumer credit when consumers pay late. Himpler said that there is no definition of junk fees and it has a chilling effect on companies as they try to stay in the regulators guard rails. He said that the best way to protect consumers is to protect access to credit and that includes providing clear rules for industry. Posey pointed to a report, required by Dodd Frank, on an assessment of HMDA and asked how the CFPB is complying with Section 22(d) of the Dodd-Frank Act. Himpler responded that the pronouncements that they put forward without any notice and comment means that they are not well informed.

Rep. Beatty (D-OH) asked Himpler if he knew how many dollars are returned to consumers because of the CFPB. Himpler thought it was around a total of $16 billion. Beatty asked if Himpler was familiar with the work of Kraninger and Mulvaney. Himpler was familiar with some of it. Beatty said that she was supportive of the work of the CFPB under both Republicans and Democrats. She said that we know that there are things that are discriminatory in our country and thought that the CFPB has done great work. Beatty said that the CFPB has worked to create fairness, transparency, and competition on our financial system. She believed that we have a lot of work to do and the CFPB can help us. Beatty pointed to discrimination, consumer abuse, and fraud. She noted that part of the CFPBs mandate is to root out unfair, deceptive, or abusive acts and practices (UDAAP) and said that this includes unfair discrimination. Beatty asked Ellison to address the argument that discrimination does not exist in financial services and what the agency can do. Ellison said it does exist, pointing to student lending, mortgage lending, and auto lending, and it undermines the American dream for people of color.

Rep. Luetkemeyer (R-MO) questioned Foster calling the CFPB a 'service organization' and asked Johnson if the CFPB was a service organization. Johnson said that it is an enforcement organization and its mission is to enforce a discrete set of laws, similar to the FTC. Luetkemeyer turned to the CFPB's funding mechanism and said that the Fed is losing money and just printing money to pay bills, including the budget of the CFPB. He asked if there are no earnings, can the Fed pay the CFPB bills with the money it prints. Johnson thought that the Fed's accounting treatment maintains a negative balance and did not think that Americans paid bills like this. Luetkemeyer turned to the CFPB creating the word 'junk fees' and asked if this word existed before. Thompson said possibly in the popular lexicon, but not in enforcement. Luetkemeyer said that a director who has no authority over this created a word and Chopra has also twisted UDAAP. He asked if this was fair to say. Thompson agreed. Luetkemeyer said that the fact that we call them junk fees does not mean they're real and said they must push back. Himpler added that the lack of a definition leaves companies with no roadmap and noted how Chopra even referred to credit insurance. Luetkemeyer said he saw a piece in a magazine about the legal uncertainty of an upcoming CFPB ruling and how it could put other rules in jeopardy and asked Watkins if he saw this happening. Watkins said that actions, like expanding the definition of junk fees to any fee they do not like, raises non-delegation concerns that could undermine their authority to enact any of these.

Chairwoman Waters (D-CA) welcomed Ellison and noted how the CFPB launched an initiative to combat junk fees which could save consumers millions every year. She pointed to all the consumer complaint letters on this initiative and how it builds on the initiatives of the Committee to combat excessive overdraft fees. Waters then noted Ellison's work on mortgage servicer fees and asked if the CFPB has the authority to combat junk fees and asked if they should combat excessive payment processing junk fees. Ellison said that maybe certain firms do not know what junk fees are, but consumers do. He said that these fees are often not disclosed and they are tacked on because the companies have the market power to do so. Ellison thought it was appropriate for the CFPB to regulate this and state AGs do this every day, and it is how they allow consumers to have a shot at prosperity. Waters turned to the interpretive ruling released on state AGs also being allowed to enforce the law and asked how the CFPB will be helpful in halting student debt relief fraud. Ellison noted how AGs sued student loan companies and the CFPB has been key in helping Americans. He added that the CFPB also helps small businesses and helps create market stability. Ellison said that Madoff did more damage to consumer confidence than any regulatory agency; bad actors undermine confidence in the market.

Rep. Williams (R-TX) could not believe how many people knew about the car industry and said that he is a car dealer so he knows about this stuff. He said that he has experience with Operation Choke Point. Williams thought that junk fees were taken care of under Obama. He said that the CFPB has a tradition of avoiding the rulemaking process and that this uncertainty hurts small businesses. Williams pointed to Chopra’s comments on improving the rulemaking process and had not seen this occur. He asked Himpler if financial services firms have seen increased costs and if this compliance cost impacts small businesses. Himpler said that Willaims is right and it does have an impact on the business as well as the consumer as it limits access to credit. Williams said that everyone in his business lives off commission and asked how you pay a compliance officer this way. He turned to the CFPB’s funding structure and how they act as prosecutor, judge, and jury and this violates due process rights. Williams asked Thompson how the lack of accountability hurts the American public and how subjecting them to appropriations will help consumers. Thompson said that without appropriations, the CFPB can abuse its power, but with appropriations, they would be accountable to Congress and the public. Williams said that community banks are terrified about the Sec. 1071 rulemaking and that will kill relationship banking. He asked Himpler to expand on the potential problem with the 1071 data collection. Himpler pointed to how in the auto finance space, the industry is governed by the Fed and the CFPB, adding that there is an incongruity there and they are promulgating a rule that doesn’t match up.

Rep. Meeks (D-NY) said that Himpler keeps saying access to credit, but the CFPB was put in place to ensure fair access to credit. He said that people had access to credit and lost all their wealth during the financial crisis. Meeks said that people need a voice and their voice is the CFPB. He said people were ripped off all over the country and they created the CFPB to prevent this. Meeks said that he is a big advocate for homeownership and that this was not done fairly. He said that we should talk about what we can do to strengthen the CFPB so people can have a stronger and louder voice. Meeks asked if Ellison does not do this every day as an AG. Ellison said that he does and he works with other AGs.

Rep. Loudermilk (R-GA) said that the CFPB has a habit of dodging law and statutory statutes. He pointed to the guidance on UDAAP and asked Johnson if the Bureau had the authority to interpret and broadly apply his law. Johnson pointed the major questions doctrine and said that there is a method and process that the CFPB needs to follow. He noted how UDAAP authority was given to the FTC. Johnson thought this was an issue for Congress to address and said that they should decide if the CFPB authority is expanded. Loudermilk pointed to the single director governing structure and how it results in policy shifts. He asked how a multi-member board would bring regulatory stability. Johnson said that in significantly complex questions and in looking at the downstream effects, he thought it was foreseeable that the inclusion of the views of multiple members could lead the agency to arrive at a better conclusion. He added that there are other multi member commission agencies where the agenda is not hampered by having multiple members. Loudermilk turned to the rulemaking process and how their circulars do not result in clarity. He asked about the implications for policy and rule of law. Watkins said that the agency is undermining the rule of law because people do not know if their actions are wrong or not.

Rep Casten (D-IL) asked Ellison if he struggled to understand the needs of banks when he was in Congress because of their lack of congressional funding. Ellison said no. Casten then asked how the creation of the CFPB impacted Ellison's ability to understand the needs of consumers and borrowers. Ellison said that it gave him a clear place to direct his constituents and added that as AG, the CFPB has been a key partner and has been an advocate on a range of things when it comes to sharing information. Casten asked how the CFPB helps Ellison do his job as AG. Ellison said that AGs meet and talk about a variety of challenges, saying that they have partisan wrangling, but they work together on multidistrict cases. Casten then quoted Adam Smith on making sure everyone has a voice.

Rep. Timmons (R-SC) said that the CFPB was created to make the consumer financial markets work for consumers. He points to their insulation from congressional oversight and checks and balances and how this actually hurts consumers. Timmons wanted to reign in the CFPB and make it accountable. He noted new enforcement mechanisms from the CFPB over the past few years and how they avoid the APA process. Timmons asked how these actions have harmed consumers and innovation. Himpler pointed to his oral statement and said that they liked what Chopra said about markets working best when there are clear rules that are easy to enforce, but what we have from the CFPB, in terms of press releases and blogs, is like trying to follow the speed limit without it being clearly posted. He said that this results in increased compliance costs and those resources could go to increasing access to credit. Timmons said that businesses want predictability and stability. Himpler commented that no one here has advocated for the CFPB to be abolished but rather that they should face accountability. Timmons turned to the impact of the CFPB on the consumer finance sector. He asked about key legislative solutions to ensure that the CFPB abides by the system of checks and balances. Johnson said that congressional appropriations can ensure that the CFPB is paying attention to the needs of the people. In terms of checks and balances, he said that there is not a single inspector general for the CFPB and that having one would help the agency get in line with its responsibilities.

Rep. Pressley (D-MA) pointed to the CFPB's action on junk fees and how they are holding bad actors accountable. She pointed to the lawsuit against Townstone Financial in Chicago and noted that Thompson represented them. Pressley said that the lawsuit was about redlining and asked for the definition of redlining. Thompson said that the CFPB does not have a definition. Pressley then clarified what the definition is and asked Thompson to confirm that Townstone used marketing services through radio ads on weekly radio shows. Thompson said that they did. Pressley then described how the company racistly described various sections of Chicago, saying that this was modern day redlining. She said that we need more of the CFPB and asked who was president when this lawsuit was filed. Thompson said that Trump was president. Pressley said that there is no political bias here and the agency is doing what it is supposed to. Ellison thanked her for laying out the record on Townstone and said that there is ample oversight of the CFPB through reports and congressional hearings.

Rep. Norman (R-SC) gave Thompson a chance to respond. Thompson said that Townstone never discriminated against applications for credit nor said anything racist to credit applicants. She said that the CFPB is trying to police creditor speech, which violates the first amendment. Norman thought that the CFPB should be zeroed out and said that it is a rogue organization. He said that banks have to compete and he did know we had some many experts who could qualify fees as junk fees. Norman thought some of the comments today were laughable, pointing to trial by jury and how the January 6th people were still in jail without this. Norman did not think there was anything more American than arbitration and asked why the CFPB would have the audacity to do away with this. Himpler said that Congress overturned their attempt to do this and they are trying to go around Congress with their nonbank registry. He thought this was the definition of unaccountable. Norman asked Thompson what the cost of legal fees associated with bringing an action against the CFPB would be and said that not everyone can do this, asking if she agreed. Thompson agreed and said that they engaged in pro-bono work with Townstone, but it would cost millions. Norman said that all the fees in closing with real estate are disclosed.

Rep. Vargas (D-CA) pointed to comments on Mulvaney and did not think there was anyone more principled than him. He said that Dodd-Frank was the boogeyman years ago and the stress tests in Dodd-Frank were actually helpful. Vargas said Republicans were then after the CFPB and the reason for that is that they have returned $16 billion to consumers and done a good job. He asked what would happen if we did not have the CFPB. Ellison said that some in the financial services sector would be bad actors and then others would copy them. He thought this would lead back to what happened in 2008. Vargas thought the CFPB was working well and said that Himpler does not think the CFPB should be abolished, but that it just needs to be rolled in a bit.

Himpler said that regulation is the problem and the CFPB is governing by press release without following the APA process and providing clear guideposts.

Rep. Kim (R-CA) was concerned about the proposals under Chopra because his proposed rules will increase costs and reduce access to capital, especially for women and minority-owned businesses. She pointed to Sec. 1071 and how small businesses have to guess the races of small business owners. Kim asked Himpler what policy considerations the CFPB should be taking into account as they work on the final 1071 rule. Himpler said that the vehicle finance and auto markets are key parts of the economy and said that his businesses do not know the races of these people and the dealers have this data. He said that they cannot implement this rule until the Fed acts. Kim then turned to the credit card late fee proposal at the CFPB and thought that Americans with credit cards would not benefit from this as it would result in higher costs for them, including maintenance fees, lower rewards, and even high interest paying accounts. She thought the CFPB was breaking its obligation to comply with SBREFA and said that the proposed credit card late fee rule said it would not impact small banks and credit unions. Kim asked Johnson if the CFPB has a process in place to certify that rules do not have a disparate impact on small businesses. Johnson did not know how they reached this conclusion and said that it is a statutory requirement for them. He said that the failure to abide by SBREFA is a risk to the agency's rulemaking and that the insufficiency of the 10-22 analysis through the lack of quantitative analysis is a risk. He also noted the prejudgment risk about where the Bureau is going to come out with this rule.

Chairman Barr (R-KY) said that Chopra has defended the blog posts and releases saying that the industry wants it for clarity. He asked if they have provided clarity or actually made the requirements more confusing. Himpler said that it has made it more confusing. Barr asked if these releases impose new obligations. Johnson said that they do sometimes.

Rep. Velazquez (D-NY) pointed to how Mulvaney withheld funding allocated to help the people in Puerto Rico based on a HUD IG investigation. She noted the purpose of the CFPB and asked Ellison to describe areas where he has collaborated with the CFPB. Ellison pointed to their work on student loans. Velazquez asked what their interaction with the CFPB has been like. Ellison said that it has been very positive and said that with the CFPB, they were able to get relief to consumers. Velazquez asked Ellison to remind members of the committee why it was important to create an agency like the CFPB. Ellison said that there were a number of agencies that were assigned consumer protection and they believed that it would be good to consolidate consumer protection in one place since it often took a backseat at other agencies. He also thought subjecting the CFPB to appropriations was a bad idea. Velazquez noted discrimination in lending and the CFPBs section 1071 rule and how it will shine a light on lending disparities. She asked if critics of the rule are right that this would lead to more discrimination and less lending. Ellison thought it would help them see how they are doing in the area of equal opportunity.

Rep. Donalds (R-FL) said that he is not a fan of the agency and has legislation to repeal the CFPB. He said that he was in commercial banking from 2003-2007 and he saw the deliberations on Dodd-Frank and TARP. Donalds said that one of the issues with the CFPB is its partisaness and he thought the agency was unconstitutional. He said that there is no oversight of the CFPB and they seem to be more of a freelancer than a regulator. Donalds asked Himpler if vehicle loans pose a systemic risk to the American economy. Himpler said no. He asked Johnson if credit card late fees pose a systemic risk to the American economy. Johnson said no. Donalds asked Johnson if there are issues about separation of powers and due process at the CFPB and if he could detail them. Johnson said his written statement provides a list of roughly 30 instances that, in his view, constitute concerns about due process, separation of powers, or the Bureau overreaching its statutory authority. Donalds asked Johnson to address the CFPB's waving of attorney-client privilege in some cases. Johnson said that the CFPB lacks the authority to do this and it is troubling in the context of supervisory examinations as this is confidential information. Donalds asked Ellison if the CFPB should force them to waive these privileges. Ellison said it depends, but wanted to see the facts he used to make this claim. Donalds noted his work on student loans and thanked Ellison for prosecuting fraudsters. He said that this needs to be rooted out. Donalds turned to the civil penalty funds and asked where the CFPB gets this money. Ellison said it is through fines from other areas, which is an appropriate thing to do.

Rep. Green (D-TX) turned to Himpler and asked how a service member can receive a reduction to 6% on a pre-serviced loan. Himpler said that a service member who receives active duty orders can submit it to the creditor and obtain this 6% rate according to the SCRA. Green said that the CFPB has indicated that if the service member does as he indicated with a single loan, that will apply to other loans. He asked if this is true. Himpler said no and the CFPB said that the industry needs to go through the Department of Defense database to find active duty orders. Green asked if they indicate that one loan must have been a request for a loan. Himpler said no and that the industry has to look into a database that is often down and it gets thousands of pings annually. He added that the Defense Department database does not have the necessary security precautions either. Green asked how it would harm the service people if the Defense Department complied with what the CFPB has recommended. Himpler said that if the industry does not find the active duty assignment, the service member does not receive the relief they should get as if they had pursued this as statute requires. Green told Himpler to assume the database is functioning and asked if the servicemembers would benefit. Himpler said that they cannot assume that it is functioning because his members are accountable for this. Green asked if the servicemembers get their loans reduced if the industry complies with the request of the CFPB. Himpler said that the database is down on a regular basis but that we cannot assume that the database is functioning.

Rep. Ogles (R-TN) could not think of an agency that should meet a quicker end than the CFPB. Ogles said that if it exists, it should be subject to oversight and appropriations. He asked if it is appropriate for the CFPB to upend transparency by undermining APA. Himpler said no, it is not fair. He said that they are looking for clear, understandable rules from the CFPB. Johnson said that if the agency wishes to impose new burdens, they should comply with the APA. Thompson said that this raises constitutional concerns like the major questions doctrine. Watkins said the regulated industry should only receive what is unlawful from Congress or through the process that Congress has mandated. Ogles asked if Himpler wanted to clarify the issue around servicemembers reducing the interest rates on loans. Himpler said that every other creditor would need to be aware of a service member submitting this to one creditor. He thought that the statutory requirement to protect servicemembers was good, but trying to figure it out from someone posting it in the cloud does not make sense. Ogles turned to UDAAP and how this includes disparate impact liability now and the CFPB changed this via press release. He asked if it is fair that an agency can transform industry and industry practices without due process. Himpler said that this is a wonderful question and emphasized that they want fairness and meaningful back and forth between them and the regulator. Johnson agreed it was not fair. Thompson said that the CFPB should only exercise the power given to it by Congress. Watkins said the Constitution requires notice before due process can be found and that a blog post is not proper notice.

Rep. Sherman (D-CA) said that it is interesting that there is a database of servicemembers and noted national security and privacy concerns about this. He liked nationwide standards and said that if the CFPB does not do its job, there is pressure for the states to do their job. Sherman asked Ellison if states would be more involved without the CFPB and if there would be a patchwork of laws. Ellison thought so and said it would not be pleasing to industry. He added that their staff are also limited. Sherman said that national standards give a floor and then Himpler asked why some lenders have higher default rates in some industries than in others. Himpler said that their finance companies deal with 50 sets of state regulation and the certainty in those states is still better than that at the CFPB. On default rates, he said that some lenders go deeper into the credit spectrum. Sherman asked how higher interest rates would impact his companies and the consumers they serve. Himpler said that their members serve various industries and they have to charge different rates to get to performing loans. Sherman said that the natural thing is that we want all constituents to get loans at the lowest rates and you cannot always do that. He pointed to the Supreme Court case and was glad that the Committee was not determining this. Sherman thought a single, national organization determining standards in a way the courts find appropriate is good.

Rep. Fitzgerald (R-WI) said that small institutions face compliance challenges and the CFPB has used its authority to advance a political agenda. He pointed to SBREFA and said that over time, this process has been treated as a check the box initiative. Fitzgerald pointed to his legislation on tailoring of regulation, *Making the CFPB Accountable to Small Businesses Act*, and asked Johnson to talk about the SBREFA process. Johnson said that it is critical that the agency undertake this so they get input from smaller participants that do not have compliance capacity. Thompson said that compliance costs especially fall on small institutions who provide access to credit to those who might not otherwise have access. Watkins said that it adds a lot of costs for small institutions.

Chair Barr (R-KY) said that the takeaway was that the CFPB needed greater scrutiny and oversight. He said that if any agency pronouncement, whether it be a blog post or press release, creates new legal obligations, it should do so with clearly delegated authority from Congress and through the APA process.