

July 15, 2021

Mr. David Uejio  
Acting Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Acting Director Uejio:

During your six-month tenure as Acting Director, you have directed the Consumer Financial Protection Bureau (Bureau) to undertake several actions that would traditionally be reserved for a Senate-confirmed Director. These actions include issuing new rules, guidance, and policy statements; delaying the implementation date of multiple major rulemakings conducted in accordance with the APA under a Senate-confirmed Director; reversing and rescinding policy statements and guidance issued by a Senate-confirmed Director; and undertaking nine enforcement actions against financial services companies.

Senate confirmation is an important Constitutional process that ensures the will of the American public is preserved and Presidential power is limited. It is concerning the CFPB is conducting business as usual without a Senate-confirmed Director and without proper oversight. To that end, we would like additional information on the three specific actions described below.

*1. Abusiveness Standard*

In March, the Bureau rescinded a January 2020 policy statement that provided clarity on the application of the “abusiveness” standard in supervision and enforcement matters.<sup>1</sup> The 2020 policy statement provided transparency with respect to the Bureau’s strategy for enforcing alleged wrongdoing under the “abusive” component in UDAAP. This is particularly important in situations where there is overlap with allegations that a practice is “unfair” or “deceptive.”<sup>2</sup> Federal courts have established precedent to determine whether a practice is “unfair or deceptive.” The 2020 statement provided further clarity for financial institutions regarding when the “abusive standard” would apply. This certainty encouraged financial institutions to offer permissible, innovative products and services.

It is unclear why you rescinded this policy statement, which is to the benefit of consumers and the financial institutions that serve them. It will not expand the number of mortgage or auto loans, credit cards, or small dollar credit products. The Bureau’s decision

---

<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/>

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

appears to be purely political and grounded in the strategy of “regulation by enforcement” that was utilized by the Bureau prior to 2017.

Please provide the Committee with the Bureau’s basis for making this change. Your response should include a list of enforcement actions pursued subsequent to your decision, including the duplicative charges against a company for allegations of abusive and unfair or deceptive practices. In addition, please outline the types of financial products and services that will be restricted for consumers because of this policy.

## *2. Supervisory Recommendation*

In March, the Bureau rescinded a 2018 bulletin outlining the Bureau’s approach to supervisory communications.<sup>3</sup> The 2018 bulletin was replaced with a new bulletin that upholds the Bureau’s use of Matters Requiring Attention (MRA) but eliminated the Supervisory Recommendation (SR). The SR is a tool that had been used by the Bureau to communicate and recommend action absent a violation of federal consumer financial law. While MRAs are not legally binding, an MRA can impact a financial institution’s compliance rating.

This shift in policy escalates all examiner recommendations to MRA level. It shows the Bureau is no longer interested in collaborating with supervised financial institutions through a feedback process that benefits consumers and financial institutions alike. The action further suggests the Bureau is reverting to a policy of regulation by enforcement.

Please provide the Bureau’s justification for not soliciting public comment with respect to removing the Supervisory Recommendation from the bulletin. This is particularly important considering the Bureau solicited public comment prior to its inclusion. In addition, please confirm to this Committee that the bulletin is not enforceable, and outline the statutory authority under which the Bureau is able to order a regulated financial institution to make changes in policies or practices where there is no finding of a violation of federal consumer financial law.

## *3. Military Lending Act Authority*

In June, the Bureau issued an Interpretive Rule indicating the Bureau will resume supervising financial institutions for compliance with the Military Lending Act (MLA). In making this decision, the Bureau opined that it is “no longer persuaded by counterarguments that it does not have the relevant authority.”<sup>4</sup> To be clear, Congress has never explicitly granted the Bureau this authority. In fact, in 2019, Director Kraninger “asked Congress to explicitly grant the

---

<sup>3</sup> CFPB Bulletin 2018-01

<sup>4</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-interpretive-rule-on-authority-to-resume-examinations-regarding-the-military-lending-act/>

Bureau authority to conduct examinations specifically intended to review compliance with the MLA.”<sup>5</sup>

Please provide the justification for reversing the Bureau’s previous position that it lacked the authority to supervise financial institutions for compliance with the MLA and the legal basis for engaging in such supervision. In addition, we note that, absent an express legal authorization, the Bureau may not establish a usury limit on consumer credit, including with respect to extending the annual percentage rate limits in the MLA beyond the scope of that statute.<sup>6</sup>

We appreciate your attention to these issues. Please provide your response to the Committee on Financial Services, Minority Staff, no later than July 31, 2021. If you have any questions, please do not hesitate to contact Kathleen Palmer, Minority Staff at Kathleen.Palmer@mail.house.gov.

Sincerely,



---

Patrick McHenry  
Ranking Member



---

Ann Wagner  
Vice Ranking Member



---

Frank Lucas  
Member of Congress



---

Pete Sessions  
Member of Congress



---

Bill Posey  
Member of Congress



---

Blaine Luetkemeyer  
Member of Congress

---

<sup>5</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-asks-congress-clear-authority-supervise-compliance-military-lending-act/>

<sup>6</sup> 12 U.S.C. §5517(o)



---

Bill Huizenga  
Member of Congress



---

Andy Barr  
Member of Congress



---

Roger Williams  
Member of Congress



---

French Hill  
Member of Congress



---

Tom Emmer  
Member of Congress



---

Lee Zeldin  
Member of Congress



---

Barry Loudermilk  
Member of Congress



---

Alex Mooney  
Member of Congress



---

Warren Davidson  
Member of Congress



---

Ted Budd  
Member of Congress

David Kustoff

---

David Kustoff  
Member of Congress

Trey Hollingsworth

---

Trey Hollingsworth  
Member of Congress

Anthony Gonzalez

---

Anthony Gonzalez  
Member of Congress

John W Rose

---

John Rose  
Member of Congress

Bryan Steil

---

Bryan Steil  
Member of Congress

Lance Gooden

---

Lance Gooden  
Member of Congress

William R Timmons TD

---

William Timmons  
Member of Congress

Van Taylor

---

Van Taylor  
Member of Congress

**Congress of the United States**  
**Washington, DC 20515**

July 29, 2021

Dave Uejio  
Acting Director  
Consumer Financial Protection Bureau  
1700 G St NW  
Washington, D.C. 20552

We write to you today regarding Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1071). In February of this year you issued a memo to the CFPB Division of Research, Markets, and Regulations (RMR), where you “pledged RMR the support it needs to implement section 1071 without delay.”<sup>1</sup> In addition, on June 11 the CFPB published its Spring 2021 Rulemaking Agenda that included section 1071 with a tentative deadline for a Notice of Proposed Rulemaking (NPRM) in September of this year.<sup>2</sup> As the CFPB continues in the rulemaking process, we urge you to build on the efforts of the previous Director, specifically the Small Business Advocacy Review (SBAR) panel conducted under Director Kraninger and required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit certain data to the CFPB on women owned, minority owned, and small businesses. As you know, SBREFA requires certain federal agencies, including the CFPB, to conduct a SBAR before publishing a proposed rule that includes a Regulatory Flexibility Analysis. The SBAR conducted regarding Section 1071 includes representatives from the CFPB, Small Business Administration (SBA), and the Office of Information and Regulatory Affairs (OIRA). The panel held numerous outreach meetings with Small Entity Representatives (SERs) to solicit feedback on how a potential 1071 rulemaking will impact small firms and potential regulatory solutions to ease regulatory burdens, eliminate duplicative reporting, streamline data reporting, and narrow the scope of 1071 applicability.

Considering only three government entities are required to conduct additional outreach to small entities through a SBAR panel, including the CFPB, it is evident the broad range of regulatory authority exhibited by the Bureau has a considerable impact on small businesses. It is critical the CFPB consider the numerous findings of the SBAR and closely follow the recommendations of the panel to eliminate burdens, decrease duplication, and take into account the feedback of SERs when developing a Notice of Proposed Rulemaking. Specifically, we urge you to consider the potential for increased regulatory costs on financial institutions and the potential impact on access to capital for all small businesses.

---

<sup>1</sup> <https://www.consumerfinance.gov/about-us/blog/the-bureau-is-working-hard-to-address-housing-insecurity-promote-racial-equity-and-protect-small-businesses-access-to-credit/>

<sup>2</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3170-AA09>

When SBREFA was enacted in 1996, Congress intended to enhance and improve the ability of federal agencies to thoroughly understand how their rules impact small firms and concordantly use that information to eliminate unnecessary burdens on those entities. Over time, the SBREFA process has been treated as merely a check-the-box initiative where outreach is made to SERs, but their feedback is not adopted in the final rulemaking. We will closely monitor any NPRM from the Bureau regarding Section 1071 and will expect to see provisions responding to the numerous concerns voiced by SERs in the SBAR, and an overall rule that strives to limit burdens on small entities.

Sincerely,



Blaine Luetkemeyer (MO-3)  
Member of Congress



Roger Williams (TX-25)  
Member of Congress



Bill Posey (FL-08)  
Member of Congress



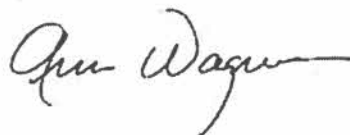
Pete Stauber (MN-8)  
Member of Congress



Bill Huizenga (MI-02)  
Member of Congress



Dan Meuser (PA-9)  
Member of Congress



Ann Wagner (MO-02)  
Member of Congress



Claudia Tenney (NY-22)  
Member of Congress



Andy Barr (KY-06)  
Member of Congress



Andrew Garbarino (NY-2)  
Member of Congress



French Hill (AR-02)  
Member of Congress



Young Kim (CA-39)  
Member of Congress



Tom Emmer (MN-06)  
Member of Congress



Beth Van Duyne (TX-24)  
Member of Congress



Lee M. Zeldin (NY-01)  
Member of Congress



Byron Donalds (FL-19)  
Member of Congress



Barry Loudermilk (GA-11)  
Member of Congress



Maria Salazar (FL-27)  
Member of Congress




Alexander X. Mooney (WV-02)  
Member of Congress



Scott Fitzgerald (WI-5)  
Member of Congress



Warren Davidson (OH-08)  
Member of Congress



David Kustoff (TN-08)  
Member of Congress



Tedd Budd (NC-13)  
Member of Congress




Anthony Gonzalez (OH-16)  
Member of Congress





Lance Gooden (TX-05)  
Member of Congress



William Timmons (SC-04)  
Member of Congress



Van Taylor (TX-03)  
Member of Congress



Trey Hollingsworth (IN-09)  
Member of Congress

October 14, 2021

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Director Chopra:

Earlier this year, we wrote to former Acting Director Uejio regarding several actions he undertook while at the Consumer Financial Protection Bureau (Bureau). Over his nine-month tenure, Acting Director Uejio delayed the implementation date of multiple major rulemakings conducted in accordance with the Administrative Procedures Act (APA) typically taken under a Senate-confirmed Director; reversed and rescinded policy statements and guidance issued by a Senate-confirmed Director; and undertook 14 enforcement actions against financial services companies. Acting Director Uejio's response was less than satisfactory. It failed to articulate with any type of specificity substantive problems with the previous rulemakings, policy statements, and guidance. As you begin your tenure, we would appreciate a more fulsome response to the concerns outlined below.

*1. Abusiveness Standard*

In March, the Bureau rescinded a January 2020 policy statement that provided clarity on the application of the "abusiveness" standard in supervision and enforcement matters.<sup>1</sup> The 2020 policy statement provided transparency with respect to the Bureau's strategy for enforcing alleged wrongdoing under the "abusive" component in UDAAP. This is particularly important in situations where there is overlap with allegations that a practice is "unfair" or "deceptive."<sup>2</sup> Federal courts have established precedent to determine whether a practice is "unfair or deceptive." The 2020 statement provided further clarity for financial institutions regarding when the "abusiveness" standard would apply. This certainty encouraged financial institutions to offer permissible, innovative products and services.

Please provide the Committee with a detailed explanation of the Bureau's basis for making this change, including the research and analysis conducted. Your response should describe in detail how mortgages or auto loans, credit cards, or small dollar credit products made available to consumers will be expanded under this action. Note that attaching the federal register is insufficient.

---

<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/>

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

## 2. *Supervisory Recommendation*

In March, the Bureau rescinded a 2018 bulletin outlining the Bureau's approach to supervisory communications.<sup>3</sup> The 2018 bulletin was replaced with a new bulletin that upholds the Bureau's use of Matters Requiring Attention (MRA) but eliminates the Supervisory Recommendation (SR). The SR is a tool that had been used by the Bureau to communicate and recommend action absent a violation of federal consumer financial law. While MRAs are not legally binding, an MRA can impact a financial institution's compliance rating.

We noted to Acting Director Uejio this shift in policy escalates all examiner recommendations to MRA level. It also shows the Bureau is no longer interested in collaborating with supervised financial institutions through a feedback process that benefits consumers and financial institutions alike. Please confirm to this Committee that the bulletin is not enforceable and how the Bureau intends to work with a financial institution to make changes, particularly where there is no finding of a violation of federal consumer financial law.

## 3. *Military Lending Act Authority*

In June, the Bureau issued an Interpretive Rule indicating the Bureau will resume supervising financial institutions for compliance with the Military Lending Act (MLA). In making this decision, the Bureau opined that it is "no longer persuaded by counterarguments that it does not have the relevant authority."<sup>4</sup> To be clear, Congress has never explicitly granted the Bureau this authority. In fact, in 2019, former Director Kraninger "asked Congress to explicitly grant the Bureau authority to conduct examinations specifically intended to review compliance with the MLA."<sup>5</sup>

Please cite with specificity the statutory authority to supervise financial institutions for compliance with the MLA. In addition, we want to make clear again that absent an express legal authorization from Congress, the Bureau may not establish a usury limit on consumer credit. This includes extending the annual percentage rate limits in the MLA beyond the scope of the statute.<sup>6</sup>

## *Conclusion*

In addition to answers to the questions above, we would appreciate a list of your priorities that we can expect during your tenure. Acting Director Uejio's tenure was blatantly political and grounded in the strategy of "regulation by enforcement." This also describes the tenure of former Director Cordray as he ran roughshod over businesses of all sizes. We have reason to believe your tenure will be no different. Several statements you made during your confirmation

---

<sup>3</sup> CFPB Bulletin 2018-01

<sup>4</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-interpretive-rule-on-authority-to-resume-examinations-regarding-the-military-lending-act/>

<sup>5</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-asks-congress-clear-authority-supervise-compliance-military-lending-act/>

<sup>6</sup> 12 U.S.C. §5517(o)

hearing are concerning. We caution you against initiatives that exceed your statutory authority, undermine the credit markets, and have the effect of raising the cost of credit for all Americans.

We would appreciate written responses no later than October 25, 2021. This will ensure Committee Republicans are able to seek additional details during your testimony before the Committee on October 27, 2021. If you have any questions, please do not hesitate to contact Kathleen Palmer, Minority Staff, at [Kathleen.Palmer@mail.house.gov](mailto:Kathleen.Palmer@mail.house.gov).

Sincerely,



Patrick T. McHenry  
Ranking Member



Ann Wagner  
Vice Ranking  
Member



Frank Lucas



Pete Sessions



Bill Posey



Blaine Luetkemeyer



Bill Huizenga



Andy Barr



Roger Williams



French Hill



Tom Emmer



Lee M. Zeldin



Barry Loudermilk



Alexander X. Mooney



Warren Davidson



Ted Budd



David Kustoff



Trey Hollingsworth



Anthony Gonzalez



John Rose



Bryan Steil



Lance Gooden



William Timmons



Van Taylor

**Congress of the United States**  
**Washington, DC 20510**

February 07, 2022

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Dear Director Chopra:

Access to credit for small businesses is critical to the growth of the American economy. These businesses employ nearly half of all private sector workers and are responsible for 62 percent of net new job creation since 1995.<sup>1</sup> Small businesses have spurred market competition and helped create and adopt many innovative products and services that deliver tremendous benefit to consumers. Any action to adversely affect the health of small businesses – which account for approximately 43.5 percent of our country’s GDP – would have a significant negative impact on the strength of the broader US economy.

We are concerned that the Consumer Financial Protection Bureau’s (CFPB) September 01, 2021 proposal to implement Section 1071 of the Dodd-Frank Act (Section 1071) and require financial institutions to compile, maintain, and submit to the CFPB data from credit applications submitted by small businesses may reduce the availability and accessibility of small business credit. By imposing overly burdensome new regulatory requirements on lenders, the proposed rule will counterproductively increase the cost of credit for the same small businesses borrowers it is intended to help.

Mandatory regulatory analysis has determined that the compliance costs associated with the CFPB’s proposed rule will be passed down directly to small businesses. On September 15, 2020, consistent with its obligations under The Small Business Regulatory Enforcement Fairness Act (SBREFA), the CFPB issued a report finding: *“The Bureau expects that much of the variable cost component of ongoing costs would be passed onto small business borrowers in the form of higher interest rates or fees.”*<sup>2</sup> These variable costs (i.e. per application), as detailed by the report, primarily relate to the transcribing and transfer of data by loan officers and other financial institution employees tasked with collecting and reporting this new credit application data.

Perhaps more concerning, though the CFPB concluded that the proposed rule will definitively increase the cost of credit for small businesses, it has failed to explain what actions were taken to prevent or mitigate this outcome. The proposed rule states, *“Based on the Bureau’s available evidence, it expects that the variable ongoing costs to comply with the proposed rule will be passed on in full to small business credit applicants in the form of higher prices or fees to small businesses.”* The CFPB, consistent with its obligations under section

---

<sup>1</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>

<sup>2</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbreffa\\_outline-of-proposals-under-consideration\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa_outline-of-proposals-under-consideration_2020-09.pdf)

603(d) makes note of the reasons for these increased costs to lenders and their small business customers but makes no effort to adequately explain why it does not attempt to mitigate them. In fact, in many cases, the proposed rule is far more onerous than what was contemplated by the SBREFA panel, and specifically disregards advice suggesting that certain proposals the CFPB is proposing to adopt would increase compliance costs.

During your confirmation hearing before the Senate Banking Committee you stated, “*I believe it is important for policymakers to take account of the potential benefits and costs to consumers and businesses of any rule, including the potential impact on access to credit. Any analysis should be rigorous, robust, and grounded in data.*” We agree. And to that end, we request your response to the following questions:

1. What is the estimated total increase in the cost of credit for small businesses?
2. What are the estimated benefits to small businesses? The Bureau does not provide any clarity on this in the proposed rule. The proposed rule concludes, “*The Bureau is unable to readily quantify any of these benefits with precision, both because the Bureau does not have the data to quantify all benefits and because the Bureau is not able to assess completely how effective the implementation of section 1071 will be in achieving those benefits.*”<sup>3</sup>
3. Are you concerned that some financial institutions may choose to no longer offer lending products designed for small businesses borrowers, including women-owned and minority-owned businesses?
4. Can you provide the CFPB’s rationale for disregarding the recommendations offered by the SBREFA panel when issuing the proposed rule? For example, why has the Bureau proposed collecting discretionary data points (i.e. additional to those required by the statute)? The SBREFA report notes, “*One SER (small entity representatives) stated that the cost of collecting and reporting the discretionary data points under consideration would be significant, and another SER stated that the Bureau should include as few data points as possible to avoid unnecessary costs. Another SER stated that the Bureau should finalize a rule with just the statutorily required data points and avoid adding any discretionary data points.*”<sup>4</sup>

We value your response to these questions by Friday, February 25, 2022. It is critical that the CFPB explain its approach for assessing how the proposed rule will impact the availability of credit to small businesses and why it has not pursued less burdensome alternative proposals.

Very Respectfully,



---

Trey Hollingsworth  
Member of Congress



---

Tim Scott  
United States Senator

<sup>3</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf) (See page 690)

<sup>4</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbreffa-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa-report.pdf) (See page 30)



---

Patrick McHenry  
Member of Congress



---

Pat Toomey  
US Senator



---

Ted Budd  
Member of Congress



---

M. Michael Rounds  
US Senator



---

Blaine Luetkemeyer  
Member of Congress



---

Thom Tillis  
US Senator



---

Bill Huizenga  
Member of Congress



---

John Kennedy  
US Senator



---

Roger Williams  
Member of Congress



---

Bill Hagerty  
US Senator



---

Lee Zeldin  
Member of Congress



---

Cynthia Lummis  
US Senator



---

Barry Loudermilk  
Member of Congress



---

Kevin Cramer  
US Senator





---

French Hill  
Member of Congress



---

Steve Daines  
US Senator



---

David Kustoff  
Member of Congress



---

Richard Shelby  
US Senator



---

Bryan Steil  
Member of Congress



---

Mike Crapo  
US Senator



---

Van Taylor  
Member of Congress



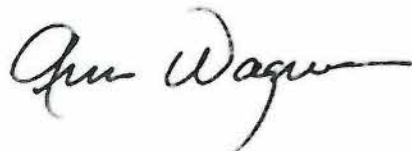
---

Lance Gooden  
Member of Congress



---

Andy Barr  
Member of Congress



---

Ann Wagner  
Member of Congress



---

John Rose  
Member of Congress



---

Warren Davidson  
Member of Congress



---

Bill Posey  
Member of Congress



---

Alex X. Mooney  
Member of Congress



---

Anthony Gonzalez  
Member of Congress



---

Pete Sessions  
Member of Congress



---

William R. Timmons IV  
Member of Congress



---

Frank D. Lucas  
Member of Congress



---

Tom Emmer  
Member of Congress

March 30, 2022

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

Dear Director Chopra:

On January 26, 2022, the Consumer Financial Protection Bureau (CFPB) launched an effort to solicit public comment on consumer financial fees.<sup>1</sup> The stated goal of the Request for Information (RFI) was the CFPB “exercising its enforcement, supervision, regulatory, and other authorities” to address concerns you represent the CFPB has received. For example, the CFPB alluded to hidden or exploitative fees and asked the public to comment on respective experiences with fees linked to deposit accounts, credit cards, remittances and payments, prepaid accounts, and mortgage and other loan types.

We agree consumer education and simplification of disclosures should be a priority. There is, however, always a cost associated with providing financial services and access to credit. These costs include the risk to the offering firm for such product and credit extensions, which may be offset in part by certain fees for service. Moreover, there are statutory and regulatory requirements in place that guide financial institutions in how to properly communicate these costs, including the Truth In Lending Act (TILA) disclosure requirements and fee disclosures promulgated by the CFPB.

Furthermore, the CFPB broadly groups all fees associated with consumer products and services as “junk fees” and does not provide any legal definition of the term or any statutory authority to define such a term. The CFPB gives examples of the types of fees on which they are soliciting information including “unexpected fees” and “fees that seemed too high.” However, the CFPB fails to outline any illegal activity taking place regarding fees by financial institutions that would require the CFPB “exercising its enforcement, supervision, regulatory, and other authorities.”

In addition to the RFI, on December 1, 2021, the CFPB published two data sets regarding financial institution revenue related to overdraft and non-sufficient funds (NSF) fees and titled the release of these data sets “CFPB shows banks deep dependence on overdraft fees.”<sup>2</sup> However, closer examination of the data shows the CFPB is sowing a false narrative. One data set titled *Overdraft/NSF Fee Reliance since 2015 – Evidence from bank Call Reports* shows bank revenue from overdraft and NSF fees in 2019 was roughly \$15.47 billion. However, the CFPB failed to

---

<sup>1</sup> <https://www.federalregister.gov/documents/2022/02/02/2022-02071/request-for-information-regarding-fees-imposed-by-providers-of-consumer-financial-products-or>.

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/>.

mention total bank revenue for 2019 was \$540 billion,<sup>3</sup> and these fees only represent 2 percent of all bank revenue. This data directly contradicts the CFPB’s claims that banks are “deeply dependent” on overdraft fees.

The second data set, titled *Checking Account Overdraft at Financial Institutions Served by Core Processors*, highlights data from 2014 – more than 7 years ago. This data set fails to take into account new innovations in overdraft, such as grace periods, posting alerts, and overall increase in availability and use of online banking. This data set is a failed representation of these financial products and the fees associated with them.

Overdraft protection is a short-term liquidity product that can aid consumers in making ends meet when a deposit account balance is low, particularly for those consumers who are unable to qualify for traditional credit products. A recent study indicates most consumers are well aware of the cost associated with tapping into overdraft coverage and choose to use this low-cost option to cover temporary funding shortfalls.<sup>4</sup> Some financial institutions will derive a higher percentage of revenue from deposit account related fees, such as overdraft or NSF, based on their business models and product offerings. Moreover, in December 2021, Acting Comptroller Hsu outlined potential reforms while cautioning that “limiting overdrafts may limit the financial capacity for those who need it most.”<sup>5</sup>

It is a known fact that smaller financial institutions are struggling to survive and compete in a complex regulatory environment, particularly in the midst of constant technological advancements. Democrats further harmed the viability prospects of community financial institutions by overturning the Office of the Comptroller of the Currency’s 2020 True Lender Rule<sup>6</sup>. This action created legal uncertainty for partnerships between community financial institutions and financial technology (fintech) firms. These partnerships have proven to foster innovation, increase capability, and promote competition in the financial services industry. Consumers ultimately benefit from these partnerships.

Given these efforts to weaken the financial system, we request that you provide answers to the following questions:

1. In the case of credit products designed to reach low- and moderate-income consumers and consumers with difficult credit histories, how does the CFPB expect financial institutions to bear the cost and offset the risk of these products in a safe and sound manner without fee assessment?
2. If offering such products ceases to make financial sense for financial institutions, does the CFPB expect these products to be discontinued? In this event, how does the CFPB propose that low- and moderate-income consumers and consumers with difficult credit histories seek extensions of credit?

---

<sup>3</sup> <https://fred.stlouisfed.org/series/REVEF52211ALLEST>.

<sup>4</sup> <https://curinos.com/insights/competition-drives-overdraft-disruption/>.

<sup>5</sup> <https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-129.html>.

<sup>6</sup> <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-139.html>.

3. Has the CFPB taken into consideration the impact on consumer financial inclusion and choice if overdraft protection is removed as an option for consumers? If so, what were those considerations?
4. Has the CFPB considered where consumers will turn to help meet their short-term liquidity needs if overdraft protection and similar products are discontinued? If so, where?
5. Has the CFPB consulted with the prudential regulatory agencies concerning the risks to safety and soundness of limiting fees or attempting to set pricing?
6. What analysis has the CFPB independently performed regarding the safety and soundness effects of discontinuing or limiting the assessment of fees for the financial products and services specified in the RFI?
7. What current specific regulations and guidance does the CFPB intend to review in relation to this RFI?
8. How does the CFPB distinguish between legitimate fees, such as fees that cover cost of service provided or penalty fees, and “junk fees”?
9. How will the CFPB measure the success of any proposed regulatory changes? Does the CFPB take into account any specific metrics regarding transparency or industry competition? If so, which metrics does the CFPB consider?
10. Please define the term “junk fee?” Where does the CFPB receive statutory authority to create the term “junk fee?”
11. Of the examples the CFPB cites as a “junk fee” in the January 26, 2022 press release and the RFI, are any of these practices illegal? Specifically, are “fees for things a consumer believed were covered by the baseline price of a product or service, unexpected fees for a product or service, fees that seemed too high for the purported service, fees where it was unclear why they were charged” illegal?
12. To demonstrate if fees associated with the products mentioned by the CFPB are inappropriate, please notify us of the revenue of the following industries each year over the past five years and the total amount of fees collected by the following products each year over the past five years: deposit accounts, credit cards, remittances and payments, prepaid accounts, mortgages, student loans, auto loans, installment loans, and payday loans.
13. To determine if a consumer receives appropriate disclosure of the fees associated with financial products, please outline current disclosure requirements for the fees associated with the following products: deposit accounts, credit cards, remittances and payments, prepaid accounts, mortgages, student loans, auto loans, installment loans, and payday loans.

A key feature of the U.S. financial system is its wide range of institutions with varied business models and offering a broad selection of products and services to consumers. Any attempts by the CFPB or other financial regulators to stifle financial inclusion or consumer choice

or undermine the safety and soundness of particular financial institutions or the financial system as a whole would be imprudent.

We would appreciate written responses no later than April 15, 2022. This will ensure Committee Republicans are able to seek additional details during your upcoming semi-annual testimony requirement before the Committee. If you have any questions, please do not hesitate to contact Kathleen Palmer, Minority Staff, at [Kathleen.Palmer@mail.house.gov](mailto:Kathleen.Palmer@mail.house.gov).

Sincerely,



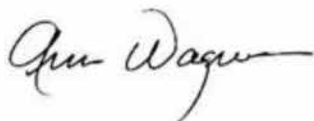
---

Patrick McHenry  
Ranking Member



---

Blaine Luetkemeyer  
Ranking Member on the  
Subcommittee on Consumer  
Protection and Financial  
Institutions



---

Ann Wagner  
Vice Ranking Member



---

Pete Sessions  
Committee on Financial Services



---

Bill Posey  
Committee on Financial Services



---

Bill Huizenga  
Committee on Financial Services



---

Andy Barr  
Committee on Financial Services



---

Roger Williams  
Committee on Financial Services



---

French Hill  
Committee on Financial Services



---

Tom Emmer  
Committee on Financial Services



---

Lee M. Zeldin  
Committee on Financial Services



---

Barry Loudermilk  
Committee on Financial Services



---

Alexander M. Mooney  
Committee on Financial Services



---

Warren Davidson  
Committee on Financial Services



---

Ted Budd  
Committee on Financial Services



---

David Kustoff  
Committee on Financial Services



---

Trey Hollingsworth  
Committee on Financial Services



---

Anthony Gonzalez  
Committee on Financial Services





---

John Rose  
Committee on Financial Services



---

Bryan Steil  
Committee on Financial Services



---

Lance Gooden  
Committee on Financial Services



---

William Timmons  
Committee on Financial Services



---

Van Taylor  
Committee on Financial Services

May 19, 2022

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

Dear Director Chopra:

We are writing to express our concern with respect to two recent actions taken by the Consumer Financial Protection Bureau (CFPB). In particular, the CFPB's new unfair, deceptive, or abusive acts and practices (UDAAPs) supervisory policy and the recent changes to CFPB administrative adjudication procedures deviate significantly from past practices. Moreover, notwithstanding the fact these actions were taken outside of the typical notice and comment process, they suggest the CFPB intends to pursue a regulatory and enforcement agenda well beyond its statutory authority. We call on you rescind these measures immediately and adhere to the appropriate notice and comment paradigm.

On March 16, 2022, CFPB amended its UDAAP supervision exam manual.<sup>1</sup> At the same time, the CFPB announced plans to target discrimination as an "unfair" practice under the Consumer Financial Protection Act's prohibition against UDAAPs.<sup>2</sup> Under the new policy, Bureau examiners will look for discriminatory conduct, whether intentional or unintentional, in all consumer financial products and services, "including in situations where fair lending laws may not apply."<sup>3</sup> These updates to the CFPB exam manual strongly suggest that the new UDAAP policy is intended to cover both intentional and unintentional or disparate impact discrimination.<sup>4</sup>

Let us be clear, there is no place for discrimination in financial services. If illegal discriminatory practices are identified, they should be addressed through the enforcement of existing laws, such as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act – known together as the fair lending laws. Congress enacted the fair lending laws and delegated their enforcement to the CFPB, clearly defining the limits of CFPB's jurisdiction.

---

<sup>1</sup> Consumer Financial Protection Bureau (CFPB), "CFPB Targets Unfair Discrimination in Consumer Finance," Mar. 16, 2022, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> For example, examiners are instructed to consider whether an "entity has a process to take prompt corrective action if the decision-making processes it uses produce deficiencies or discriminatory results." *See* CFPB UDAAP Exam Manual V.3 (March 2022) pg. 18.

Extending ECOA's disparate treatment and disparate impact analysis to non-credit financial products and services ignores these clear limits. Moreover, the CFPB's recent decision to fundamentally alter long-standing fair lending policy was made outside of the rulemaking process. The CFPB did not solicit public input or provide any prior notice to those who must comply with a new "theory" of liability. Instead, the changes were communicated through press release, blog post, and exam manual update. These channels do not satisfy the requirements of the Administrative Procedure Act (APA) and circumvent judicial review.

In addition to radically reinterpreting UDAAP, changes to the way the CFPB will supervise for UDAAP will impose significant new responsibilities on supervised entities. For example, the CFPB announced that "examiners will require supervised companies to show their processes for assessing risks and discriminatory outcomes, including documentation of customer demographics and the impact of products and fees on different demographic groups," and examiners "will look at how companies test and monitor their decision-making processes for unfair discrimination, as well as discrimination under ECOA." We would remind the CFPB that under its own Role of Supervisory Guidance rule, "unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the Bureau does not take enforcement actions based on supervisory guidance."<sup>5</sup>

Our concerns with the new UDAAP policy are heightened even more by the changes recently made to the rules governing CFPB administrative adjudications. On February 22, 2022, the CFPB quietly issued a procedural rule to update its Rules of Practice for Adjudication Proceedings (Rules of Practice).<sup>6</sup> The Rules of Practice were effective immediately and provide significant new powers to the CFPB Director, limit due process rights, and will contribute to the formation of partisan, and not durable, jurisprudence.<sup>7</sup>

This action is disturbing. Not only is it contrary to your comments about intending to establish durable jurisprudence made during testimony before the House Financial Services Committee in October 2021, but it does not abide by typical notice and comment procedures. It is worth noting that on March 22, 2022, other prudential regulators issued an interagency proposal for comment as they seek to update certain parts of their policies and procedures governing administrative proceedings.<sup>8</sup>

Moreover, the CFPB did not issue a press release or public statement when publishing the revised Rules of Practice. In fact, it was only noted at the end of the announcement in the federal register that it "welcomes comments on this rule, and the Bureau may make further amendments if it receives comments warranting changes."<sup>9</sup> Equally disturbing, the comment period closed

---

<sup>5</sup> Appendix A to 12 CFR § 1074, Statement Clarifying the Role of Supervisory Guidance.

<sup>6</sup> CFPB, "Interim Final Rule: Rules of Practice for Adjudication Proceedings" Feb. 22, 2022, <https://www.consumerfinance.gov/rules-policy/final-rules/rules-of-practice-for-adjudication-proceedings/>.

<sup>7</sup> See U.S. Chamber of Commerce, et. al., comment letter, <https://www.regulations.gov/comment/CFPB-2022-0009-0006>.

<sup>8</sup> Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration, "Rules of Practice and Procedure," Mar. 22, 2022, <https://www.federalregister.gov/documents/2022/04/13/2022-04454/rules-of-practice-and-procedure>.

<sup>9</sup> CFPB, "Rules of Practice for Adjudication Proceedings," Feb. 22, 2022, <https://www.federalregister.gov/documents/2022/02/22/2022-02863/rules-of-practice-for-adjudication-proceedings>.

April 8, 2022. In light of comments since received by the CFPB, we believe it is appropriate for the CFPB to immediately revert back to the previous Rules of Practice and conduct notice and comment rulemaking before the any new procedures become effective.<sup>10</sup> This is critical. In the past, Article III courts have found the CFPB’s administrative adjudication process to have been abused. Specifically, the CFPB used its in-house adjudication process to apply new regulatory interpretations to conduct that occurred before the new interpretation was issued and before any entity could reasonably have had fair notice.<sup>11</sup>

Considering the significance of the changes adopted under the new UDAAP policy, we believe it would be inappropriate for the CFPB to pursue actions under the policy through the administrative adjudication process. The new interpretation within the policy should be considered by a non-partisan, independent judge. We believe this should be the practice for all cases but particularly when the CFPB circumvents the rulemaking process. The CFPB must not pursue actions under these theories and then be allowed to judge the legality of its own actions and processes and impose significant penalties. Given the CFPB’s unprecedented and expansive new self-appointed authorities we request answers to the following questions:

1. Does the CFPB believe that entities regulated by the CFPB should change their practices or take additional steps—for example by seeking demographic information or language preference information on customers where not already required to do so by law—in response to these changes to the examination manual?
  - a. If yes, does the CFPB believe its official statements on supervisory guidance not creating new obligations nor providing a basis for CFPB enforcement to no longer be accurate?
  - b. If yes, why did the CFPB choose to circumvent the Administrative Procedure Act (APA) which is generally required for announcing significant and binding new regulatory requirements?
2. Is the CFPB pursuing any enforcement matters under this theory of unfairness? Does the CFPB expect covered entities to retroactively comply with the new supervisory guidance?
3. On what date did the CFPB begin pursuing the inclusion of “discriminatory” conduct under UDAAP in relation to supervisory responsibilities?
4. What correspondence, including written (email, text, other documentation), verbal, or in person and what internal or external staff were involved in making the determination that the discriminatory conduct would fall under UDAAP in a supervisory matter?

---

<sup>10</sup> See U.S. Chamber of Commerce, et. al., “Comment from U.S. Chamber of Commerce,” Apr. 8, 2022, <https://www.regulations.gov/comment/CFPB-2022-0009-0006>.

<sup>11</sup> *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (en banc) [Reinstating portions of the earlier panel’s decision in *PHH Corp. v. CFPB*, 839 F.3d 1, 39-44 (D.C. Cir. 2016), vacated upon grant of reh’g en banc (Feb. 16, 2017), specifically the panel’s rejection of the CFPB Director’s interpretation of the anti-kickback provision of the Real Estate Settlement Procedures Act (RESPA), his attempt to apply that interpretation retroactively, his construction of RESPA’s limitations provision, and his theory that the CFPB is bound by no limitations period in any administrative enforcement action under any of the laws the agency administers.].

5. Has the CFPB conducted any type of cost-benefit or regulatory impact analysis on how these new powers and procedures will affect consumers and consumer choice in financial services?

Additionally, we request that any documentation referenced in the questions included in this letter be submitted with your responses in an unredacted form.

Sincerely,



---

Patrick McHenry  
Ranking Member



---

Blaine Luetkemeyer  
Ranking Member on the  
Subcommittee on Consumer  
Protection and Financial  
Institutions



---

Ann Wagner  
Vice Ranking Member



---

Pete Sessions  
Committee on Financial Services



---

Bill Posey  
Committee on Financial Services



---

Bill Huizenga  
Committee on Financial Services



---

Andy Barr  
Committee on Financial Services



---

Roger Williams  
Committee on Financial Services



---

French Hill  
Committee on Financial Services



---

Tom Emmer  
Committee on Financial Services



---

Barry Loudermilk  
Committee on Financial Services



---

Alexander X. Mooney  
Committee on Financial Services



---

Warren Davidson  
Committee on Financial Services



---

Ted Budd  
Committee on Financial Services



---

David Kustoff  
Committee on Financial Services



---

Trey Hollingsworth  
Committee on Financial Services



---

Anthony Gonzalez  
Committee on Financial Services



---

Bryan Steil  
Committee on Financial Services



---

William Timmons  
Committee on Financial Services