10 Reasons We Need The CFPB Now:

An AFR Issue Brief

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Americans for Financial Reform (http://ourfinancialsecurity.org) is a coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as leading economists.

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Executive Summary

For years leading up to the 2008 financial collapse, federal bank regulators ignored numerous warnings of increasingly predatory mortgage practices, credit card tricks and unfair overdraft policies used by banks. The banks were earning billions from "gotcha" practices. Incredibly, bank regulators actively encouraged this behavior, arguing it was profitable and kept banks safe. No regulator cared about its other (and, to them, secondary) job: enforcing consumer laws. Some regulators rejected the role and even actively worked to prevent states from carrying it out. Worse, firms were able to pick and choose among regulators, encouraging a "race-to-the-regulatory-bottom." That is the system that failed to protect us.

This report outlines predatory financial practices that hurt consumers and helped collapse the economy, costing us eight million jobs, millions of foreclosed homes and trillions of dollars in lost home and retirement values. It explains these and other emerging problems as "10 Reasons We Need The Consumer Financial Protection Bureau Now."

In response to the problems caused by those predatory practices, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 included a major reform demanded by the public: it established the landmark Consumer Financial Protection Bureau.

On July 21, 2011, the law provides that the CFPB takes over as the primary regulator of 18 consumer financial laws that 7 federal regulators had unevenly and inadequately implemented and enforced in both the bank and non-bank financial sectors.

Making Markets Work: According to the CFPB itself, "The central mission of the Consumer Financial Protection Bureau (CFPB) is to make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products."

The CFPB also has special roles granted by Congress to protect senior citizens, military families and other frequent targets of unfair financial practices.

As described on its own website, the CFPB was created:

> "1) to ensure that consumers have timely and understandable information to make responsible decisions about financial transactions;
> 2) to protect consumers from unfair, deceptive, or abusive acts or practices, and from discrimination;
> 3) to reduce outdated, unnecessary, or overly burdensome regulations;
> 4) to promote fair competition by enforcing the Federal consumer financial laws consistently; and
> 5) to advance markets for consumer financial products and services that operate transparently and efficiently to facilitate access and innovation."

Introduction

The idea of a federal consumer protection agency focused on credit and payment products gained broad and high-profile support because it targets one of the most significant underlying causes of the massive regulatory failures that did so much damage to families and to our economy.[1] Over many years leading up to the crisis, federal agencies did not make protecting consumers their top priority and, in fact, seemed to compete against each other to keep standards low, ignoring many festering problems that grew worse over time. If agencies did act to protect consumers (and they often did not), the process was cumbersome and time-consuming. As a result, agencies did not act to stop some abusive lending practices until it was too late. And regulators were not truly independent of the influence of the financial institutions they regulated.

The failure of federal banking agencies to stem sub-prime mortgage lending abuses is well documented. From 1994 forward the Federal Reserve Board had explicit authority to stop unfair and deceptive mortgage lending practices. But despite extensive evidence of large and growing problems, they did not use it. In an extreme case of "too little too late" it was not until July of 2008 that mortgage rules were finalized, close to a decade after analysts and experts started warning that predatory sub-prime mortgage lending would lead to a foreclosure epidemic.

Less well known are federal regulatory failures that have contributed to the extension of unsustainable consumer loans, such as credit card, overdraft and payday loans, which are now imposing a crushing financial burden on many families. As with problems in the mortgage lending market, failures to rein in abusive types of consumer loans were in areas where federal regulators had existing authority to act, and either chose not to do so or acted too late to stem serious problems in the credit markets.

Combining safety and soundness supervision – with its focus on bank profitability – in the same regulatory institution where consumer protection regulation was housed magnified an ideological predisposition or anti-regulatory bias by federal officials that led to unwillingness to rein in abusive lending before it triggered the housing and economic crises. Though we now know that consumer protection is in fact vital to ensure safety and soundness in the medium and long term, structural flaws in the federal regulatory system compromised the independence of banking regulators, encouraging them to overlook, ignore and minimize the consumer protection part of their missions.

In what has been called "a race to the bottom," regulators competed to gain a greater number of regulated banks under their charter by enforcing less stringent regulations, since by doing so they collected greater regulatory fee assessments from their regulated banks. There is a massive conflict of interest in a system where agencies worry that they will lose revenue because regulated institutions can choose to pay another agency to regulate them instead. Even apart from the race to the bottom, the balkanization of regulators resulted in uneven and inconsistent regulation and a lack of transparency.

Taken together, these flaws severely compromised the regulatory process and made it far less likely that agency leaders would either act to protect consumers or succeed in doing so.

Right now, four federal bank regulatory agencies are required both to ensure the solvency of the financial institutions they regulate and to protect consumers from lending abuses.[2] Several other agencies share authority over other consumer laws.

On July 21, this responsibility is streamlined, and the CFPB becomes the primary rule maker for 18 enumerated consumer laws that govern banks, payday lenders, credit bureaus, debt collectors and others. The CFPB will also gain authority on that date to supervise compliance with those laws for all banks and credit unions over $10 billion dollars; supervision of smaller institutions remains with their prudential regulators under the law. When a CFPB director is approved, it will also gain full supervisory authority – beyond enforcement power – over certain non-bank lenders, including non-bank mortgage lenders, payday lenders and private student lenders. When a director is approved, the CFPB gains authority over unfair, deceptive and abusive practices by banks or non-banks it regulates. When it completes a "larger participants" rule, it can gain additional supervisory authority over other large non-bank firms, such as the biggest credit bureaus, debt collectors and auto finance companies, among others.

The next section describes 10 reasons, 5 in detail, that we need the CFPB. It starts out with an explanation of each of these predatory lending problems bank regulators manifestly failed to address, explains it through a few consumer stories, and then provides recommendations for early CFPB action to solve the problem. The sections are as follows:

Reason 1: Unchecked predatory mortgages
Reason 2: Unfair credit card practices
Reason 3: Overpriced overdraft fees
Reason 4: The growth of triple-digit payday lending
Reason 5: Lack of consumer legal rights
Reasons 6-10: Private student loan rip-offs, credit bureau mistakes, debt collector problems, unregulated prepaid debit cards, and auto finance scams.

A Note On "Some Actions The CFPB Can Take:"
In each section, we list "Some Actions the CFPB Can Take." The actions we suggest in each section are generalized and serve as examples of some of the reforms we believe are necessary. On an ongoing basis, AFR and its member organizations may provide more detailed recommendations or additional priorities as problems are identified or the CFPB issues requests for comment.

Finally, before the report concludes, we also have a brief section explaining the powers and structure of the CFPB and why its oversight mechanisms are not merely adequate, but unprecedented.

Reason #1: The Failure To Stop Predatory Mortgage Lending

For many years, mortgages helped most families to build assets and financial stability. But when the aggressive marketing of reckless loans became routine in the subprime market, too many mortgages became destructive, both for vulnerable communities and the entire economy. Could the regulators have taken steps to solve the problem? Yes. Could Congress have mitigated the continuing problem? Yes. Is the mortgage crisis over? No. Is there work for the CFPB? Yes.

Since housing prices began their precipitous decline in early 2007, 7.5 million homes have entered the foreclosure process.[3] And the crisis shows no signs of abating, as 8.1 percent of all loans—representing about 4.2 million borrowers—are currently 90 days or more delinquent or in some stage of the foreclosure process.[4] The foreclosure crisis has had catastrophic consequences for families and communities, especially communities of color. A 2010 study by the Center for Responsible Lending estimated that among borrowers who received their loans between 2005 and 2008, nearly 8 percent of both African Americans and Latinos had lost their homes to foreclosures, compared to 4.5 percent of whites.[5] But the negative effects of foreclosures are not confined to the families who lose their homes. Forty million of their neighbors – those who are paying their mortgages on time – will see their property values decline as a result, by over $350 billion.

Further, the U.S. Financial Crisis Inquiry Commission directly linked predatory mortgage practices to the collapse of the economy:

> As the mortgage and real estate markets churned out riskier and riskier loans and securities, many financial institutions loaded up on them. By the end of 2007, Lehman had amassed $111 billion in commercial and residential real estate holdings and securities, which was almost twice what it held just two years before, and more than four times its total equity. And again, the risk wasn't being taken on just by the big financial firms, but by families, too. Nearly one in 10 mortgage borrowers in 2005 and 2006 took out "option ARM" loans, which meant they could choose to make payments so low that their mortgage balances rose every month.[6]

CONSUMER STORIES BEHIND REASON #1

Through a local affordable housing program in North Carolina, a homeowner had a 7% fixed-rate, 30-year mortgage. A mortgage broker told the homeowner he could get a new loan at a rate "a lot" lower. Broker originated a 2/28 ARM with a starting rate of 6.75%, but told borrower that it was a fixed-rate, 30-year mortgage. At the 24th month, the loan went up to 9.75%, following the loan's formula of LIBOR plus 5.125% and a first-change cap maximum of 9.75%. Now the borrower cannot afford the loan and faces foreclosure.

A North Carolina homeowner refinanced out of a fixed-rate mortgage because she wanted a lower monthly payment. The homeowner expressly requested lower monthly payments that included escrow for insurance and taxes. Mortgage broker assured her that he would abide by her wishes. Borrower ended up in a $72,000 2/28 ARM loan with first two years monthly payments of $560.00 at a rate of 8.625%. This initial payment was lower than her fixed-rate mortgage, but it did not include escrowed insurance and taxes. After two years, loan payments increased every six months at a maximum one percent with a cap of 14.625%. At the time of foreclosure, the interest rate had climbed to 13.375% with a monthly payment of $808.75.

Lack of Action by Federal Regulators or Congress and Preemption of State and Local Efforts Began In 1994

The Federal Reserve Board was granted sweeping anti-predatory mortgage regulatory authority by the 1994 Home Ownership and Equity Protection Act (HOEPA). Final regulations were issued on 30 July 2008 only after the world economy had collapsed due to the collapse of the U.S. housing market triggered by predatory lending. Throughout this period, while the Federal Reserve Board failed to act, the Office of the Comptroller of the Currency did act – but to *prevent* states and localities from taking up the slack and protecting their residents. The OCC engaged in an escalating pattern of preemption of state and local laws designed to protect consumers from a variety of unfair bank practices and to quell the growing predatory mortgage crisis, culminating in its 2004 rules preempting both state laws and state enforcement of laws over national banks and their subsidiaries.

The Mortgage Crisis That Led To the Financial Crisis Continues as a Mortgage Servicing and Foreclosure Crisis

More recently, of course, we have seen the back-end of this problem, as the mortgage servicing and foreclosure problem has become a second national mortgage crisis.

The existing federal regulators of financial institutions have allowed mortgage servicers to flout the laws under which they operate, as well as their mortgage contracts with homeowners, government agencies, and investors. For example, during the years leading up to the current foreclosure crisis, the OCC aggressively tried to block state enforcement actions that could have dealt effectively with many of the industry practices that are wreaking havoc upon the American public today. Recent non-public consent orders continue that pattern of attempting to block effective action at the state level, while permitting abusive practices by federally-regulated institutions to continue unchecked.

CONSUMER STORIES BEHIND REASON #1 (continued)
Mr. and Mrs. B., an elderly couple (in their late 60s) in California who each suffer from numerous disabilities, including (Mr. B.) severe depression and emphysema. They care for several of their teenage grandchildren who live with them. The couple lives on a fixed and limited income. In 2007, when the couple faced financial problems due largely to medical bills, they looked into refinancing their home. They spoke to a broker who, in turn, connected them with a hard money lender in another county, who placed them into high-cost loans that stripped out home equity in the form of high fees. Specifically, the lender put them into two loans (they had asked for only one loan). The first was for $172,000, at11% interest with a term of 20 years and a balloon payment at the end; the second was for $10,100 at an interest rate of 12% over a term of 20 years (with interest only payments) and a balloon payment. Nearly $30,000 of the $172,000 was paid out in fees to the lender, broker, et cetera. This includes a payment of over $17,000 listed as a "Reserve Account" on the Final Settlement Statement, which went to a third party and was not requested by or accessible to the elderly homeowners. Another mysterious fee was for over $6000 paid to an attorney who had not worked on the transaction at all. Monthly payments were at an amount that the couple could not keep up with. When they fell behind a year later, the lender moved to foreclose.

Fortunately, Mr. and Mrs. B. found a local legal aid office that obtained additional assistance. Claims in their complaint included a request for injunctive relief, rescission, violations of the Truth in Lending Act, and damages for predatory home mortgage lending practices. The case recently settled with the homeowners keeping their home free and clear of any mortgage and receiving a significant cash settlement, plus attorneys fees and costs paid to counsel.

Millions of homeowners have been victimized by the fraudulent and abusive practices of mortgage servicers whose staff are trained for collection activities rather than loss mitigation, whose infrastructure cannot handle the volume and intensity of demand, and whose business records are a mess. Servicers falsify court documents because they have not kept the accurate records of ownership, payments and escrow accounts that would enable them to proceed legally. The robo-signing allegations are the most obvious evidence that servicers are routinely failing to comply with the requirements of the laws and contractual provisions to which they are subject, and the tip of the iceberg of servicer noncompliance.

The failures of loan modification efforts and the robo-signing scandal have made clear what many have known for years: our system for servicing mortgage loans is plagued with problems. Misaligned incentives and inadequate rules and supervision for mortgage servicers have allowed servicers to impose unwarranted fees and forced-placed insurance, mismanage payment records, and favor foreclosure over home preservation.

While there are now some important new reforms in the area of mortgage origination, there is almost a complete absence of federal consumer protection governing mortgage servicing. The inadequacies of the HAMP program and of loan modification efforts by Freddie Mac, Fannie Mae, and the banking agencies demonstrate the need for strong and clear rules that will govern all servicers. Although the states have an important role to play in regulating mortgage servicing, federal law should provide a baseline to ensure that unfair, deceptive or abusive servicing practices are not tolerated anywhere.

Some Actions The CFPB Can Take:
Reforming mortgage servicing practices should be an important priority for the CFPB.

1) The CFPB should ensure that the companies who collect your mortgage payments keep accurate track of what you owe, do not charge illegal fees, do not enroll you in overpriced insurance, cannot foreclose without clear legal title, and do not make mistakes that push you into foreclosure.
2) Most importantly, the CFPB should ensure that mortgage services work with you when you get into trouble to help avoid foreclosures whenever possible.

Reason #2: The Growth of Unchecked, Unfair Credit Card Practices:

In a period when complaints about credit card abuses to consumer advocates and regulators were exploding, between 1995 and 2007 the Office of the Comptroller of Currency (OCC) issued only one public enforcement action against a Top Ten credit card bank (and then only after the San Francisco District Attorney had brought an enforcement action). In that period, the OCC did not issue a public enforcement order against any of the eight largest national banks for violating consumer lending laws.[7]

Although other regulators did belatedly propose Truth In Lending rule changes, the OCC's failure to act on rising credit card complaints at the largest national banks triggered a massive public outcry that caused Congress to investigate, resulting in passage of the 2009 Credit Card Accountability, Responsibility and Disclosure Act (CARD Act). When the Federal Reserve proposed those rules prior to passage of the CARD Act, the OCC went so far as to oppose most of them.[8].

Among the practices addressed by that landmark law:

- Applying penalty interest rate hikes to 30% APR or more retroactively on existing credit card debt, which led to sharp increases in monthly payments and forced consumers on tight budgets into credit counseling and bankruptcy;
- Charging exorbitant "penalty" fees for paying late or exceeding the credit limit.
- Using tricks or traps to illegitimately bring in fee income, such as requiring that payments be received in the late morning of the due date or approving purchases above the credit limit;
- Making aggressive credit card marketing offers directed at college students and other young people;
- Pitching fee-harvesters cards which offered low credit limits and came with so many fees that the consumer couldn't charge purchases to the card because it was already maxed out when the consumer first got it.
- Using the practice of "universal default" to raise interest rates when customers' credit scores declined or they were late only to other firms, but not the bank.

People Behind the Reasons:
From an email just received by a consumer group: "On a Thursday I went on my bank's website to pay my credit card bill, which was due on Sunday. When I entered the bill, it showed that it would not be received on Monday (because, I later found out, the people who process electronic transactions do not work over the weekend). I figured that was fine given the CARD Act rule that you get an extra day if your due date falls on a day when mail is not received. The next month's statement showed a late fee and I called to complain. The customer service guy explained that they go and pick up their mail on Sunday and therefore can charge the late fee. He wouldn't even reverse it at first, but did eventually, though I had to go to a supervisor to get the interest charge reversed."

Following passage of the law, banks moved quickly to evade its terms. However, a recent consumer-industry-academic seminar held by the CFPB found that the law is now generally working well.[9] Still, there are loopholes and problems that remain.

Some issuers may be attempting to avoid disclosure of penalty rates, perhaps intending to justify this by re-characterizing them to fall under other rate increase classifications. Additionally, examinations provide an excellent opportunity to track compliance with provisions of the new rules that protect consumers against unreasonable penalty fees and other abuses. Ongoing supervision and enforcement are critical.

Also, while the CARD Act was a major step, among the problems that the CARD Act did not address were deferred interest programs, which are credit cards - often offered for big ticket purchases or medical bills - that promote "no interest" until a certain date, but then retroactively assess interest starting from the purchase date if the consumer does not pay off the entire balance by the specified date. Another abuse that continues is the industry's practice of requiring consumers to waive their right to pursue legal violations in the court system; instead, contracts force them to participate in arbitration proceedings if there is a dispute, often before an arbitrator with a conflict of interest. Consequently, there has been little recent successful consumer litigation to reform credit card practices.

Special CFPB Jobs

Preventing Discrimination:

The Congress established within the CFPB an **Office of Fair Lending and Equal Opportunity**, "with such powers and duties as the Director may delegate to the Office, including—(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities…" One study found that borrowers of color were more than 30 percent more likely to receive a higher-rate loan than White borrowers even after accounting for differences in creditworthiness. Another study found that *high-income* African-Americans in predominantly Black neighborhoods were three times more likely to receive a subprime purchase loan than *low-income* White borrowers.

Protecting Older Americans:

Unfortunately older Americans are often the targets of investment scams such as Ponzi schemes and illegal offshore investments. The CFPB has been charged with helping to educate older Americans to avoid unfair and deceptive practices. **The CFPB is creating an Office of Financial Protection for Older Americans** to ensure we serve this large community effectively."

__Some Actions The CFPB Can Take:__

The Credit CARD Act of 2009 enacted important reforms in the credit card area. Ensuring full compliance with both the letter and spirit of that Act should be a top priority for the Bureau. Frustration with credit card abuses is widespread among the many millions of consumers who use credit cards. Unfortunately, this industry has shown over and over again that it is on the lookout for the next ingenious trick to increase costs for consumers.

1) The CFPB should move forward on the 1-page credit card contract: The new one-page credit card contract is an important part of this agenda. To be successful in the long run, this contract should be coupled with rules or supervision to ensure that cards are not structured in ways that undercut understanding of that agreement and the reforms of the Credit CARD Act.

2) The CFPB should protect consumers from unfair rate hikes or illegal fees: Earlier this month, the CFPB announced its large bank supervision and enforcement plan to be implemented on the July 21 transfer date. "The CFPB's bank supervision program will oversee the 111 depository institutions that have total assets over $10 billion. […] These institutions collectively hold more than 80 percent of the banking industry's assets." The CFPB should use its authority to supervise and examine credit card company practices to ensure that they are complying with the credit card reform law and are not charging illegal fees or rate increases.[10]

3) The CFPB should aggressively investigate consumer complaints: The CFPB has also announced that its Complaint Center (also being rolled out on July 21) will first place a focus on credit card complaints. The volume and type of these complaints will help identify areas of concern for supervisory and enforcement purposes.

4) The bureau should ban mandatory arbitration: Consumers were stopped from challenging many credit card practices of questionable legality due to arbitration clauses in their credit card contracts that stripped them of their access to the justice system. (See Reason #5 below for more details).

REASON # 3: The Growth of Unfair Overdraft Loans

Special CFPB Jobs

Protecting Military Families:

Recently, JP Morgan Chase Bank apologized to Congress for illegally foreclosing on active duty servicemembers. The leading reason servicemebers lose security clearances and therefore diminish unit preparedness? Bad credit, often due to predatory lending.

The CFPB legislation required it to establish an **Office of Servicemember Affairs** which has been up and running since January.

"The Consumer Financial Protection Bureau (CFPB) and the Judge Advocate Generals of the United States Army, Marine Corps, Navy, Air Force, and Coast Guard today announced an agreement on a Joint Statement of Principles to provide stronger protections for servicemembers and their families in connection with consumer financial products and services.[…] "I have worked for years trying to protect military families from predatory practices and to help raise awareness of the unique financial challenges they face – and I know the Judge Advocate Generals have been on the front lines in each of those fights," said **Holly Petraeus, CFPB's Assistant Director for the Office of Servicemember Affairs.**" *News Release, July 6, 2011*

Bank overdraft fees cost Americans billions annually in unfair fees. More than half of Americans are now living paycheck-to-paycheck, making a majority of U.S. families vulnerable to bank overdraft practices, including large fees for small debit card transactions and manipulation of account holders' transactions.

Pressure from the public, lawsuits and regulators have forced minimal changes, but many banks are still automatically approving debit card transactions at the cash register and charging a fee around $35 in the event of insufficient funds. Among the four largest banks in the country, Bank of America no longer engages in this practice (although it does permit one-time opt-in overdrafts at ATMs for a $35 fee), and Citibank never has, but Wells Fargo and Chase continue it. Most banks also automatically put consumers in the most expensive form of overdraft protection for checks and electronic payments, rather than the most affordable one for which they qualify.

Years ago, when you went to an ATM or attempted to use your debit card at a store, the default switch was to deny the transaction at no cost if it would overdraft your account. When you bounced a check, banks would return it.

Seeking greater fee income, banks and their consultants came up with the idea of standard "overdraft protection." They discouraged consumers from applying for overdraft lines-of-credit or transfer-from-savings programs to overdrafts. Instead, they aggressively promoted "courtesy overdraft" as a "standard feature" of regular checking accounts. This default feature allowed nearly every accountholder to overdraw their checking account, at a cost of $30-$35 for the privilege, even for a 50 cent overdraft. The banks also made check re-ordering an industry standard – they began to clear checks and debits in order from largest to smallest instead of chronologically, as they arrived at the bank. This maximized overdraft revenue. The banks also changed the default switch on debit and ATM cards to allow overdrafts. The combination of these practices, along with the switch from cash to debit card transactions encouraged by rewards programs, made overdraft revenue a major profit center.

Would you knowingly agree to pay a $35 fee each time you used your debit card at point of sale, simply to allow you to purchase a $3 loaf of bread with only $2 in your account? Even the banks didn't think so, that's why they made "standard overdraft protection" a feature of your checking account that you didn't need to choose.

The practices would not have been successful if not for regulator indifference and even encouragement.

Until mid-2010, when some changes were made, regulators had encouraged the practice and even refused to require banks to tell consumers the APR required by the Truth in Lending Act (TILA).

Instead of treating short term bank loans in the same manner as all other loans covered under TILA, as consumer organizations recommended, the FRB issued and updated regulations under the Truth in Savings Act, pretending that finance charges for these loans were bank "service fees." In several dockets, national consumer organizations provided well-researched comments, urging the Federal Reserve to place consumer protection ahead of short-term bank profits, to no avail. As a result, consumers unknowingly borrow billions of dollars at astronomical interest rates. A $100 overdraft loan with a $35 fee that is repaid in two weeks costs 910% APR. The use of debit cards for small purchases often resulted in consumers paying more in overdraft fees than the amount of credit extended.

In 2010, after years of consumer pressure, the Fed finally issued regulations limiting "standard overdraft protection" on debit and ATM withdrawals, a so-called feature on checking accounts, only to consumers who first opted-in. However, the regulation failed to adequately restrict the number of allowable overdrafts in a month or a year for consumers who did opt-in, nor did it require banks to stop reordering transactions from highest-to-lowest to maximize fee income.

Late last year, the FDIC issued a consumer-friendly guidance for its regulated banks; conversely, the bank-friendly OCC in July proposed a bank-friendly interpretation for its regulated banks.[11]

In 2010, a U.S. judge ordered Wells Fargo to pay $203 million due to its overdraft and check re-ordering practices. In his opinion, Judge William Alsup said:

> ...the essence of this case is that Wells Fargo has devised a bookkeeping device [check re-ordering] to turn what would ordinarily be one overdraft into as many as ten overdrafts, thereby dramatically multiplying the number of fees the bank can extract from a single mistake. The draconian impact of this bookkeeping device has then been exacerbated through closely allied practices specifically "engineered" — as the bank put it — to multiply the adverse impact of this bookkeeping device. These neat tricks generated colossal sums per year in additional overdraft fees, just as the internal bank memos had predicted. The bank went to considerable effort to hide these manipulations while constructing a facade of phony disclosure. This order holds that these manipulations were and continue to be unfair and deceptive in violation of Section 17200 of the California Business and Professions Code.[12]

People Behind The Reasons

In July of 2010 my client, whose sole source of income is SSI and who has chronic Schizoaffective Disorder, received multiple (two or three) unsolicited (possibly automated) phone calls from M&T Bank during which he was offered to have M&T cover any overdrafts on his account. He states he had no idea what an "overdraft" was, and so he chose not to enroll during the first and possibly second call. He states that the final time that M&T called he decided simply to agree to enroll, and states that he believed at the time that the bank would allow him to borrow some money and to pay back money in increments. Shortly thereafter, he received a letter from M&T confirming his decision "to allow M&T Bank to authorize and pay overdrafts" on his ATM and debit transactions. It appears that afterwards, though his account balance was $4.93 at the time, he made a series of withdrawals on August 5th and August 6th using his ATM card, overdrawing his account by a total of $1,066.07, including $91.00 in insufficient funds fees. After he received postcards from M&T alerting him of the overdrawn amount, he called M&T and canceled his enrollment in the overdraft protection plan, on or around August 15, 2010.

According to Reuters:

> "Bank of America Corp. has agreed to pay $410 million to settle class-action lawsuits accusing it of charging customers excessive overdraft fees. As noted earlier, Bank of America has stopped charging overdraft fees on debit cards. But it is only one of more than two dozen U.S., Canadian, and European lenders named as defendants in the litigation."[13]

Some Actions The CFPB Can Take:

1) The CFPB should move immediately to stop banks from tricking people into incurring overdraft fees. While Federal Reserve rules now require institutions to get customers' permission before enrolling them in an overdraft system for debit card and ATM transactions, the rules do not address the excessive cost or frequency of the fees institutions can charge once they are in, nor do they prohibit banks from steering customers into far more expensive overdraft protection programs than others for which they qualify.
2) The CFPB should stop check re-ordering and other unfair practices: Prompt action by the CFPB is needed to stop the overdraft abuses that still abound. For example, the new rules don't stop institutions from manipulating posting order to increase fees. .

Reason #4: The Rise of Triple-Digit Payday Lending And The New Threat of Bank-Issued Payday Loans

From highly-visible signs and convenient neighborhood locations or websites, payday loans beckon borrowers with promises of quick cash and no credit checks. But instead of a small amount owed for a couple of weeks, borrowers become trapped in thousands of dollars of debt from fees and interest that can last a year or even longer. Most payday borrowers have nine repeat loans per year and pay 400 percent interest.

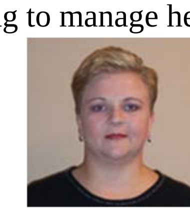
Today, there are more payday loan stores than fast food chain outlets, according to academic research. And the problem has been exacerbated by the rapid growth of virtually-unregulated online payday lending. Several of the largest banks in the country have developed their own payday loan-like products, as well. Both the online payday lenders and the banks rely on easy access to your bank accounts.

Growth Of Bank Payday Loans (Direct Deposit Advance): Astonishingly, loan sharking is not limited to traditional payday lenders. Mainstream banks are increasingly entering the 400% payday loan business to make up for lost overdraft fee income. Banks call this product a "direct deposit advance," "ready advance" or "checking account advance," but it is a payday loan plain and simple. Typically, the banks offer loans of up to $500 at a fee of $10 per $100 borrowed. The bank uses funds from incoming direct deposits to repay the loan, typically just several days later. If those deposits are not sufficient within 35 days, the bank repays itself by withdrawing the funds from the borrower's bank account, even when no deposit has been made. The bank can withdraw the funds even if the withdrawal overdraws the consumer's account.

Because the entire loan must be repaid in short order, borrowers are likely to have difficulty both retiring the loan and meeting their other obligations. As a result, these borrowers—like the typical customers of payday loan stores—will likely take out a series of back-to-back loans, staying indebted for a significant portion of the year.

The Human Cost of Payday Lending: What does it cost us? Each year, working people give payday lenders $5 billion in fees. One Advance America borrower was trapped for over five years and paid

$5,000 in fees. A 69-year-old man in Raleigh, North Carolina went to a national chain payday shop every payday for over five years. His total interest paid was over $5,000 — for one loan with a principal that started at $200 and eventually increased to $300. Here are some more stories: "At the time it seems like the way out, but this is not a quick fix. It's like a ton of bricks." Sandra Harris, (left) once a Head Start student, now a well-known and respected member of her community, worked diligently to keep up with her bills. In a tough time, she turned to payday lending. After several rollovers, Sandra's first loan was due in full. She couldn't pay it off, so she took a loan from a second lender. Frantically trying to manage her bills, Sandra eventually found herself with six simultaneous payday loans. She was paying over $600 per month in fees, none of which was applied to her debt. Sandra was evicted and her car was repossessed. Read more of Sandra's story.



"As soon as you get your first loan, you are trapped unless you know you will have the 300 extra dollars in the next two weeks." Lisa Engelkins, (right) a single mother making less than $8 an hour, paid $1254 in fees to renew a payday loan 35 times. Lisa thought she was getting "new money" each time, when in fact she was simply borrowing back the $300 she just repaid. She paid renewal fees every two weeks for 17 months to float a $300 loan, without paying down the loan. Read more of Lisa's story.

Payday Lending Affects The Military: The Military Lending Act took effect in October of 2007, capping payday loans, car title loans and refund anticipation loans at 36 percent APR and prohibiting the use of checks, debits or car titles to secure loans defined by DOD as "covered credit." It has reportedly been significantly, though not completely, successful in keeping military families free of predatory debt. But in addition to being susceptible to practices not covered by the Act, military families are also now vulnerable to payday loans from banks, several of which have recently entered the predatory market with high-cost cash advances secured by the borrower's direct deposit paycheck.

Evasion Of State Payday Loan Laws Through Bank Prepaid Cards: Banks are increasingly partnering with payday lenders and check cashers to offer payday loans on prepaid cards. Because the card is issued by a bank, the loan does not need to comply with state laws limiting payday loans.

Some Actions The CFPB Can Take:

Although the CFPB does not have authority to extend to all consumers the 36% rate cap of the Military Lending Act, the agency does have the authority to address other harmful aspects of storefront, internet and bank payday loans.

The Electronic Funds Transfer Act (EFTA) of 1974 prohibits lenders from requiring that a consumer give the lender a right to withdraw the payment electronically from the consumer's bank account – turning control over their bank account over to the lender and putting the loan payment ahead of food and rent. The EFTA also gives consumers the right to stop payment of preauthorized electronic transfers. Unfortunately, "preauthorized electronic payment" is defined as a payment that is recurring. Thus, those who structure their loans as single payment loans claim that they can escape these protections, even though payday loans rollover and payment recurs over and over again. Payday lenders, especially internet lenders, have been adept at taking advantage of these loopholes. They can evade laws prohibiting garnishment of benefits and wages needed for necessities and can gain almost unfettered access to the consumer's bank account, even if the loan or fees are illegal.

1) The CFPB should collect information about emerging payday practices: The research and examination processes offer an excellent opportunity to develop information about the use, impact, and incidence of payday loan programs by traditional, internet, bank and prepaid card payday lenders
2) The CFPB should close loopholes. The CFPB should determine whether internet, bank and prepaid card payday lenders are requiring that consumers make recurring electronic payments in violation of the Electronic Fund Transfer Act and should extend that 1974 law to ensure that its protections reach all modern payment methods, including single electronic payments and checks converted to electronic payments.

Reason #5: Consumers Have Lost Their Rights To Protect Themselves In Court

In the financial marketplace, as well as in other parts of the market, consumers have little ability to defend themselves in court. In 2005, a so-called "Class Action Fairness Act" made it harder for consumers to band together to challenge financial and other rip-offs. Worse, over the last fifteen years or so, banks pioneered insertion of "mandatory arbitration" clauses in all bank-related contracts and agreements to strip consumers of their right to hold wrongdoers accountable in the justice system. A 2011 Supreme Court decision now even allows companies to hide class action bans in the small print of these boilerplate "take-it-or-leave it" contracts, including bank account, payday loan, credit card and other financial contracts.[14]

Some Actions The CFPB Can Take:
The Wall Street Reform and Consumer Protection Act gives the CFPB the authority to regulate or ban pre-dispute mandatory arbitration after first conducting a study.

1) The CFPB should move expeditiously to complete the study on mandatory arbitration required by the Wall Street Reform and Consumer Protection Act. At the completion of that study, it will gain the authority to conduct a rulemaking to ban or regulate pre-dispute mandatory arbitration in consumer financial contracts. We are confident that a substantive study will support a flat ban on binding arbitration requirements. Procedural protections cannot reform a fundamentally biased and lawless system.

2) The CFPB should examine other unfair limits on consumer rights. The CFPB should examine whether class action bans, venue requirements, and choice of law requirements imposed in consumer contracts are unfair, deceptive or abusive. The CFPB should also examine consumer laws that unwisely limit consumer private rights of action. For example, amendments to the Truth In Savings Act that eliminated its private right of action are likely one of the reasons banks routinely ignore the Act's requirement to disclose all their fees to prospective customers, as both the U.S. GAO and U.S. PIRG have documented.[15]

People Behind the Reasons: The Human Cost of Mandatory Arbitration: Beth Plowman was a victim of identity theft but that didn't stop MBNA [now part of Bank of America] and a debt buyer, Asset Acceptance Inc., from taking her to arbitration to collect more than $26,000 in principal and interest rung up on her credit card account by thieves. And, it didn't stop NAF [The National Arbitration Forum] from finding against her.[1] In 2009, Minnesota Attorney General Lori Swanson settled a lawsuit with the NAF after "charging that the dispute-resolution company engaged in "deceptive practices" in hiding its ties to the debt-collection and banking industry."[1]

Reasons 6-10: Other Unsolved Consumer Problems For The CFPB To Solve

The five reasons above concern only some of the unsolved problems that the CFPB will have the authority to address. Briefly, here are five additional reasons we need the CFPB now:

Reason #6: Private Student Loan Problems

Student lending is big business. The CFPB has been given full supervisory and examination authority over private education loans and also a statutory requirement to designate a "Private Education Loan Ombudsman." Federal student loans have a variety of protections, but private student loans can be much more dangerous. As Pauline Abernathy of The Institute for College Access and Success explained to Congress last month:

> Borrowers with *private* student loans, in contrast, can face much higher costs and have far fewer options when their payments become unmanageable. They are, ultimately, at the mercy of their lenders because private loans lack the important deferment options, affordable repayment plans, loan forgiveness programs and cancellation rights in cases of death, severe disability and school closure that federal student loans provide. Experts agree that private student loans should only be used as a last resort. Even borrowers in so much financial distress that they meet the requirements for declaring bankruptcy find it is nearly impossible to have student loan debt discharged, whether for federal or private loans. To put it plainly, it is currently easier to get relief from credit card and gambling debt than from student loan debt.[16]

This market has had little supervision at the federal (or even the state) level, and little information about the market is publicly available. For instance, we do not know why most students with private loans have not exhausted their federal loans, the terms of the private loans, what schools the students attend, or whether students default on the loans in high numbers.

Some Actions The CFPB Can Take:

1) The CFPB should begin to collect more information about this market.
2) The CFPB should prohibit lenders from pushing students to take on more expensive and riskier private loans without first exhausting their federal aid.
3) The CFPB should consider enforcement or supervision action now (and rules eventually may be needed) to address schools that are making loans despite knowing (and disclosing to their investors) that a majority of the students will be pushed into default.
4) Abernathy's testimony, above, includes a number of additional ideas.

Reason 7: Credit Bureaus: The Gatekeepers to Financial Success

Creditors, insurers, banks, landlords and a growing number of employers base their decisions in part or even entirely on credit reports and/or credit scores. Three national credit bureaus, Equifax, Experian and Trans Union, have become the gatekeepers to financial success in the United States. Credit scores issued by the industry leader, Fair Isaacs/FICO, are derived from the credit reports held by the Big Three credit bureaus, which also issue their own product, VantageScore. An array of "specialty" credit bureaus or consumer reporting agencies (CRAs), many owned by Fortune 500 firms, issues reports for employment, insurance claims, residential rentals, check writing, and medical records purposes. New types of databases, such as credit decision matrices derived from consumer posts to Facebook and other social network sites, are also being marketed to business subscribers. The CFPB gains authority over Fair Credit Reporting Act (FCRA) rulemaking as of July 21, 2011.

Under the Dodd-Frank Act, CFPB has the authority to supervise and examine large banks as well as companies of all sizes in the mortgage, payday lending, and private student lending markets. In addition, for all other non-bank financial markets—like credit reporting, debt collection, consumer installment loans and money transmitting and remittances—the CFPB gains authority to supervise "larger participants," after it defines them by rule. [17] It is important that the CFPB determine that all the major players in the credit reporting marketplace are larger participants, so that they will be subject to this greater scrutiny.[18] The Federal Trade Commission has never had this ability to look inside the "black boxes" of the credit bureaus it has regulated since 1970.

Some Actions The CFPB Can Take:

1) The CFPB should define the larger credit bureaus, including the Big Three, as "larger participants." It should also define the larger specialty CRAs, resellers, and credit scoring companies as "larger participants" so that it will gain the ability to subject them to supervision and examination authority.
2) The CFPB should force creditors and credit bureaus to clean up a system that produces reports prone to mistakes such as incorrect and outdated information, fraudulent accounts due to identity theft, and mixed up files of different consumers. The CFPB should take enforcement action against the credit bureaus' blatant noncompliance with the Fair Credit Reporting Act's (FCRA) dispute and investigation requirements.
3) The CFPB should address racial disparities in credit reports: These well-documented problems impact not only credit pricing and availability but also employment and homeowners and auto insurance.
4) The CFPB should make credit scoring fairer and less opaque to consumers and policymakers.

<u>Reason 8:</u> The Unfair Practices of Debt Collectors and Debt Settlement Companies

Nearly all households who are behind on their bills paid their bills until they faced a financial catastrophe: unemployment, illness, disability, divorce, or succumbed to some of the daily exhortations in their mailbox to borrow and on TV to buy on credit. During recessions even more consumers fall behind because they are laid off by an employer. Recognizing this, federal and many states' laws require that financially distressed consumers not be abused, deceived, lose their privacy, or be treated unfairly.

Debt collectors use various forms of illegal intimidation, including talking with friends and employers about a consumer's debt without permission from the debtor; making harassing or abusive telephone calls; threatening to take actions that are illegal or not intended; and suing on debts that were paid or not owed.

Over the past decade or more, debt collectors have consolidated and created a more complex industry that poses even greater risks to consumers. When consumer debts are not paid, even in circumstances where they may not be owed (either due to a statute of limitations or because the consumer was mistakenly identified or was a victim of identity theft), the debts are sold to a series of debt buyers, which are firms that buy the debt from other debt collectors as an investment and continue aggressive collection efforts, often seeking to "re-age" debts to make them collectible again.[19]

Debt collectors and debt buyers are flooding the courts with collection actions based on nothing more than spreadsheets, mirroring the robo-signing scandals of the mortgage industry. If a consumer disputes a debt, the debt collector just passes it off to the next debt buyer, which begins the cycle again.

In response to the recession, a once-cottage industry of debt settlement and debt negotiation firms has grown dramatically. As Chairman Jon Leibowitz of the Federal Trade Commission said last summer, "Too many of these companies pick the last dollar out of consumers' pockets – and far from leaving them better off, push them deeper into debt, even bankruptcy."

Some Actions The CFPB Can Take:

1) The CFPB should enforce the laws against debt collectors who make illegal threats or harass people for debts they do not owe.
2) The CFPB should propose rules requiring that debt collectors and debt buyers hold all relevant information identifying the owner of, amount of and payments on the debt, and all contacts with the consumer, before they can collect a debt.
3) The CFPB should bar collection of "zombie debt" that never dies but is sold and resold to the next debt buyer even if the consumer disputes it or it is too old to be legally collectible;
4) The CFPB should extend and strengthen the FTC's ban on advance fees collected by debt settlement firms to firms that do not use the telephone and thus are not covered by the Telemarketing Sales Rule.

Reason # 9: The Growing Use of Under-Protected Prepaid Debit Cards

The prepaid card industry is in an important growth stage. There has been relatively little regulation of the industry thus far, and having enjoyed relative freedom from regulation as prepaid cards developed, it is now time to ensure that prepaid card accounts enjoy the same protections as bank accounts do and to stop junk fees from spreading in this market. Prepaid cards – including general purpose cards, payroll cards, gift cards and other variants -- are becoming an important alternative for those shut out of bank accounts, a situation which may become more common as overdraft and interchange fees become less of a profit center. As this is a relatively new industry, it is essential to stop unfair fees and other abusive practices before they spread and solidify.

The Federal Reserve was on the verge of voluntarily proposing how to extend the Electronic Funds Transfer Act (EFTA) to prepaid cards before the agency gained other unrelated new mandatory rulemaking responsibilities under the Dodd-Frank Act. There is actually a lot of consensus between industry and consumer groups. There is wide agreement that the EFTA should be extended to prepaid cards, with limited areas of disagreement. Both consumers and the industry would also benefit by weeding out bad fee practices that will give this industry a bad name just as it is trying to gain consumer acceptance. Consequently, we believe that it would be a relatively easy matter, and is of some urgency, to adopt rules for prepaid cards. As the industry grows, credit may be offered on prepaid cards and the CFPB will also need to ensure that credit offered on prepaid cards complies with the Credit CARD Act, including its fee harvester provision limiting fees to 25% of the credit line, and should ensure that prepaid cards are not used as vehicles for predatory lending or evasion of state law protections.

Some Actions The CFPB Can Take:

1) The CFPB should give consumers more prepaid card rights: The CFPB should extend the Electronic Funds Transfer Act to cover prepaid cards and ensure that consumers can receive free balance and transaction information about their accounts in order to monitor unauthorized charges, unwanted fees and errors.
2) The CFPB should require a "Schumer" box for prepaid card disclosures: The CFPB should develop clear disclosures for prepaid cards (and bank accounts) with a "Schumer box" that consumers can see before purchasing a card.

3) The CFPB should monitor prepaid cards for unfair, deceptive or abusive fees: CFPB should explore methods to encourage fee simplification and transparency.[20]

<u>Reason #10:</u> Auto Finance Rip-offs

An auto loan is the biggest or second biggest loan that many consumers will take out. The auto lending market is plagued by many of the same problems as the mortgage market, including incentives for loan packing, kickbacks for putting consumers in more expensive loans, fair lending abuses, bait and switch tactics, deceptively low advertised rates, loan flipping, and consumers locked into loans bigger than the cars are worth. Auto lending problems can ruin credit and lead to lost jobs. According to auto industry analysts, over six million would-be new car buyers are out of the market due to excessive negative equity. In turn, this hampers efforts to restore jobs to the automotive sector of the economy.

The CFPB will have jurisdiction over most auto lenders and some car dealers, with the FTC handling the remainder. The FTC was granted expanded authority over auto dealers in the Dodd-Frank Act.

Some Actions The CFPB Can Take:

1) The CFPB should work with the FTC to identify abuses. The CFPB, the FTC should work together to begin collecting information on auto lending problems and abuses in order to prepare for rulemaking and enforcement actions to protect consumers in the largest area of consumer lending after mortgage lending.
2) The CFPB should work with other regulators on other known problems, including yo-yo sales and other unfair tactics: The CFPB, the FTC and the Fed should together prohibit kick-backs to dealers who put consumers in more expensive loans than they qualify for or who charge more to minorities. The CFPB and other regulators should prohibit bait and switch tactics through “yo-yo” clauses that give dealers a unilateral right to cancel the sale or loan
3) The CFPB and other regulators should ensure that the condition of used cars is accurately represented to borrowers and lenders by lenders by requiring independent inspections and disclosure of known defects.

The Jurisdiction and Structure Of The CFPB Under Law And How It Provides Adequate Oversight To The Congress

The CFPB has a clear mandate, and – once a Director is in place – sufficient authority and a range of tools to take on the 10 problems discussed here, as well as additional abuses in the consumer financial marketplace. These powers are not, however, unprecedented nor without limits or oversight. In fact, the opposite is true. Unique to the CFPB are unprecedented limits on its powers that exist in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Nowhere else in federal law can one set of regulators – in this case two-thirds of the members of the Financial Stability Oversight Council (FSOC) – veto the actions of another agency. The Dodd-Frank Act also caps the amount of funding provided to the CFPB, a statutory limit imposed on no other financial regulator. The Office of the Comptroller of the Currency, for example, also an agency with a single director, can raise the regulatory fees it collects from regulated national banks whenever it needs to. It sets its own budget. The CFPB is also the only financial regulator that must comply with rulemaking procedures under the Regulatory Flexibility Act, which will add at least six months to the already lengthy rulemaking process and make it more difficult for the agency to effectively address serious financial abuses that spread quickly.

The CFPB Director is appointed by the President and can be removed for cause. The CFPB director must testify before Congress semi-annually. The director must appear before committees in both houses of Congress twice a year. For these hearings, the CFPB must submit reports to both the Congressional committees and the President. These reports must include a justification for the CFPB's budget, a list of rules the CFPB has adopted, and a list of public supervisory and enforcement actions in which the CFPB has been involved.[21]

The CFPB's JURISDICTION INCLUDES THESE 18 LAWS
''enumerated consumer laws'' means— (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.); (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act; (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.); (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w); (G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.); (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.); (I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f)); (J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 as it applies to section 501(b); (K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); (L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note); (M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); (N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.); (O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); (P) the Truth in Savings Act (12 U.S.C. 4301 et seq.); (Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8); and (R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

Conclusion: The CFPB's Goal Is To Make Markets Work

The idea of a Consumer Financial Protection Bureau was first proposed in articles by Professor Elizabeth Warren just a few years ago.[22] Yet, as this issue brief shows, it has been needed for years. Just one year after it was established by law, on July 21, 2011, the CFPB begins to protect consumers from unfair financial practices. Its goal is not to put banks or even payday lenders out of business. Markets need both buyers and sellers to work. In the words of the CFPB, its goal is simply "to make markets work."

> "In a market that works, consumers should be able to make direct comparisons among products and no provider should be able to build, or feel pressure to build, a business model around unfair, deceptive, or abusive practices."

It should not be a radical idea that when ordinary consumers or families take out credit cards or mortgages that they be treated fairly. Nor should it be a radical idea that consumers and families should be able to count on a federal agency with only job, protecting them from unfair marketplace practices. The Consumer Financial Protection Bureau is a consumer cop on the beat making markets work.

ENDNOTES

[1] This report is based on the consumer protection work of numerous consumer, community, senior, labor and other organizations that have come together as the coalition Americans for Financial Reform. Much of the historical information on regulatory failures in this report is treated in greater detail in the joint testimony of Edmund Mierzwinski, U.S. PIRG and Travis Plunkett, Consumer Federation of America, on behalf of 12 consumer and community groups, before a hearing entitled "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation of the Committee on Financial Services, 24 June 2009, available at http://financialservices.house.gov/media/file/hearings/111/mierzwinski_-_submitted_with_plunkett.pdf. The hearing website also includes the testimony of Professor Elizabeth Warren and others and is available here http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=231823. (Both pages last visited 16 July 2011). Many organizations have pages on the CFPB and the need for reform. For additional information and materials on the CFPB, for example, see the websites of Americans for Financial Reform (http://www.ourfinancialsecurity.org), the Center for Responsible Lending (http://www.responsiblelending.org), Consumer Federation of America (http://www.consumerfed.org) , Consumers Union (http://www.consumersunion.org), the National Consumer Law Center (http://www.nclc.org), and U.S. PIRG (http://www.uspirg.org).

[2] Until July 21, the four bank prudential regulators or supervisory agencies are the Office of the Comptroller of the Currency ((OCC), which supervises national banks, the Office of Thrift Supervision (OTS), which supervises national thrifts; the Federal Reserve Board, which supervises state member banks of the Federal Reserve, and the FDIC, which supervises other state banks. On July 21, the OTS merges into the OCC. On July 21, the CFPB takes over consumer rulewriting authority for all of these banks as well as consumer supervisory and examination authority for larger banks and credit unions over $10 billion (there are currently 111 total in this category). Consumer supervision for smaller institutions is retained by these regulators and the National Credit Union Administration.

[3] CRL calculations, based on Mortgage Bankers Association, National Delinquency Surveys 2007-2011, with numbers adjusted to reflect MBA's estimated 88% market coverage.

[4] See Mortgage Bankers Association, National Delinquency Survey 1Q 2011.

[5] *See generally* Debbie G. Bocian, et al., *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* (June 18, 2010), available at http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf [hereinafter *Foreclosures by Race and Ethnicity*].

[6] Page xx, Conclusions of the Financial Crisis Inquiry Commission, available at http://bit.ly/q8pPHm (last visited 15 July 2011)

[7] See testimony of Professor Arthur Wilmarth before the House Financial Services Committee at page 14, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729840 (last visited 16 July 2011).

[8] Comment letter, 18 August 2008, from Comptroller John Dugan to the Federal Reserve available at http://www.federalreserve.gov/SECRS/2008/August/20080822/R-1314/R-1314_28743_1.pdf (last visited 16 July 2011).

[9] See the CFPB page on the Credit CARD Act including materials on the seminar held 22 February 2011 available at

http://www.consumerfinance.gov/credit-cards/credit-card-act/
(last visited 16 July 2011).

[10] News release, "Consumer Financial Protection Bureau Outlines Bank Supervision Approach," 12 July 2011, available at http://www.treasury.gov/press-center/press-releases/Pages/tg1236.aspx, (last visited 17 July 2011).

[11] See OCC news release "OCC Extends Comment Period on Deposit-Related Consumer Credit Products Guidance," 1 July 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-87.html (last visited 17 July w011).

[12] Judge Alsup's decision in *Gutierrez et al v. Wells Fargo Bank,* 10 August 2010, is available here http://graphics8.nytimes.com/packages/pdf/business/20100811-wells.pdf (last visited 17 July 2011).

[13] Jonathan Stempel, "B of A to pay $410 million to settle overdraft lawsuit," 5 February 2011, Reuters, available at http://www.reuters.com/article/2011/02/05/us-bankofamerica-overdraft-settlement-idUSTRE71423420110205(last visited 17 July 2011).

[14] See Statement of Public Citizen's Deepak Gupta, "In AT&T v. Concepcion, U.S. Supreme Court Deals Crushing Blow to Consumers," 27 April 2011, available at http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3326 (last visited 17 July 2011).

[15] See GAO Report 08-281, January 2008, "Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts," available at http://www.gao.gov/new.items/d08281.pdf (last visited on 16 July 2011). Also see U.S. PIRG Report, "Big Banks, Bigger Fees," April 2011, available at http://bit.ly/eRFHAv, (last visited on 16 July 2011).

[16] Testimony of Pauline Abernathy, Vice President, The Institute for College Access & Success, before the Senate Committee on Health, Education, Labor, and Pensions, Hearing on "Drowning in Debt: Financial Outcomes of Students at For-Profit Colleges" 7 June 2011, available at http://help.senate.gov/imo/media/doc/Abernathy.pdf (last visited 17 July 2011). TICAS is a member of Americans for Financial Reform.

[17] The CFPB has issued an Advance Notice of Proposed Rulemaking for its "Larger Participants" rulemaking. Comments on the ANPR are due by August 15. The final rule must be issued by 21 July 2012. For more information, see "Defining Larger Participants," available at http://www.consumerfinance.gov/defining-larger-nonbank-participants/ (last visited 17 July 2011).

[18] In AFR's or its member groups' detailed comments on the larger participant rule, of course, we may suggest that additional firms, including debt collectors and debt buyers, certain installment lenders and others also be categorized as larger participants.

[19] For more detail on debt collection problems, see NCLC, The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms the Courts (July 2010), Consumer Comments to the FTC: Protecting Consumers in Debt Collection Litigation and Arbitration (2009), and Consumer Comments to the FTC: Collecting Consumer Debts: The Challenges of Change (2007), all available at http://www.nclc.org/issues/debt-collection.html (last visited 17 July 2011); Woodstock Institute & Citizen Action/Illinois, "Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies," (2006), available at http://www.woodstockinst.org/publications/download/hunting-down-the-payday-loan-customer%3a--the-debt-collection-practices-of-two-payday-loan-companies/ (last visited 17 July 2011); and "Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers," Neighborhood Economic Development Assistance Project (NEDAP), The Legal Aid Society, MFY Legal Services, and Urban Justice Center, May 2010, available at http://www.nedap.org/resources/documents/DEPT_POLICY_PAPER_FINAL_WEB_REV.pdf (last visited 17 July 2011).

[20] "Prepaid Cards website, The National Consumer Law Center, available at http://www.nclc.org/issues/prepaid-debit-cards.html (last visited 17 July 2011).

[21] For more details, see Consumer Federation of America factsheet, June 2011, "Accountability Of The Consumer Financial Protection Bureau," available at http://consumerfed.org/pdfs/CFPB-Accountability-fact-sheet-6-11.pdf, (last visited 17 July 2011).

[22] Elizabeth Warren, "Unsafe at Any Rate," Democracy: A Journal of Ideas, Issue #5, Summer 2007, available at http://www.democracyjournal.org/5/6528.php (last visited 17 July 2011).