

CONSUMER FINANCIAL PROTECTION BUREAU LAW ENFORCEMENT: AN EMPIRICAL REVIEW

*Christopher L. Peterson**

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I. INTRODUCTION

The great recession and its aftermath deeply scarred the United States. While estimates vary, approximately 9.3 million U.S. families lost their homes to foreclosure or short sales.¹ In the aftermath of the financial collapse, nearly \$11 trillion in

* John J. Flynn Professor of Law, University of Utah, S.J. Quinney College of Law and Special Advisor, Office of the Director, Consumer Financial Protection Bureau. This Article is based on the author's presentation of the inaugural Sher Garner Keynote Address on Commercial Law at Tulane Law School. The author wishes to thank Lee Sher and Jim Garner for their support of commercial law scholarship. The author gratefully acknowledges feedback and constructive criticism from many CFPB staff. However, this Article presents the views and estimates of the author alone and does not necessarily represent the views, estimates, or positions of the Consumer Financial Protection Bureau or any of its other staff. Alex Williams provided valuable research assistance.

1. See Jonathan Horn, Foreclosed? Maybe You Can Buy Again, SAN DIEGO UNION-TRIB. (June 5, 2015, 9:41 AM), <http://www.sandiegouniontribune.com/news/2015/jun/05/foreclosure-shortsale-boomerang-buyers-real-estate/>; Laura Kusisto, Many Who Lost Homes to Foreclosure in Last Decade Won't Return—NAR, WALL STREET J. (Apr. 20, 2015, 12:50 PM), <http://www.wsj.com/articles/many-who-lost-homes-to-foreclosure-in-last-decade->

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household wealth vanished.² Years after the crisis, about 7.5 million families still owe more on their mortgage loans than the current value of their homes.³ Approximately 7.9 million U.S. jobs disappeared,⁴ and the seasonally adjusted mean duration of unemployment nearly doubled the peak duration in prior modern economic downturns.⁵ These macroeconomic trends rippled out to profoundly damage the lives of millions of Americans. The number of homeless families nationwide increased by 4% from 2008 to 2009.⁶ Neighborhoods stricken by foreclosures faced significant increases in crime.⁷ Reflecting growing financial uncertainty and stress, sociologists found that the Great Recession was strongly associated with significant increases (a sixfold increase by one measure) in the likelihood that children would fall victim to

wont-return-nar-1429548640; see also Annamaria Andriotis et al., After Foreclosures, Home Buyers Are Back, WALL STREET J. (Apr. 8, 2015, 8:17 PM), <http://www.wsj.com/articles/after-foreclosures-home-buyers-are-back-1428538655> (providing alternative estimates); Tara Siegel Bernard, Years After the Market Collapse, Sidelined Borrowers Return, N.Y. TIMES (Oct. 22, 2014), <http://www.nytimes.com/2014/10/23/your-money/a-second-try-at-home-buying-after-the-market-collapse.html> (same).

2. U.S. FIN. CRISIS INQUIRY COMM'N, FINANCIAL CRISIS INQUIRY REPORT, at xv (2011).

3. See Michela Zonta & Sarah Edelman, The Uneven Housing Recovery, CTR. FOR AM. PROGRESS (Nov. 2, 2015), <https://www.americanprogress.org/issues/housing/report/2015/11/02/123537/the-uneven-housing-recovery/>; 7.3 Million Boomerang Buyers Poised To Recover Homeownership in Next 8 Years, REALTYTRAC (Jan. 26, 2015), <http://www.realtytrac.com/news/foreclosure-trends/boomerang-buyers/>.

4. Chris Isidore, 7.9 Million Jobs Lost—Many Forever, CNN MONEY (July 2, 2010, 11:46 PM), http://money.cnn.com/2010/07/02/news/economy/jobs_gone_forever/.

5. Henry S. Farber, Job Loss in the Great Recession and Its Aftermath: U.S. Evidence from the Displaced Workers Survey 3–4 (Nat'l Bureau of Econ. Research, Working Paper No. 21216, 2015), <http://www.nber.org/papers/w21216> (“A related concern is the unprecedentedly long average duration of unemployment spells. . . . The mean unemployment rate reached about 20 weeks in the three earlier recessions . . . but rose to 37 weeks in the Great Recession.”).

6. M. William Sermons & Peter Witte, State of Homelessness in America, NAT'L ALL. TO END HOMELESSNESS & HOMELESSNESS RESEARCH INST. 1 (Jan. 2011), http://www.endhomelessness.org/page/-/files/The_State_of_Homelessness_in_America_2011.pdf.

7. Lin Cui & Randall Walsh, Foreclosure, Vacancy and Crime, 87 J. URB. ECON. 72, 80 (2015); Ryan M. Goodstein & Yan Y. Lee, Do Foreclosures Increase Crime? 3 (FDIC Ctr. for Fin. Research, Working Paper No. 2010-05, 2010).

physical abuse.⁸ Epidemiologists and economists have discovered an association between home mortgage foreclosure and significant increases in sickness, including heart attacks, strokes, respiratory failure, gastrointestinal hemorrhage, and kidney failure.⁹ Studies suggest that the foreclosure crisis was partially responsible for a 13% increase in the national suicide rate¹⁰ and a 35% increase in the number of households facing food insecurity.¹¹ The causes and consequences of the Great Recession are undeniably complex. And although there are as many honorable and well-meaning people and companies in the consumer finance industry, there can be no serious debate that consumer financial services gone awry can intensely harm American families.

In the wake of this financial catastrophe, the public demanded and the United States Congress delivered the most transformative financial reform since the 1930s. While the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-

8. E.g., Jeanne Brooks-Gunn et al., The Great Recession and the Risk for Child Maltreatment, 37 CHILD ABUSE & NEGLECT 721, 725 (2013).

9. Ana V. Diez Roux, Editorial, The Foreclosure Crisis and Cardiovascular Disease, 129 CIRCULATION 2248, 2248–49 (2014); see also Mariana Arcaya et al., Effects of Proximate Foreclosed Properties on Individuals' Systolic Blood Pressure in Massachusetts, 1987 to 2008, 129 CIRCULATION 2262, 2266 (2014) (“The presence of real estate—owned foreclosed properties near participants’ homes predicted higher measured systolic blood pressure in a large cohort.”); Carolyn C. Cannuscio et al., Housing Strain, Mortgage Foreclosure, and Health, 60 NURSING OUTLOOK 134 (2012) (finding an adverse effect of foreclosure on mental health); Janet Currie & Erdal Tekin, Is There a Link Between Foreclosure and Health? 7 AM. ECON. J. 63, 76-77 (2015) (finding statistically significant correlations between foreclosure and nonelective hospital visits for a variety of serious conditions).

10. Jason N. Houle & Michael T. Light, The Home Foreclosure Crisis and Rising Suicide Rates, 2005 to 2010, 104 AM. J. PUB. HEALTH 1073, 1073 (2014).

11. Patricia M. Anderson et al., Food Insecurity and the Great Recession: The Role of Unemployment Duration, Credit and Housing Markets 1 (June 2014) (unpublished manuscript) (on file with Texas A&M University); see also Deborah A. Frank et al., Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less than 3 Years of Age, 118 PEDIATRICS e1293 (2006) (evaluating the “association between a family's participation or nonparticipation in the Low Income Home Energy Assistance Program and the anthropometric status and health of their young children”); T. Jelleyman & N. Spencer, Residential Mobility in Childhood and Health Outcomes: A Systematic Review, 62 J. EPIDEMIOLOGY COMMUNITY HEALTH 584 (2008) (describing the harmful effects of residential mobility on pediatric health); Margot B. Kushel et al., Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans, 21 J. GEN. INTERNAL MED. 71 (2006) (showing the harmful effects of food insecurity on health).

Frank)¹² includes many changes, its centerpiece was the creation of the new Consumer Financial Protection Bureau (CFPB).¹³ The brainchild of the charismatic Harvard Law Professor Elizabeth Warren,¹⁴ the newest federal agency describes itself as a “21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.”¹⁵ The agency further describes its “core functions” thus:

We work to give consumers the information they need to understand the terms of their agreements with financial companies. We are working to make regulations and guidance as clear and streamlined as possible so providers of consumer financial products and services can follow the rules on their own. Congress established the CFPB to protect consumers by carrying out federal consumer financial laws. Among other things, we:

- Write rules, supervise companies, and enforce federal consumer financial protection laws
- Restrict unfair, deceptive, or abusive acts or practices
- Take consumer complaints
- Promote financial education
- Research consumer behavior
- Monitor financial markets for new risks to consumers
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance.¹⁶

12. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of 7, 12, 15, 22, 31, and 42 U.S.C. (2012)).

13. *See id.* §§ 101, 124 Stat. at 1955.

14. *See* Elizabeth Warren, Unsafe at Any Rate, DEMOCRACY J. (Summer 2007), <http://democracyjournal.org/magazine/5/unsafe-at-any-rate/>.

15. About Us, CFPB, <http://www.consumerfinance.gov/the-bureau/> (last visited Apr. 4, 2016) (“[T]his means ensuring that consumers get the information they need to make the financial decisions they believe are best for themselves and their families—that prices are clear up front, that risks are visible, and that nothing is buried in fine print. In a market that works, consumers should be able to make direct comparisons among products and no provider should be able to use unfair, deceptive, or abusive practices.”).

16. *Id.*; *see also* Leonard J. Kennedy, Patricia A. McCoy & Ethan Bernstein, The Consumer Financial Protection Bureau: Financial Regulation for the Twenty-First Century, 97 CORNELL L. REV. 1141, 1160–75 (2012) (providing case study examples of the Bureau’s approach to its core functions).

Despite the agency's seemingly benign mission statement and purpose, it has faced dogged and at times vitriolic opposition from some in the financial industry. Some political leaders with close ties to the banking and consumer finance industry have argued that the CFPB:

- Is a “runaway agency”;¹⁷
- Is an example of “how socialism starts” and “a vast bureaucracy with no congressional oversight”;¹⁸
- Is a “rogue agency that dishes out malicious financial policy”;¹⁹
- Takes actions that are “misguided and deceptive”;²⁰
- “[C]ontinually oversteps its bounds”;²¹
- Has aspects similar to “the Stalin model”;²² and,
- Is a “nanny state mechanism.”²³

17. Michael Hiltzik, Consumer Protection: Why Do Republicans Hate the CFPB So Much?, L.A. TIMES (July 23, 2015, 12:46 PM), <http://www.latimes.com/business/hiltzik/la-fi-mh-cfpb-republicans-20150723-column.html> (quoting Senator Ted Cruz).

18. Louis Jacobson, Carly Fiorina Says Consumer Financial Protection Bureau Has 'No Congressional Oversight.' POLITIFACT (Nov. 14, 2015, 8:33 PM), <http://www.politifact.com/truth-o-meter/statements/2015/nov/14/carly-fiorina/carly-fiorina-says-consumer-financial-protection-b/> (quoting Carly Fiorina).

19. Ben Lane, U.S. Senator: CFPB Is Rogue Agency Dishing Out Malicious Financial Policy, HOUSINGWIRE (Mar. 23, 2015), <http://www.housingwire.com/articles/33322-us-senator-cfpb-is-a-rogue-agency-that-dishes-out-malicious-financial-policy> (quoting Senator David Perdue).

20. REPUBLICAN STAFF OF H. COMM. ON FIN. SERVS. 114TH CONG., UNSAFE AT ANY BUREAUCRACY: CFPB JUNK SCIENCE AND INDIRECT AUTO LENDING (2015).

21. John Ratcliffe, Abolishing the Consumer Financial Protection Bureau, WASH. TIMES (July 30, 2015), <http://www.washingtontimes.com/news/2015/jul/30/john-ratcliffe-abolishing-the-consumer-financial-p/>.

22. Jim Lardner, The Real Wolves of Wall Street, U.S. NEWS (Oct. 6, 2015, 3:30 PM), <http://www.usnews.com/opinion/economic-intelligence/2015/10/06/the-gops-obstructive-consumer-protection-play> (quoting Representative Sean Duffy).

23. Ben S. Carson, The Perfect Example of Government Overreach: The CFPB, WASH. TIMES (July 28, 2015), <http://www.washingtontimes.com/news/2015/jul/28/ben-carson-perfect-example-government-overreach/>.

These claims have in turn provided rhetorical support for dozens of congressional bills aiming to eliminate, defund, or weaken the agency in some procedural or substantive respect.²⁴

24. At the end of 2015, at least 48 bills were pending before Congress that sought to change the CFPB. These bills include: Bureau of Consumer Financial Protection Advisory Boards Act, H.R. 1195, 114th Cong. (as introduced in House, Mar. 2, 2015) (requiring the creation of a Small Business Advisory Board “to advise and consult with the Bureau in the exercise of the Bureau’s functions under the Federal consumer financial laws applicable to eligible financial products or services” and “to provide information on emerging practices of small business concerns that provide eligible financial products or services, including regional trends, concerns, and other relevant information,” along with various requirements regarding board member qualifications and meeting frequency and limits on the amount of funding that the CFPB Director could request in future years); SAFE Act Confidentiality and Privilege Enhancement Act, H.R. 1480, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, Apr. 14, 2015) (amending the S.A.F.E. Mortgage Licensing Act of 2008 to allow federal and state officials to access any information that comes from any program or system run by the CFPB); Bureau of Consumer Financial Protection Accountability Act of 2015, H.R. 1261, 114th Cong. (as introduced in House, Mar. 4, 2015) (prohibiting the CFPB from receiving funding from transfers of earnings from the Federal Reserve); Consumer Right to Financial Privacy Act of 2015, H.R. 1262, 114th Cong. (as introduced in House, Mar. 4, 2015) (prohibiting the CFPB from disclosing a consumer’s personal information unless “the Bureau clearly and conspicuously discloses to the consumer, in writing or in an electronic form, what information will be requested, obtained, accessed, collected, used, retained, or disclosed” and “before such information is requested, obtained, accessed, collected, used, retained, or disclosed, the consumer informs the Bureau that such information may be requested, obtained, accessed, collected, used, retained, or disclosed”); Consumer Financial Protection Safety and Soundness Improvement Act of 2015, H.R. 1263, 114th Cong. (as introduced in House, Mar. 4, 2015) (requiring the Financial Stability Oversight Council to set aside CFPB final regulations if it was determined that the regulations “[were] inconsistent with the safe and sound operations of United States financial institutions”); Financial Product Safety Commission Act of 2015, H.R. 1266, 114th Cong. (as introduced in House, Mar. 4, 2015) (replacing the CFPB with a “Financial Product Safety Commission”); Reforming CFPB Indirect Auto Financing Guidance Act, H.R. 1737, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, Nov. 19, 2015) (creating requirements for the CFPB to follow when issuing guidance regarding indirect auto financing, including public notice, consultation with other federal agencies, and studies on the potential effects that the guidance might have on certain consumer groups); Right to Lend Act of 2015, H.R. 1766, 114th Cong. (as referred to H. Comm. on Fin. Servs., Apr. 14, 2015) (repealing section 704B of ECOA—a statute through which the CFPB collects information about small business loans); Financial Institutions Examination Fairness and Reform Act, H.R. 1941, 114th Cong. (as introduced in House, Apr. 22, 2015) (furthering protection of various institutions and credit unions from any potential retaliation by the CFPB); H.R. 2099,

A complete discussion of the merit of these claims or the pending legislation they purport to justify is well beyond the scope of this Article. Instead, this study evaluates the actual track record of the CFPB in one important respect: the congressional directive that the agency enforce the nation's consumer financial protection laws.²⁵ Today, the CFPB's Division of Supervision, Enforcement, and Fair Lending (SEFL) has been open for business for over 4 years. The public has a right to expect that the CFPB has created an agency that will protect Americans from the all too real financial, mental health, and physical harms associated with illegal consumer financial practices. To this end, this study gathers quantitative and qualitative information in hopes of providing an answer to a simple but critically important question: Has the United States succeeded in creating an effective consumer financial civil law enforcement agency?

This Article presents the first empirical analysis of all publically announced CFPB enforcement actions. Part II provides a background discussion summarizing the CFPB's enforcement authority, jurisdiction, and powers. Part III explains the study's simple, descriptive methodology. Part IV reports results. Part V sets out seven noteworthy findings, and Part VI briefly concludes. To assist policy makers, courts, legal counsel, academics, and students studying the CFPB's enforcement work, an

114th Cong. (as introduced in House, Apr. 29, 2015) (requiring the CFPB "to develop a model form for a disclosure notice that shall be used by depository institutions and credit unions"); Financial Transparency Act of 2015, H.R. 2477, 114th Cong. (as introduced in House, May 20, 2015) (requiring the CFPB to adopt new data reporting standards); Community Financial Institution Exemption Act, H.R. 3048, 114th Cong. (as referred to H. Comm. on Fin. Servs., July 14, 2015) (requiring the CFPB to exempt "community financial institutions," or "insured depository institution[s] or credit union[s] with less than \$10,000,000,000 in consolidated assets," from CFPB rules and regulations); Bureau Research Transparency Act, H.R. 3131, 114th Cong. (as referred to H. Comm. on Fin. Servs., July 21, 2015) (requiring the CFPB "to include all studies, data, and other analyses" upon which a published research paper was based); S. 96, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, Jan. 7, 2015) (requiring the CFPB to disclose all of the information that the CFPB maintains about a particular consumer upon request by a consumer); SAFE Act Confidentiality and Privilege Enhancement Act, S. 372, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, Feb. 4, 2015) (allowing federal and state officials to have access to any information that comes from any program or system run by the CFPB); Financial Institutions Examination Fairness and Reform Act, S. 774, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, Mar. 18, 2015) (changing the appeals process that the CFPB must follow and would further protect various institutions and credit unions from any potential retaliation by the CFPB); Repeal CFPB Act, S. 1804, 114th Cong. (as referred to S. Comm. on Banking, Housing & Urban Affairs, July 21, 2015) (discontinuing the CFPB by repealing the CFPA).

25. 12 U.S.C. § 5511(a) (2012).

appendix identifying every publically announced CFPB enforcement action through 2015 follows.

II. BACKGROUND: THE CFPB'S SUPERVISORY AND ENFORCEMENT AUTHORITY

U.S. federal consumer protection law is a jumble of statutes Congress adopted and frequently amended in fits and starts over nearly fifty years. Each statute was the product of compromise, and many were enacted in response to technological change or evolving commercial patterns in the sometimes harsh U.S. financial services industry. Among the most important of these statutes are the Truth in Lending Act (TILA),²⁶ the Equal Credit Opportunity Act (ECOA),²⁷ the Fair Credit Reporting Act (FCRA),²⁸ the Electronic Funds Transfer Act (EFTA),²⁹ the Real Estate Settlement Procedures Act (RESPA),³⁰ and the Fair Debt Collection Practices Act (FDCPA).³¹ Congress has supplemented these core statutes with a variety of amendatory or specifically focused acts that address problematic practices in particular markets. These statutes include the Home Ownership and Equity Protection Act (HOEPA),³² the Interstate Land Sales Full Disclosure Act (ILSA),³³ the Credit Card Accountability Responsibility and Disclosure Act (CARD Act),³⁴ the Military Lending Act (MLA),³⁵

26. Truth in Lending Act, Pub. L. No. 90-321, 82 Stat. 146 (codified as amended at 15 U.S.C. ch. 41, subch. 1).

27. Equal Credit Opportunity Act, Pub. L. No. 90-321, 88 Stat. 1521 (codified as amended at 15 U.S.C. ch. 41, subch. 4).

28. Fair Credit Reporting Act, Pub. L. No. 90-321, 84 Stat. 1128 (codified as amended at 15 U.S.C. ch. 41, subch. 3).

29. Electronic Fund Transfer Act, Pub. L. No. 90-321, 92 Stat. 3728 (codified as amended at 15 U.S.C. ch. 41, subch. 6).

30. Real Estate Settlement Procedures Act, Pub. L. No. 93-533, 88 Stat. 1724 (codified as amended at 12 U.S.C. ch. 27).

31. Fair Debt Collection Practices Act, Pub. L. No. 90-321, 91 Stat. 874 (codified as amended at 15 U.S.C. ch. 41, subch. 5).

32. Home Ownership and Equity Protection Act, Pub. L. No. 103-325, 108 Stat. 2190 (codified as amended at _____).

33. Interstate Land Sales Full Disclosure Act, Pub. L. No. 90-448, 82 Stat. 590 (codified as amended at 15 U.S.C. ch. 42).

34. Credit Card Accountability Responsibility and Disclosure Act, Pub. L. No. 111-24, 123 Stat. 1734 (codified as amended in scattered sections of 15 and 16 U.S.C.).

35. Military Lending Act, Pub. L. No. 109-34, 120 Stat. 2266 (codified as amended at 10 U.S.C. § 987).

and the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act).³⁶ In addition to each of these statutes, the Federal Trade Commission Act has for many decades declared unlawful any “unfair or deceptive acts or practices in or affecting commerce.”³⁷

Prior to the financial crisis, regulatory, supervisory, and enforcement authority for each of these statutes was distributed across a variety of regulatory agencies. With some limited exceptions, the Federal Reserve Board of Governors (Federal Reserve) generally held regulatory authority under these statutes.³⁸ The Federal Reserve also held supervisory and enforcement authority for these statutes with respect to bank holding companies, state-chartered banks that are members of the Federal Reserve system, nonbank subsidiaries of bank holding companies, and foreign banking organizations operating in the United States.³⁹ For national banks that were not members of the Federal Reserve system, the Office of the Comptroller of the Currency (OCC) within the Department of the Treasury (Treasury) held supervisory and enforcement authority.⁴⁰ The Federal Deposit Insurance Corporation (FDIC) held supervisory and enforcement authority for most of these statutes with respect to state

36. Secure and Fair Enforcement for Mortgage Licensing Act, Pub. L. No. 110-289, 122 Stat. 2810 (codified as amended at 12 U.S.C. ch. 51).

37. Federal Trade Commission Act § 5, 15 U.S.C. § 45(a)(1).

38. Exceptions include the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, wherein Congress originally did not give rulemaking authority to any federal agency, and the Military Lending Act, 10 U.S.C. § 987, wherein Congress gave regulatory authority to the Department of Defense.

39. FED. RESERVE BD. OF GOVERNORS, THE FEDERAL RESERVE SYSTEM: PURPOSES AND FUNCTIONS 59 (9th ed. 2005). The Federal Reserve Board also has jurisdiction over Edge Act corporations, through which U.S. banks conduct international banking activities, and nonbanking activities of foreign banks. *Id.* Edge Act Corporations are bank subsidiaries set up to offer services only to non-U.S. residents and institutions. *See* 12 C.F.R. § 211 (2015) (describing Regulation K); KAROL K. SPARKS & HARDING DE C. WILLIAMS, THE KEYS TO BANKING LAW: A HANDBOOK FOR LAWYERS 184 (2012).

40. *See generally* MARK JICKLING & EDWARD V. MURPHY, CONG. RESEARCH SERV., WHO REGULATES WHOM?: AN OVERVIEW OF U.S. FINANCIAL SUPERVISION 4, 7 (2010) (describing the OCC’s regulatory power over banks and its incorporation into the U.S. Treasury). Prior to the financial crisis, the Office of Thrift Supervision (OTS) held supervisory and enforcement authority over federally chartered thrifts. Title III of Dodd-Frank abolished the OTS. *See* 12 U.S.C. § 5413. The Act gave jurisdiction over savings and loan holding companies to the Federal Reserve. *See id.* § 5412. The OCC received rulemaking and supervisory authority over federal savings associations. *Id.* And, Congress gave authority over state-chartered savings associations to the FDIC. *Id.*

chartered banks.⁴¹ The National Credit Union Administration (NCUA) held supervisory and enforcement authority for these statutes for credit unions.⁴² The Department of Housing and Urban Development (HUD) was the primary regulatory and enforcement authority for the RESPA.⁴³ Financial companies other than banks and credit unions were not supervised by the federal government, but were subject to Federal Trade Commission (FTC) enforcement actions under most of these consumer protection statutes.⁴⁴ The Federal Reserve board, the OCC, the OTS, the FDIC, and the FTC each had authority to enforce the general prohibition of unfair or deceptive acts or practices against companies subject to their jurisdiction.⁴⁵

Consumer advocates and academics argued that the structure of federal consumer financial regulation had several structural flaws. The split responsibility for rulemaking, supervision, and enforcement across multiple different agencies with respect to interrelated statutes made timely reform and consistent interpretation difficult. Many argued that prudential regulators tasked with both promoting safety and soundness as well as consumer protection compliance neglected the latter.⁴⁶ Throughout the boom-years of subprime and exotic mortgage lending prior to the 2008 crash, federal banking regulators often worked closely with the financial industry to preempt more aggressive state and local consumer protection regulations.⁴⁷ The

41. See JICKLING & MURPHY, *supra* note 40, at 4, 14.

42. *Id.* at 4, 18.

43. Real Estate Settlement Procedures Act § 2, 12 U.S.C. § 2601(a).

44. See JICKLING & MURPHY, *supra* note 40, at 4-5.

45. 12 U.S.C. § 1818(b)(1), (c)(1), (i)(2); Bd. of Governors of the Fed. Reserve Sys. & FDIC, Financial Institutions Letters: Unfair or Deceptive Act or Practices by State-Chartered Banks, FDIC 1 (Mar. 11, 2004), <https://www.fdic.gov/news/news/financial/2004/fil2604.html>; OCC Advisory Letter: Guidance on Unfair or Deceptive Acts or Practices, OCC (Mar. 22, 2002), <http://www.occ.gov/static/news-issuances/memos-advisory-letters/2002/advisory-letter-2002-3.pdf>.

46. See Adam J. Levitin, Hydraulic Regulation: Regulating Credit Markets Upstream, 26 YALE J. ON REG. 143, 155–56 (2009); Heidi Mandanis Schooner, The Role of Central Banks in Bank Supervision in the United States and the United Kingdom, 28 BROOK. J. INT'L L. 411, 427 (2003); cf. Eric Gerding, The Subprime Crisis and the Link Between Consumer Financial Protection and Systemic Risk, 5 FLA. INT'L U. L. REV. 93, 122 (2009) (arguing that effective safety and soundness regulation must include consumer protection).

47. See U.S. FIN. CRISIS INQUIRY COMM'N, *supra* note 2, at 13; Christopher L. Peterson, Preemption, Agency Cost Theory, and Predatory Lending by Banking Agents: Are Federal Regulators Biting Off More than They Can Chew?, 56 AM. U. L. REV. 515, 547–49 (2007); Arthur E. Wilmarth, Jr., The OCC's Preemption Rules

Federal Reserve Board declined to aggressively exercise its considerable discretion under HOEPA to address the emerging glut of unaffordable mortgage loans.⁴⁸ Consumer finance businesses had considerable incentive to shop for the banking charter and regulator that provided the least searching oversight.⁴⁹ HUD interpreted RESPA's prohibition of kickbacks in a way that made it difficult for borrowers to legally challenge mortgage brokers that accepted yield spread premium compensation in exchange for convincing their clients to take on unaffordable, exotic mortgage loans.⁵⁰ The FTC, which lacks jurisdiction over any bank or credit union, generally was unable to exert sufficient deterrence to head off the impending catastrophe.⁵¹ And, the lack of supervisory oversight allowed nonbank financial companies more latitude in skirting the law.

In the wake of the financial crisis, Congress adopted the Dodd-Frank Act.⁵² Among a variety of reforms, Title X of Dodd-Frank, called the Consumer Financial Protection Act (CFPA), created the new CFPB.⁵³ Drawing on the proposals of

Exceed the Agency's Authority and Present a Serious Threat to the Dual Banking System and Consumer Protection, 23 ANN. REV. BANKING & FIN. L. 225 (2004).

48. U.S. FIN. CRISIS INQUIRY COMM'N, supra note 2, at 19–22; KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS 194–96 (2011); see Susan Block-Lieb, Accountability and the Bureau of Consumer Financial Protection, 7 BROOK. J. CORP. FIN. & COM. L. 25, 34 (2012); see also 15 U.S.C. § 57a (2012) (authorizing the Federal Trade Commission to issue rules, policy statements, and definitions with respect to unfair or deceptive acts or practices in or affecting commerce).

49. See U.S. FIN. CRISIS INQUIRY COMM'N, supra note 2, at xviii.

50. See Taiesha L. Cantwell, Yield-Spread Premiums: Who's Working for the Borrower? HUD's Erroneous Regulation and Its Bar on Plaintiffs, 21 L. & INEQ. 367, 388–90 (2003) (arguing that a legally permissible construction of RESPA's kickback prohibition should not have preclude class actions based on rate-sheet pricing common to all borrowers); compare 12 U.S.C. § 2607(a) (prohibiting kickbacks in residential mortgage loan settlement), with Real Estate Settlement Procedure Act Statement of Policy 2001-1: Clarification of Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b), 66 Fed. Reg. 53,052, 53,053 (Oct. 18, 2001) (adopting a total compensation test that permitted lender payment of fees to mortgage brokers in exchange for originating more expensive loans than borrowers qualified for under the lender's own underwriting guidelines).

51. U.S. FIN. CRISIS INQUIRY COMM'N, supra note 2, at 76.

52. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (codified as amended in scattered sections of 7, 12, 15, 22, 31, and 42 U.S.C.).

53. Id. § 101, 124 Stat. at 1955.

Warren, Oren Bar-Gil, Heidi Mandanis Schooner, and Treasury Department reports,⁵⁴ the CFPA created the first federal agency charged with an exclusive focus on consumer financial protection.⁵⁵ The CFPA transferred regulatory authority for “consumer financial law” to the CFPB.⁵⁶ The Act defined consumer financial protection laws to

54. Warren, *supra* note 14 (“[A] Financial Product Safety Commission could eliminate some of the most egregious tricks and traps in the credit industry.”); Oren Bar-Gil & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1, 99 (2008) (calling for a new consumer financial administrative agency with “broad rulemaking and enforcement authority over consumer credit products [that would] eliminate regulatory gaps and contradictions, and . . . halt the state and federal regulatory competition that undercuts consumer safety”); Heidi Mandanis Schooner, *Consuming Debt: Structuring the Federal Response to Abuses in Consumer Credit*, 18 LOY. CONSUMER L. REV. 43, 83 (2005) (“True reform of consumer protection laws can only be achieved through an effective mechanism for implementation and enforcement. Giving the job of consumer protection to a consumer protection agency seems the most logical choice. Asking bank regulators to do the job of a consumer protection agency not only poses conflicts of interest and creates inefficiencies, but could also distract bank regulators from their mandate: to protect the solvency of banks”); *Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation*, U.S. DEP’T TREASURY 55 (June 17, 2009), https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf (“[W]e propose the creation of a single regulatory agency, a Consumer Financial Protection Agency (CFPA), with the authority and accountability to make sure that consumer protection regulations are written fairly and enforced vigorously.”); *Blueprint For a Modernized Financial Regulatory Structure*, U.S. DEP’T TREASURY 14 (Mar. 2008), <https://www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf> (advocating for a “Conduct of Business Regulatory Agency” that “would be responsible for business conduct regulation, including consumer protection issues, across all types of firms, including the three types of federally chartered institutions”).

55. Consumer Financial Protection Act §1021, 12 U.S.C. § 5511(a).

56. *Id.* § 5511. There are at least 2 notable exceptions to the Bureau’s rulemaking authority. First, in addition to the enumerated laws, Congress separately gave the CFPB, along with prudential regulators and the FTC, enforcement authority over the MLA in the National Defense Authorization Act for Fiscal Year 2013. Pub. L. No. 112-239, §§ 661(a)-(b), 662(a)-(b), 663, 126 Stat. 1632, 1785-86 (codified as amended at 10 U.S.C. § 987(f)(6) (2012); 15 U.S.C. § 1607). However, the Department of Defense retains rulemaking authority subject to a consultation requirement with the CFPB, the Treasury, the prudential regulators, and the FTC. Second, the Federal Reserve retained rulemaking authority over enumerated consumer laws as applied to automobile dealers that do not routinely engage in “buy-here-pay here” financing. See Dodd Frank Wall Street Reform and Consumer Protection Act § 1029, 12 U.S.C. § 5519.

include the CFPB itself along with 18 “enumerated” consumer laws, including nearly all consumer credit and bank-account-related consumer protection statutes.⁵⁷

57. The enumerated consumer laws include:

- The Alternative Mortgage Transaction Parity Act of 1982, Public L. No. 97-320, 96 Stat. 1545 (codified as amended at 12 U.S.C. ch. 39);
- The Consumer Leasing Act of 1976, Pub. L. No. 94-240, 90 Stat. 257 (codified as amended at 15 U.S.C. §§ 1667-1667f);
- The Electronic Fund Transfer Act, Pub. L. No. 90-321, 92 Stat. 3728 (codified as amended at 15 U.S.C. ch. 41, subch. 6);
- The Equal Credit Opportunity Act, Pub. L. No. 90-321, 88 Stat. 1521 (codified as amended at 15 U.S.C. ch. 41, subch. 4);
- The Fair Credit Billing Act, Pub. L. No. 93-495, 88 Stat. 1511 (codified as amended at 15 U.S.C. ch. 41, subch. 1, pt. D);
- The Fair Credit Reporting Act, Pub. L. No. 90-321, 84 Stat. 1128 (codified as amended at 15 U.S.C. ch. 41, subch. 3) (excluding §§ 615(e), 628, 15 U.S.C. §§ 1681m(e), 1681w);
- The Home Owners Protection Act of 1998, Pub. L. No. 105-216, 112 Stat. 897 (codified as amended at 12 U.S.C. ch. 49);
- The Fair Debt Collection Practices Act, Pub. L. No. 90-321, 91 Stat. 874 (codified as amended at 15 U.S.C. ch. 41, subch. 5);
- Federal Deposit Insurance Act § 43(b)-(f), 64 Stat. 873, ____ (codified as amended 12 U.S.C. §§ 1831t(c)-(f));
- Gramm-Leach-Bliley Act, Pub. L. No. 106-102, §§ 502-09, 113 Stat. 1338, ____ (codified as amended at 15 U.S.C. §§ 6802-6809) (excluding § 505 as it applies to § 501(b));
- The Home Mortgage Disclosure Act of 1975, Pub. L. No. 94-200, 89 Stat. 1125 (codified as amended at 12 U.S.C. ch. 29);
- The Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 108 Stat. 2190 (codified as amended at ____);
- The Real Estate Settlement Procedures Act of 1974, Pub. L. No. 93-533, 88 Stat. 1724 (codified as amended at 12 U.S.C. ch. 27);
- The S.A.F.E. Mortgage Licensing Act of 2008, Pub. L. No. 110-289, 122 Stat. 2810 (codified as amended at 12 U.S.C. ch. 51);
- The Truth in Lending Act, Pub. L. No. 90-321, 82 Stat. 146 (codified as amended at 15 U.S.C. ch. 41, subch. 1);
- The Truth in Savings Act, Pub. L. No. 102-242, 105 Stat. 2334 (codified as amended at 12 U.S.C. ch. 44);
- Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524, ____ (codified as amended at 15 U.S.C. § 1638); and
- The Interstate Land Sales Full Disclosure Act, Pub. L. No. 90-448, 82 Stat. 590 (codified as amended at 15 U.S.C. ch. 42).

Also, Congress later gave the CFPB enforcement authority under the Military Lending Act. Pub. L. No. 109-34, 120 Stat. 2266 (codified as amended at 10 U.S.C. § 987, 15

In addition to the creation of the CFPB, Dodd-Frank also included some substantive consumer financial law reform. Most notably, Title XIV of the Act included an array of changes to address predatory mortgage lending, including an ability-to-repay standard and a prohibition of loan originator compensation tied to terms other than the size of a loan.⁵⁸ Dodd-Frank also amended the Electronic Funds Transfer Act to require more informative and accurate disclosures on remittance money transfers.⁵⁹ And most controversially, the Act also added a new general standard of “abusive practices” to the older deception and unfairness standards.⁶⁰ Spelling out several different abusiveness criteria, the CFPB defines abusive behavior as an act or practice that

- (1) [M]aterially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- (2) takes unreasonable advantage of—
 - (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
 - (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.⁶¹

The abusiveness standard has alternatively been the subject of much hand-wringing in the financial services industry and excitement amongst consumer advocates. Some have argued that the standard has the potential to tap the growing body of behavioral economic analysis of consumer contracts to prevent harmful practices not effectively addressed by the deceptive and unfair practices prohibition of the FTCA and related laws.⁶² In contrast, some financial services industry lawyers

U.S.C. §1607). However, the Department of Defense retains rulemaking authority for this statute. *Id.* § 987(h).

58. Dodd-Frank Wall Street Reform and Consumer Protection Act tit. 14, 15 U.S.C. §§ 1639c(a)(1), 1639b(c)(1).

59. *Id.* at § 1693o-1.

60. 12 U.S.C. § 5531(d).

61. *Id.*

62. See, e.g., Jean Braucher, Form and Substance in Consumer Financial Protection, 7 BROOK. J. CORP. FIN. & COM. L. 107, 107 (2012) (arguing that because the Bureau’s anti-abuse authority is “based mostly on the substance of deals rather than disclosure, [it] is arguably the most exciting development in consumer protection since the advent of the modern consumer movement in the 1960s”); Tiffany S. Lee, No More Abuse: The Dodd-Frank and Consumer Financial Protection Act’s “Abusive” Standard, 14 J. CONSUMER & COM. L. 118, 119 (2011) (arguing that under the abusiveness standard, “the Bureau is empowered to take any authorized action, including rulemaking”); Dee Pridgen, Sea Changes in Consumer Financial Protection:

have worried that, without further clarification, the standard is “infinitely flexible” and therefore meaningless.⁶³ Similarly, Professor Todd Zywicki has argued that the standard is “dangerous” because it “will likely chill innovation,” especially in light of the CFPB’s “tendency toward overuse of enforcement.”⁶⁴

Generally speaking, the CFPB applies to “covered persons,” which is defined as “any person that engages in offering or providing a consumer financial product or service.”⁶⁵ At least with respect to nonbanks, the Act treats “any director, officer, or employee charged with managerial responsibility” as a “related person,” which is “deemed to mean a covered person for all purposes.”⁶⁶ Beyond the CFPB’s general applicability, the CFPB’s authorities are tailored to fit each of the Bureau’s 3 primary legal tools.⁶⁷

Stronger Agency and Stronger Laws, 13 WYO. L. REV. 405, 413 (2013) (noting that the abusiveness standard “provides the CFPB with a unique and flexible authority to deal with abuses in the consumer financial services sector, and to issue rules or initiate enforcement actions to address the exploitation of certain consumer behavioral biases by financial service providers”); Carey Alexander, Note, Abusive: Dodd-Frank Section 1031 and the Continuing Struggle To Protect Consumers, 85 ST. JOHN’S L. REV. 1105, 1144–45 (2011) (arguing that the Bureau’s “expansive power to address abusive practices . . . potentially represents the rising of a new dawn in consumer protection”).

63. Eric Mogilnicki & Eamonn K. Moran, The CFPB’s Enforcement of the Prohibition on Abusive Acts and Practices, 104 Banking Rep. (BNA) 236, 244 (Feb. 3, 2015) (“[W]e note the risk that the Bureau will continue to resist further defining the ‘abusive’ standard. This approach would be a missed opportunity, as an infinitely flexible standard provides no guidance to covered persons and no permanent protection to consumers.”); see also Reginald R. Goeke, Is the CFPB Torturing Language with Its Abusive Standard?, LAW360 (Feb. 12, 2015, 5:41 PM), http://www.law360.com/articles/621386/is-the-cfpb-torturing-language-with-its-abusive-standard-?article_related_content=1 (“This ‘I know it when I see it’ approach naturally grants the CFPB the maximum flexibility to bring enforcement actions, while granting industry participants the minimum level of notice about what is required of them.”).

64. Todd Zywicki, The Consumer Financial Protection Bureau: Savior or Menace?, 81 GEO. WASH. L. REV. 856, 922–23 (2013).

65. 12 U.S.C. § 5481(6)(a).

66. Id. § 5481(25)(b)–(c). The definition of “related person” excludes bank holding companies, credit unions, and depository institutions. Id. § 5481(25)(a).

67. In addition to its legal tools, the Bureau also has important authorities and responsibilities with respect to consumer education and engagement as well as consumer complaint intake and referral. See, e.g., id. § 5534 (establishing consumer complaint response authorities and responsibilities); id. § 5493(d) (establishing an Office of Financial Education); id. § 5493(b)(2) (requiring the establishment of an office for providing information, guidance, and technical assistance on the provision of financial services to traditionally underserved communities); id. § 5493(e)

First, and most broadly, the CFPB generally has rulemaking authority under consumer financial laws, including the prohibition of unfair, deceptive, and abusive acts and practices.⁶⁸ Second, the Bureau has supervisory jurisdiction over all banks and credit unions with over \$10 billion in assets.⁶⁹ The Bureau also has supervisory jurisdiction over all nonbank mortgage originators, brokers, servicers, and foreclosure assistance providers; private student loan originators; and, payday lenders.⁷⁰ The CFPB also may assert supervisory jurisdiction over other large or especially risky nonbank covered persons by issuing a regulation.⁷¹ To date, the Bureau has issued larger participant rules creating supervisory jurisdiction over large consumer reporting agencies,⁷² consumer debt collection businesses,⁷³ student loan servicers,⁷⁴ international remittance providers,⁷⁵ and automobile finance companies.⁷⁶ Finally, the Bureau has enforcement jurisdiction over any covered person or service provider to a covered person, except for small banks and credit unions and automobile dealers that do not routinely engage in buy-here, pay-here financing.⁷⁷ Other businesses Congress also generally excluded from the scope of the CFPB's authority include persons regulated by the Securities and Exchange Commission, the Commodity Futures Trading Commission, and state insurance regulators; real estate brokers; accountants; and attorneys practicing law under certain circumstances.⁷⁸

(establishing an Office of Service Member Affairs); *id.* § 5493(g) (establishing an Office of Financial Protection for Older Americans); *id.* § 5535 (requiring designation of a Private Education Loan Ombudsman).

68. *Id.* § 5512; 15 U.S.C. § 45.

69. 12 U.S.C. § 5515.

70. *Id.* § 5514(a).

71. *Id.*

72. 12 C.F.R. § 1090.104 (2015).

73. *Id.* § 1090.105.

74. *Id.* § 1090.106.

75. *Id.* § 1090.107.

76. Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37,946, 37,496 (June 30, 2015) (to be codified at 12 C.F.R. § 1090.108).

77. 12 U.S.C. §§ 5515(a), (c) (2012); *id.* § 5516(a), (d). Unless they are acting as a service provider to a covered person, other businesses explicitly excluded from CFPB enforcement authority include nonfinancial retailers of goods or services, real estate brokers, manufactured home retailers, accountants or tax preparers, and, in some circumstances, attorneys. *Id.* § 5517.

78. *Id.* §§ 5481(a)(20)-(22); *id.* § 5517. *But see* CFPB v. Fredrick J. Hanna & Assocs., 114 F. Supp. 3d 1342, 1362-70 (N.D. Ga. 2015) (holding debt collection lawsuit mill was subject to CFPB jurisdiction under the FDCPA and CFPB).

Congress gave the CFPB's Office of Enforcement the authority to initiate federal investigations through serving subpoenas, issuing civil investigative demands, or compelling testimony at investigative hearings.⁷⁹ The Bureau's investigative powers extend not only to covered persons, but also to anyone who Bureau investigators reasonably believe has evidence relevant to an investigation.⁸⁰ To set limits upon and articulate expectations for Bureau investigations, the CFPB published a regulation defining its rules relating to investigations following a public notice and comment period.⁸¹

Congress authorized the Bureau to enforce federal consumer financial laws either through administrative enforcement procedures⁸² or through its own authority to litigate in federal court.⁸³ The former is governed by the CFPB's regulation defining rules of practice for adjudicative proceedings.⁸⁴ This process is subject to the same rules of administrative procedure that govern other federal agencies.⁸⁵ The rules provide for an adjudicative hearing on the Enforcement Office's alleged violations of law before an administrative law judge, called a hearing officer.⁸⁶ Bureau administrative law judges are housed within an independent judicial office within the CFPB called the Office of Administrative Adjudication (OAA).⁸⁷ OAA decisions are reviewable on appeal by the Director of the CFPB.⁸⁸ Alternatively, Congress has also authorized the Bureau's Office of Enforcement to commence civil litigation in federal courts.⁸⁹ This litigation authority is independent of the Department of Justice and merely requires the Bureau to notify the United States Attorney General when commencing a civil action.⁹⁰

In either adjudicative proceedings or civil litigation, the CFPB is entitled by law to seek any appropriate legal or equitable relief, including rescission, refunds, restitution, disgorgement, damages, public notification of violations, and limits on the

79. 12 C.F.R. §§ 1080.1-.14.

80. See DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT ¶ 4665 (CCH attorneys eds., 2010).

81. 12 C.F.R. pt. 1080.

82. 12 U.S.C. § 5563.

83. *Id.* § 5564.

84. 12 C.F.R. pt. 1081.

85. DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, *supra* note 80, ¶ 4670.

86. 12 C.F.R. § 1081.103.

87. *Id.*

88. *Id.* §§ 1081.104,.302,.402.

89. 12 U.S.C. § 5564(a) (2012).

90. *Id.* § 5564(d).

activities of the defendant.⁹¹ The Bureau can also seek to impose punitive civil money penalties not to exceed \$5,000 per day during which the violation occurred, with the penalty increasing to up to \$25,000 per day for defendants engaged in reckless violations and up to \$1,000,000 per day for knowing violations.⁹² In assessing civil money penalties, the CFPB, or a court, is required to consider the size and financial resources of the defendant, the gravity of the violation, the severity of risks or losses imposed on consumers, the history of previous violations, and other matters as justice requires.⁹³

III. METHODS: CLASSIFYING THE CFPB ENFORCEMENT OFFICE'S BODY OF WORK

This study is the first empirical analysis of all publically announced CFPB enforcement's actions. Every public enforcement case from the inception of the Bureau through the end of the 2015 calendar year was identified and classified. CFPB enforcement actions can begin either as Office of Enforcement investigations or as supervisory exams. This study does not include supervisory matters that were resolved confidentially. On the other hand, where a supervisory exam led to a publically announced enforcement action, the matter was included. Cases were identified through reviewing the Bureau's press releases, annual reports to Congress, administrative adjudication docket, and searches of the Bureau's unsealed federal court pleadings. CFPB press releases are widely available to anyone who registers with an email address for the Bureau's press release distribution list and can also be retrieved through a search of the Bureau's web page. Administrative cases were identified through the matter list and docket sheets maintained by the Bureau's OAA. The OAA's matter list includes every case initiated by the Enforcement Office through its administrative enforcement procedures.⁹⁴

For every publically announced case, the CFPB has released some legal documentation of the enforcement matter.⁹⁵ Typically, these documents include one or more of the following: a complaint, notice of charges, a consent order, a stipulation consenting to issuance of a consent order, or a settlement agreement.⁹⁶ In addition,

91. *Id.* § 5565(a)(2).

92. *Id.* § 5565(c)(2).

93. *Id.* § 5563(c)(3).

94. *Administrative Adjudication*, CFPB, <http://www.consumerfinance.gov/administrativeadjudication/> (last visited Apr. 9, 2016).

95. *Id.*

96. *Id.*

the Bureau ordinarily issues a press release, which is accompanied sometimes by a frequently asked questions document or another source of information for consumers who may be affected by the enforcement matter. For cases pursued through the CFPB's administrative enforcement procedures, the OAA maintains a docket sheet that includes all publically available pleadings, motions, and orders.⁹⁷ For cases in litigation, court filings were accessed as necessary through the publically available PACER system provided by the U.S. judiciary.

For each of the CFPB's cases, these documents were reviewed and coded using over 70 different variables. Coded variables included: the date the Bureau announced each case; the date the case was resolved (if any); whether the case was filed as an administrative enforcement matter with the OAA or as litigation in U.S. district court; whether the Bureau proceeded in partnership with some other law enforcement agency; whether the case was settled or contested upon announcement; whether the case involved a bank, credit union, or some other nondepository noncompany; and whether the Bureau charged an individual defendant with violating the law.

Moreover, this study classifies every violation of law the CFPB has asserted in public enforcement actions based on the statute providing the legal authority for the claim. These classifications include all 18 enumerated statutes set out in the CFPA, additional law that Congress subsequently added to the Bureau's enforcement jurisdiction, and the Bureau's unfairness, deception, and abusive acts or practices (UDAAP) authority.⁹⁸ UDAAP-related claims were further classified based on whether the Bureau alleged a violation of a deception or unfairness based regulation predating Dodd-Frank or the CFPA's general statutory UDAAP prohibition. Coded violations of deception and unfairness based regulations included the FTC's Telemarketing Sales Rule,⁹⁹ the Mortgage Advertising Practices Rule,¹⁰⁰ and the Credit Practices Rule.¹⁰¹

97. See, e.g., Administrative Proceeding File No. 2014-CFPB-0002: In the Matter of PHH Corporation, PHH Mortgage Corporation, PHH Home Loans LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation, CFPB <http://www.consumerfinance.gov/administrativeadjudication/2014-cfpb-0002/> (last visited Apr. 9, 2015).

98. See *infra* notes 62 - 64 and accompanying text.

99. 16 C.F.R. pt. 310 (2015). The Telemarketing Sales Rule implements the Telemarketing and Consumer Fraud and Abuse Prevention Act. Pub. L. No. 103-297, 108 Stat. 1545 (codified as amended at 15 U.S.C. ch. 87 (2012)).

100. 12 C.F.R. pt. 1014. The Mortgage Advertising Practices Rule (Regulation N) implements the 2009 Omnibus Appropriations Act § 626, 15 U.S.C. 5538, as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, § 511, 15 U.S.C. § 1638, and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, § 1097, 15 U.S.C. § 5538.

101. 16 C.F.R. pt. 444.

This study also classified cases based on the type of financial product or service involved in the illegal activity. These product or service classifications include the following categories: credit cards, mortgage loans, student loans, automobile purchase loans, nonauto retail finance, deposit accounts, remittances, pawn credit, payday loans (including similar small installment loans and car title lending), medical debt, and payment processing services.¹⁰² Finally, the study also attempts to track the dollar amounts in total consumer redress and civil money penalties awarded in all consent orders, final administrative orders, or judgments imposed in every enforcement matter.

Simple descriptive statistics were derived from each of the over seventy coded variables in order to evaluate the enforcement track record of the new agency. All information included in this Article is a matter of public record and is available through nonconfidential, widely available sources. The findings and analysis provided in this Article are the author's estimates and opinions alone, and do not necessarily reflect the views of the CFPB.

IV. RESULTS

This Part presents 3 categories of results: (1) results tracking the number of public cases and consumer relief awarded by year; (2) results illustrating the CFPB's enforcement processes, including settlements, individual liability, administrative adjudication, and intergovernmental cooperation; and (3) results classified by financial institution, financial product or service markets, and consumer financial laws enforced.

A. CFPB's Enforcement Roll-Out: Announced Cases and Consumer Relief Awarded by Year

The CFPB officially began its operations on July 21, 2011.¹⁰³ However, much of the early work of the agency focused on hiring within the complex federal process, securing physical facilities, acquiring technological systems, writing office policies and procedures, as well as designing, drafting, and implementing federal regulations on investigative procedures and administrative adjudication.¹⁰⁴ Moreover, the United States Senate did not confirm the Bureau's first director, Richard Cordray,

102. The study also coded legal claims to identify whether the alleged illegal activity involved some form of debt collection practices and whether the case related to mortgage foreclosure activity.

103. CFPB Ready To Help Consumers on Day One, CFPB (July 21, 2011), <http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-ready-to-help-consumers-on-day-one/>.

104. See, e.g., 12 C.F.R. pt. 1080.

for nearly 2 years, leading to some uncertainty in the Bureau's early enforcement work.¹⁰⁵

Nevertheless, the CFPB's investigations and exams began to bear fruit in public law enforcement in 2012. Figure 1 provides a graphic representation of the number of public enforcement cases announced by the CFPB, juxtaposed with the number of CFPB employees by year. In 2012, the Bureau announced 8 public enforcement actions. By the time the Senate confirmed Director Cordray on July 16, 2013,¹⁰⁶ the Bureau had announced 17 public enforcement cases, including 6 against large banks and 11 against nonbank financial companies. In the calendar year 2013, the Bureau announced 27 actions. In 2014 and 2015, the Bureau announced 32 and 55 actions respectively. Over the first 4 years of the Bureau's active enforcement program, the number of public enforcement actions has roughly tracked the Bureau's recruitment of staff.

105. Block-Lieb, *supra* note 48, at 42; Deepak Gupta, Recent Development, Reactions to Noel Canning v. NLRB, The Consumer Protection Bureau and the Constitution, 65 ADMIN. L. REV. 945, 946 n.1 (2013); Michael J. Teter, Letting Congress Vote: Judicial Review of Arbitrary Legislative Inaction, 87 S. CAL. L. REV. 1435, 1448–49 (2014).

106. Danielle Douglas, Senate Confirms Cordray To Head Consumer Financial Protection Bureau, WASH. POST (July 16, 2013), https://www.washingtonpost.com/business/economy/senate-confirms-consumer-watchdog-nominee-richard-cordray/2013/07/16/965d82c2-ee2b-11e2-a1f9-ea873b7e0424_story.html.

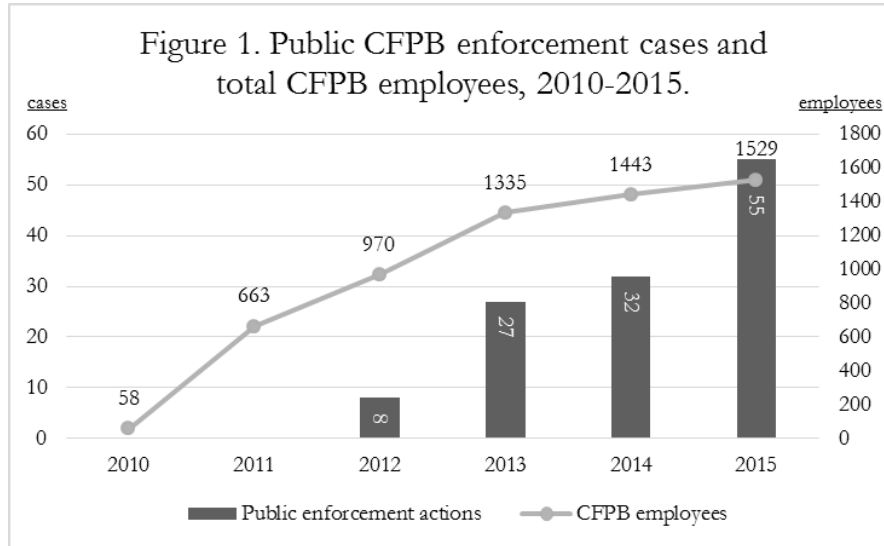
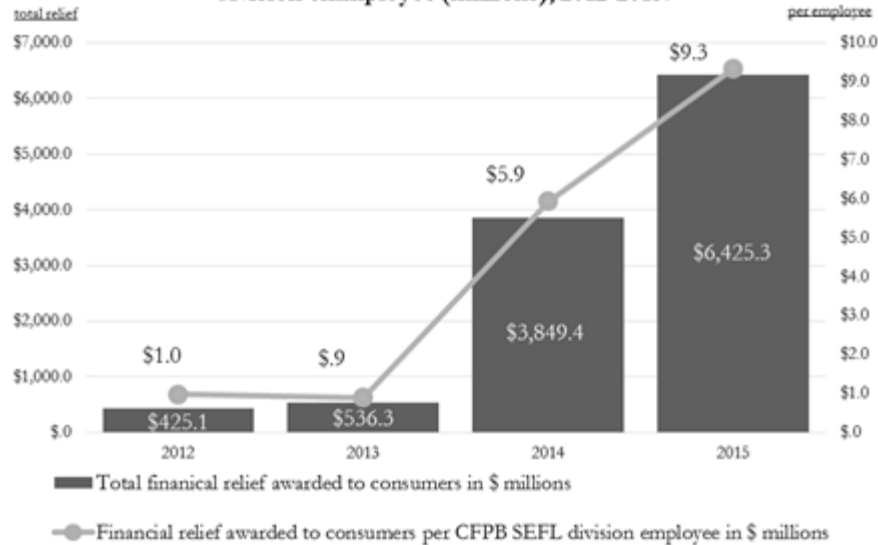


Figure 2 provides the total consumer relief awarded to consumers in public enforcement actions over the first 4 years of the CFPB's active law enforcement program. Figure 2's left y-axis and bar chart numbers for total consumer relief include consumer redress, refunds, and canceled debts awarded to consumers in millions of dollars. In the first year of the CFPB's active enforcement program, the Bureau's 8 announced enforcement cases ordered financial service providers to refund or forgive approximately \$425 million on behalf of U.S. consumers. In 2013, the Bureau's 27 cases provided \$536 million in consumer relief. In 2014 and 2015, the Bureau's enforcement program began to hit its stride once it had confirmed a director, developed operating systems, and a staff nearing capacity. In 2014, the Bureau announced 32 cases, which together produced \$3.8 billion in consumer relief. And, the 55 public enforcement actions the Bureau announced in 2015 awarded \$6.4 billion in relief to consumers.

The right y-axis and plotted line within Figure 2 divides the total consumer relief figure for each year by the number of employees within the Bureau's Supervision, Enforcement, and Fair Lending (SEFL) division at that time. SEFL employees share responsibility for exams and investigations that lead to public enforcement actions when appropriate.¹⁰⁷ The CFPB reports that 45% of its total workforce is housed

107. Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2015, CFPB 8 (Nov. 16, 2015), https://www.files.consumerfinance.gov/f/201511_cfpb_report_fiscal-year-2015.pdf. Although this study only tracks publically announced enforcement actions, these cases

Figure 2. Total consumer relief awarded to American consumers in public CFPB enforcement cases with consumer relief per CFPB supervision, enforcement, and fair lending division employee (millions), 2012-2015.



within the SEFL division.¹⁰⁸ Thus, including every attorney, examiner, manager, and all support staff, the approximately 437 SEFL employees in 2012 produced nearly \$1 million in awarded redress, refunds, and cancelled debts for U.S. consumers per employee. By 2015, the CFPB's SEFL division had added approximately 250 employees.¹⁰⁹ Nevertheless, the productivity of each employee as measured in consumer relief grew nearly tenfold. In 2015, CFPB employees charged with enforcing consumer financial protection laws won almost \$10 million in relief for U.S. consumers per employee.

B. CFPB's Enforcement Process: Settlement, Individual Liability, Administrative Adjudication, and Interagency Collaboration

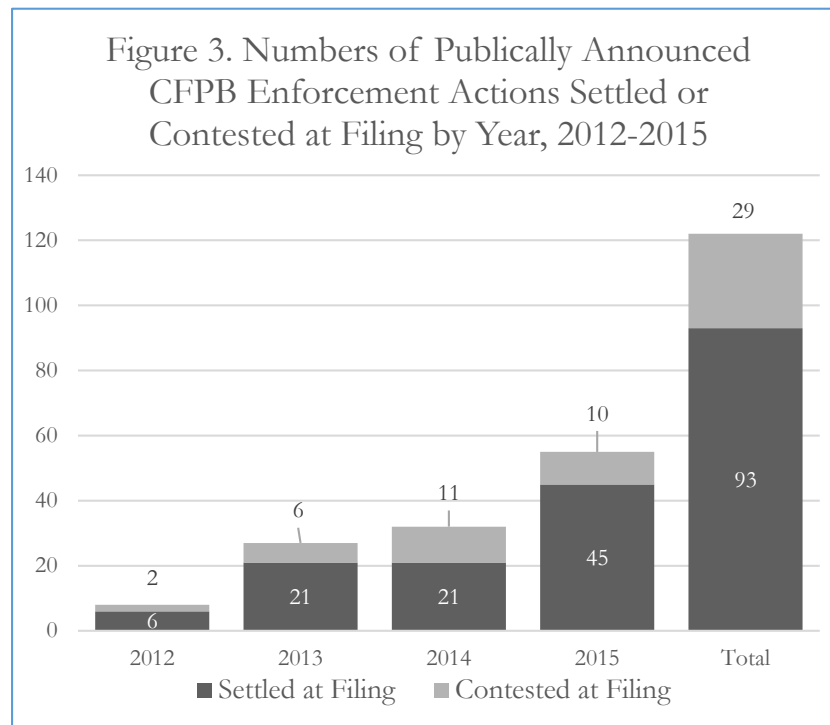
Analysis of the CFPB's publicly announced enforcement actions yields some insights into the Bureau's enforcement process. Figure 3 presents data on the numbers of the Bureau's enforcement actions that were either contested or settled by the

reflect the efforts of supervisory exams that uncovered violations referred to the Office of Enforcement.

108. *Id.* at 13.

109. Compare *id.* (showing employment as of 2015), with *Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2014*, CFPB 11-12 (2014), https://www.files.consumerfinance.gov/f/201411_cfpb_report_fiscal-year-2014.pdf (showing the growth in employees).

defendant at the time the Bureau publically announced the case. Much of the Bureau's supervisory and enforcement work takes place in the form of confidential exams and investigations.¹¹⁰ Much of the Bureau's law enforcement work is not publically announced. Nevertheless, public enforcement actions are especially important because they can provide a window into the most substantial or troubling illegal activity uncovered by the CFPB. Figure 3 classified a case as "contested" for purposes of this study when the Bureau had not reached a settlement with all of the defendants in the case at the time the Bureau publically announced the case. Contested cases include cases in which the defendant was unable or unwilling to settle on terms that the Bureau found acceptable, as well as a handful of cases in which the Bureau sought an *ex parte* temporary restraining order from a federal judge prior to public announcement in order to prevent the defendant from concealing illegally obtained assets.



110. See *CFPB Supervision and Examination Manual*, CFPB (Oct. 1, 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

Overall, a relatively small proportion of defendants have been unable or unwilling to settle CFPB enforcement actions on terms that the Bureau would accept. In the first year of the Bureau's enforcement work, only 2 matters included defendants who publically contested the Bureau's case. Six and 11 public enforcement cases included at least one contesting defendant in 2013 and 2014, respectively. Although the total number of announced CFPB cases increased substantially in 2015, the number of cases with defendants who were unable or unwilling to settle on terms acceptable to the Bureau actually declined slightly to ten. Altogether, only 29 cases included a defendant who contested a public Bureau enforcement action over the course of the Bureau's existence, constituting about 23.8% of announced cases.

Table 1 breaks down the total number and percent of both settled and contested public enforcement actions based on whether each case charged an individual defendant with violating the law. The Bureau has, on average, charged one or more individuals in nearly a third of its public enforcement cases. Approximately 16.4% of the Bureau's cases charged an individual who contested after public announcement. About 14% of the Bureau's cases charged an individual and settled upon announcement. The largest group of cases in this respect, about 62% of all public matters, were settled cases where the Bureau did not charge an individual. Although the number of individuals charged in contested and settled cases is comparable (17 and 20 respectively), the proportion of cases that charged individuals is much higher among contested cases. Thus, the CFPB charged individuals in 20 out of 29 contested cases versus 17 out of 93 settled cases. Predictably, this suggests that defendants may be less likely to accept settlement offers when the Bureau is determined to require individuals to pay some portion of restitution, disgorgement, or penalties for illegal activity out of their own pocket.

Table 1. Settlement of public CFPB enforcement actions in cases where individuals were and were not charged with illegal activity.

	Contested Cases		Settled Cases		Total	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Individual(s) charged	20	16.4	17	13.9	37	30.3
No individual(s) charged	9	7.4	76	62.3	85	69.7
Total	29	23.8	93	76.2	122	100.0

Source: Analysis of public CFPB enforcement actions, 2012-2015

Table 2 further classifies settlement data based on what adjudicative process the Bureau used to enforce the law. The Bureau has the authority and discretion to bring enforcement actions either in a U.S. district court or through an administrative enforcement action before an administrative law judge.¹¹¹ Table 2 shows the number and percent of cases that the Bureau filed in federal court versus those filed in the CFPB's OAA. These data show that the Bureau has actively used both of its enforcement procedural vehicles, with about 45% of the public cases filed in federal court and 55% of public cases filed with the CFPB's OAA. However, among cases the Bureau could not settle, federal court was a much more likely venue. In 26 of 29 contested cases, the Bureau chose to litigate in federal court. In the history of the Bureau, it has only brought contested public enforcement cases as administrative enforcement actions 3 times, which constitutes about 2% of all public matters.¹¹²

111. See *infra* notes 81-82 and accompanying text.

112. These cases were: *In re* Integrity Advance, LLC, CFPB No. 2015-CFPB-0029 (Nov. 18, 2015)(notice of charges) (alleging TILA, EFTA, and UDAAP violations); *In re* PHH Corp., CFPB No. 2014-CFPB-0002 (Jan. 29, 2014) (notice of charges) (alleging RESPA kickback violations); *In re* 3D Resorts-Bluegrass, LLC, CFPB No. 2013-CFPB-0002 (Dec. 3, 2013) (consent order) (alleging ILSA Act violations).

Table 2. Settlement of public CFPB enforcement actions: U.S. District Courts and CFPB Administrative Adjudication, 2012-2015.

		Contested Cases	Settled Cases	Total
U.S. District Courts	<i>n</i>	26	29	55
	<i>% of all cases</i>	21%	24%	45%
	<i>Consumer relief</i>	\$575,076,534	\$2,921,329,458	\$3,496,405,991
	<i>Disgorgement</i>	\$ -	\$ -	\$ -
	<i>Civ. Money Penalties</i>	\$15,232,079	\$77,559,001	\$92,791,080.00
CFPB Admin. Process	<i>n</i>	3	64	67
	<i>% of all cases</i>	2%	52%	55%
	<i>Consumer relief</i>	\$49,999	\$7,739,677,062	\$7,739,727,061
	<i>Disgorgement</i>	\$109,188,618	\$166,421	\$109,355,039
	<i>Civ. Money Penalties</i>	\$1	\$294,479,001	\$294,479,002
Both Court and Admin. Cases	<i>n</i>	29	93	122
	<i>% of all cases</i>	24%	76%	100%
	<i>Consumer relief</i>	\$575,126,533	\$10,661,006,519	\$11,236,133,052
	<i>Disgorgement</i>	\$109,188,618	\$166,421	\$109,355,039
	<i>Civ. Money Penalties</i>	\$15,232,080	\$372,038,002	\$387,270,082

Source: Analysis of public CFPB enforcement actions, 2012-2015

Table 2 also includes data on the dollar amounts awarded in consumer relief, disgorgement, and civil money penalties. These dollar amounts include only those cases where a federal judge or administrative law judge issued a final order before December 31, 2015. Therefore, these numbers conservatively understate the likely future awards that may be produced in currently disputed litigation. With that caveat, the Bureau's public enforcement actions pursued through its administrative process produced a total of about \$7.7 billion in consumer relief provided to U.S. consumers, which is just over twice the \$3.5 billion in consumer relief awarded through final orders issued by U.S. district court judges. Looking only at contested cases, however, the consumer relief awarded by federal district court judges, \$575 million, dwarfs the approximately \$50,000 in consumer relief awarded by administrative law judges in the Bureau's 3 contested administrative enforcement actions.

Also of interest in Table 2 are data showing the proportion of consumer relief, disgorgement, and civil money penalties awarded in contested versus settled cases. The vast majority of consumer relief awarded to consumers came in cases where the

defendant agreed to provide the remedy. Nearly \$10.7 billion in consumer relief came out of settled cases, as opposed to \$575 million awarded in contested cases. Similarly, the overwhelming majority of civil money penalties, \$372 million, were agreed to by defendants in settlements. In contrast, the Bureau's public enforcement actions generated \$15 million in penalties in the 24% of its cases that defendants contested after announcement.

Director Cordray has often spoke publically about the CFPB's commitment to working collaboratively with other federal and state regulatory and law enforcement agencies.¹¹³ The Bureau's 4 years of public enforcement now permits some evaluation of the Bureau's track record in its efforts to build cooperative bridges to other agencies. While it is difficult to assess the qualitative nature of collaborative relationships, Table 3 provides some information that reflects a willingness to work with states, Native American tribal governments, and other federal agencies. In 41 of the Bureau's 122 public enforcement actions, the Bureau has publically cited some form of cooperation with another government agency. In some cases, this collaboration took the form of jointly filed pleadings.¹¹⁴ In other matters, the Bureau cited collaboration in laying the ground work for the enforcement action, such as providing expertise or information sharing.¹¹⁵ Some collaborative cases involved both federal and state partners, such as the debt collection practices action against J.P. Morgan Chase Bank, which the Bureau pursued in partnership with the attorneys general of 47 states, the District of Columbia, and the OCC.¹¹⁶ Most of the Bureau's large cases, as measured by total consumer relief awarded, have necessitated some form of interagency collaboration. Cases in which the Bureau publically cited some form of cooperation or partnership with another agency produced about \$10.7 billion in consumer relief, constituting nearly 95% of the total relief awarded in all CFPB public enforcement actions.

113. See, e.g., Richard Cordray, Prepared Remarks of CFPB Director Richard Cordray at the National Association of Attorneys General, CFPB (Feb. 26, 2014), <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-national-association-of-attorneys-general/>.

114. See, e.g., CFPB v. S/W Tax Loans, Inc., No. 15-cv-00299 (D.N.M. Apr. 14, 2015), http://files.consumerfinance.gov/f/201504_cfpb_complaint-sw-tax-loans.pdf (jointly filed complaint with Navajo Nation Department of Justice).

115. See, e.g., CFPB Takes Action to Obtain \$120 Million in Redress from Sprint and Verizon for Illegal Mobile Cramming, CFPB (May 21, 2015), <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-to-obtain-120-million-in-redress-from-sprint-and-verizon-for-illegal-mobile-cramming/> (citing consultation with the FCC and state attorney generals' office staff).

116. See, e.g., CFPB v. Wells Fargo Bank, N.A., No. 1:15-cv-00179-RDB (D. Md. Jan. 22, 2015) (Bloomberg Law), http://files.consumerfinance.gov/f/201501_cfpb_stamped-exhibit-a-jpmorgan-consent-judgment-document-3-1.pdf.

Table 3. CFPB enforcement actions with publically announced inter-agency collaboration, 2012-2015.

Partner	Cases		Contested cases	Cases w/ indvd. charged	Consumer relief	
	<i>n</i>	%			<i>\$ × 1000</i>	%
Federal agency(ies) ^a	21	17.2	3	1	3,254,850.0	29.0
State agency(ies) ^b	13	10.7	3	9	2,231,001.4	19.9
Both fed. and state	6	4.9	1	1	5,175,655.7	46.1
Tribal agency ^c	1	0.8	0	1	438.0	0.0
Total	41	33.6	7	12	10,661,945.2	94.9

^aIncludes: DOED, DOJ, FFC, FDIC, Fed., FTC, HUD, & OCC. ^bIncludes agencies from 49 state governments and the District of Columbia. ^cNavajo Nation Department of Justice.

Source: Analysis of publically announced CFPB enforcement actions, 2012-2015

C. CFPB's Enforcement Outcomes: Financial Products, Consumer Financial Laws, and Financial Institutions

Analysis of the CFPB's publically announced enforcement actions yields some insights into the types of companies and financial products that have been subject to CFPB enforcement actions. Figure 4 breaks down the number of CFPB enforcement actions per year based on whether the CFPB brought each case against banks or nonbanks. Figure 4 should be interpreted bearing in mind the CFPB's enforcement jurisdiction. Dodd-Frank gave the CFPB enforcement jurisdiction only over the United States's largest banks and credit unions—those with total assets exceeding \$10 billion.¹¹⁷ This means that medium- and small-sized banks and credit unions are not subject to CFPB enforcement investigations or exams. In contrast, the Bureau's enforcement jurisdiction over nonbanks is not limited by the size or assets of the company.¹¹⁸ A majority of the Bureau's early cases in 2012 were against large banks. In 2013, half of the Bureau's 27 cases were against large banks. This proportion declined in 2014 and eventually stabilized in 2015 at about a 25% of all matters. Over

117. 12 U.S.C. § 5365 (2012).

118. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1024, 12 U.S.C. § 5514.

its first 4 years, the Bureau has brought 30 cases against large banks, accounting for about 25% of the total number of public cases.¹¹⁹

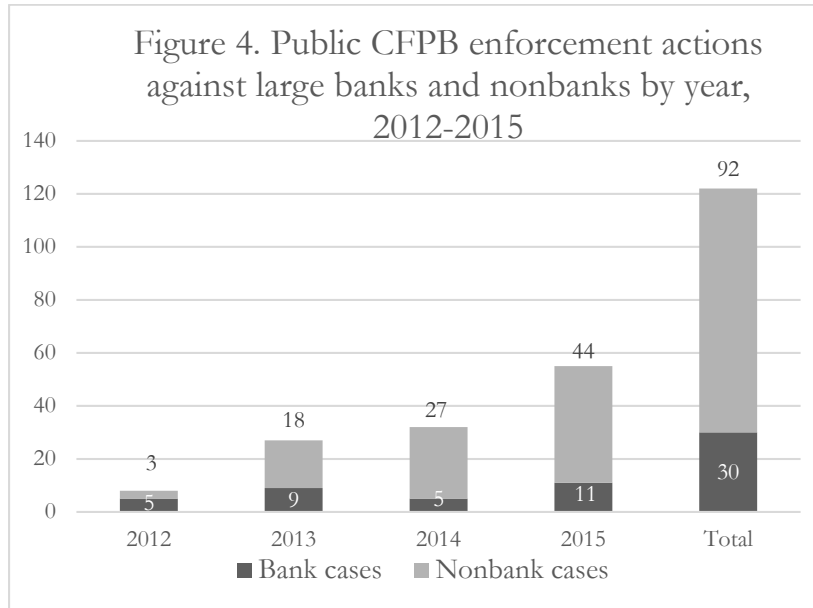


Table 4 contrasts with Figure 4 by presenting total consumer relief and civil money penalties awarded in cases against large banks versus cases against nonbanks by year and overall. Using 2013 as an example, in that year, the Bureau filed a third of its cases against banks, but perhaps reflecting the large size of these institutions, consumer relief awarded in these matters accounted for about 90% of all consumer relief. In contrast, the \$2.8 billion in relief awarded against nonbanks accounted for 72% of consumer relief awarded in 2014.¹²⁰ In 2015, the number of bank cases doubled, and bank matters produced about 80% of consumer relief. Overall, while facing about a quarter of the public enforcement cases, large banks paid about 65% of consumer relief and 63% of civil money penalties.

119. A handful of credit unions do exceed the \$10 billion threshold. However, the Bureau did not announce any public enforcement actions against a credit union.

120. Much of the nonbank consumer relief generated in 2014 came from the CFPB's mortgage servicing joint action with state attorneys general against Ocwen Financial Corporation and Ocwen Loan Servicing. See *CFPB v. Ocwen*, No. 13-cv-2025 (RMC) (D.D.C. Feb. 26, 2014) (consent judgment) (ordering defendant to provide more than \$2 billion in relief to consumers).

Table 4. Consumer relief and civil money penalties in public CFPB enforcement cases against banks and nonbanks by year, 2012-2015.

		Consumer relief		CMPs	
		\$	%	\$	%
2012	banks	425,000,000	100.0	46,100,000	100.0
	nonbanks	100,000	0.0	5,000	0.0
	total	425,100,000	100.0	46,105,000	100.0
2013	banks	485,800,000	90.6	47,634,000	63.5
	nonbanks	50,539,465	9.4	27,366,002	36.5
	total	536,339,465	100.0	75,000,002	100.0
2014	banks	1,065,300,000	27.7	38,700,000	62.0
	nonbanks	2,784,071,234	72.3	23,736,076	38.0
	total	3,849,371,234	100.0	62,436,076	100.0
2015	banks	5,385,059,808	83.8	109,500,000	53.7
	nonbanks	1,040,262,545	16.2	94,229,004	46.3
	total	6,425,322,353	100.0	203,729,004	100.0
Total	banks	7,361,159,808	65.5	241,934,000	62.5
	nonbanks	3,874,973,244	34.5	145,336,082	37.5
	total	11,236,133,052	100.0	387,270,082	100.0

Source: Analysis of public CFPB enforcement actions, 2012-2015

Table 5 classifies enforcement actions by selected financial product or service. Several caveats are in order. First, not every enforcement action is included within this selected list of financial products or services. And, second, some enforcement actions involve multiple classifications. So, for example, an enforcement action against a bank for deceptively marketing an ancillary “add-on” insurance product in a credit card program is included in the numbers for both ancillary products and credit cards.¹²¹ Similarly, where a case addresses illegal debt collection practices associated with a home mortgage loan, the case is included within the figures for both classifications. Table 5 also includes the number of cases within each product or service category in which one or more defendants contested the Bureau’s charges following public announcement. The percent contested figure in Table 5 refers to the percent of contested cases within that product or service category, rather than the percentage of all cases contested.

121. Correspondingly, the dollar amounts for consumer relief and civil money penalties reflect the awards generated in cases that addressed illegal activity in each of the listed product or service classifications. Concerning a case that involves multiple product or service classifications, Table 3 attributes dollar amounts of relief and penalties for the same case in both categories. For total relief awarded, see discussion *supra* Part IV.A.

With 47 cases overall, home mortgage loans were the financial service subject to the greatest number of CFPB enforcement actions, constituting almost 4 out of every 10 public matters. Mortgage lending related cases generated about \$2.9 billion in consumer relief, which accounted for about 25% of the relief awarded to consumers overall. Mortgage lending defendants publically contested the Bureau's charges in about quarter of the Bureau's mortgage lending related caseload. The Bureau charged individual defendants in 14 of 47 mortgage lending cases. So, cases with individual defendants accounted for about 30% of the Bureau's public mortgage lending docket, which tracked the Bureau's individual charging patterns overall.¹²²

The second most prevalent types of cases were matters challenging debt collection practices. Through 2015, the Bureau announced 29 cases alleging illegal debt collection practices, which produced \$6.7 billion in consumer relief. Almost 60% of the relief awarded to U.S. consumers occurred in cases alleging illegal debt collection practices. Twenty percent of the Bureau's contested cases involved debt collection practices.

The third most prevalent type of public enforcement action was cases addressing illegal credit card practices. The Bureau's 21 public credit card cases produced more consumer relief than cases in any other product category—almost \$7.1 billion.¹²³ Although the CFPB brought less than half as many credit card cases as mortgage loan cases, credit card matters led to more than double the consumer relief produced by mortgage matters. However, credit card related cases were particularly unlikely to involve individually charged defendants—only one case involving credit card debt settlement services.¹²⁴ And, defendants in credit card cases publically contested the Bureau's claims at less than half the Bureau's overall contested rate.¹²⁵

The CFPB has announced 13 cases against companies providing debt relief or settlement services to consumers, which accounts for about 10% of the overall number of public enforcement actions. Debt settlement providers publically contested

122. *See supra* Table 1.

123. There is significant overlap between debt collection and credit card cases because several matters involved collection of credit card debts. *See, e.g., In re Chase Bank, USA N.A., CFPB No. 2015-CFPB-0013* (July 8, 2015) (consent order) (settling allegations that Chase unfairly and deceptively sold erroneous and unenforceable credit card receivables to debt buyers).

124. *See* Complaint at 6, *CFPB v. Mission Settlement Agency*, No. 1:13-cv-3064 (S.D.N.Y. May 7, 2013), http://files.consumerfinance.gov/f/201305_cfpb_complaint_mission-settlement.pdf (charging owner of debt settlement provider individually for directing employees to promise deceptively to consumers that the provider would settle unsecured credit card balances for 55% of the total outstanding obligations).

125. *See supra* Table 1 (noting that 23.8% of all CFPB enforcement actions were contested upon public announcement).

the Bureau's claims in just over 60% of debt relief cases, making this group more likely than any other to refuse the Bureau's settlement offers. Although debt settlement cases make up about 10% of the overall number of public enforcement actions, they account for about 27.5% of the Bureau's publically contested cases. Debt settlement matters led to about \$19 million in total consumer relief. However, debt settlement providers faced relatively steep civil money penalties in comparison to the overall amount of consumer relief awarded. With about \$13.8 million in penalties, debt relief services had the highest penalty-to-relief ratio—69.4%—of any financial product or service category. Similarly, although consumer relief awarded in debt settlement cases amounted to only about 0.2% of the consumer relief awarded in all the Bureau's public cases, the civil money penalties awarded in debt settlement cases accounted for 3.5% of all awarded penalties. The Bureau's debt settlement cases are also notable in that this is the only type of financial product or service in which the Bureau charged at least one individual in every publically announced case.

On balance, the Bureau's early public enforcement leaned toward mainstream financial products commonly, but by no means exclusively, offered to middle- and upper-middle class consumers. For example, although the Bureau has announced 47 mortgage lending cases and 21 credit card matters, it has not announced any public actions against either pawnbrokers or remittance providers. The Bureau has announced 12 cases against payday and installment lenders. However, consumer advocates are likely to view the Bureau's total consumer relief of \$71 million in this large and controversial market as a relatively modest success in light of the supermajority of Americans who would prefer to adopt traditional usury limits that would effectively prohibit most payday lending altogether.¹²⁶ Reasonable observers might also query whether the CFPB has marshalled sufficient resources in the large and troublesome student lending market. Nevertheless, effective supervision and enforcement in mortgage and credit card markets are surely reasonable objectives for the Bureau given the history of the foreclosure crisis, the scale of these markets, and the ability to provide cost effective relief to large numbers of Americans.

126. Timothy E. Goldsmith & Nathalie Martin, Interest Rate Caps, State Legislation, and Public Opinion: Does the Law Reflect the Public's Desires?, 89 CHI.-KENT L. REV. 115, 120–22, 127 (2014) (collecting extensive polling data and results of ballot measure and presenting original survey results).

Table 5. Public CFPB enforcement actions relating to selected financial product or service markets, 2012-2015.

Financial Product or service	Cases		Contested cases		Ind. chrgd.	Consumer relief ^a		CMPs ^a	
	<i>n</i>	%	<i>n</i>	%		\$ x 1000	%	\$ x 1000	%
Mortgages	47	38.5	11	23.4	14	2,913,637.2	25.9	99,477.0	25.7
Debt collection	29	23.8	6	20.7	6	6,715,728.8	59.8	155,200.0	40.1
Credit cards	21	17.2	2	9.5	1	7,089,981.0	63.1	173,120.0	44.7
Ancillary products	16	13.1	0	0.0	0	2,425,061.0	21.6	128,750.0	33.2
Debt relief services	13	10.7	8	61.5	13	19,412.0	0.2	13,471.0	3.5
Payday/installment	12	9.8	5	41.7	7	71,150.9	0.6	17,693.0	4.6
Auto finance	10	8.2	1	10.0	0	172,612.9	1.5	39,465.0	10.2
Payment processing	7	5.7	2	28.6	3	144,164.1	1.3	12,376.0	3.2
Student loans	6	4.9	3	50.0	2	501,200.0	4.5	2,525.0	0.7
Retail finance	4	3.3	0	0.0	2	95,579.1	0.9	150.0	0.0
Deposit accounts	3	2.5	0	0.0	0	62,900.0	0.6	15,200.0	3.9
Pawn loans	0	0.0	0	0.0	0	.0	0.0	.0	0.0
Remittances	0	0.0	0	0.0	0	.0	0.0	.0	0.0

^aAttributes awarded consumer relief and civil money penalties to multiple product or service classifications for cases relating to more than one type of product or service.

Source: Analysis of publically announced CFPB enforcement actions, 2012-2015

A close reading of the Bureau's complaints, notices of charges, consent orders, and other publically released documents permits assessment of the Bureau's track record in enforcing various enumerated consumer financial laws under its jurisdiction. Table 6 provides descriptive statistics gathered from the Bureau's public cases that pleaded or settled claims under 6 core enumerated statutes: TILA, FCRA, ECOA, FDCPA, EFTA, and RESPA.

The Bureau pleaded RESPA violations in 21 cases—more than any other enumerated statute. The next most prevalent were cases pleading TILA and FCRA claims with 18 and 14 public actions, respectively. Table 6 also shows which enumerated statute violations were alleged against banks versus nonbanks. Notably, 10 of the Bureau's 11 cases that alleged FDCPA violations were against nonbanks. But, 6 of the Bureau's 8 fair lending cases brought under ECOA were against banks.

The consumer relief and civil money penalty figures in Table 5 should be interpreted cautiously because these figures represent the total amounts awarded in cases that included an alleged violation of each respective enumerated statute. In analyzing cases with violations of multiple statutes, it is generally not feasible to distinguish what portion of the overall relief or penalty is attributable to each count. By way of example, Table 5 shows that the 18 cases that alleged a violation of TILA produced total consumer relief of approximately \$307 million. This is not to say that the Bureau collected \$307 million for violations of TILA because in most of these 18 cases TILA claims accompanied alleged violations of other enumerated statutes or the Bureau's UDAAP standard.

Table 6. Public CFPB enforcement of selected enumerated consumer financial laws, 2012-2015.

Law	Cases enforcing		Cases against		Consumer relief ^a		CMPs ^a	
	<i>n</i>	%	<i>banks</i>	<i>nonbanks</i>	<i>\$ x 1000</i>	%	<i>\$ x 1000</i>	%
TILA	18	14.8	4	14	306,901.2	2.7	22,616.0	5.8
FCRA	14	11.5	4	10	375,130.2	3.3	65,835.0	17.0
ECOA	8	6.6	6	2	493,250.0	4.4	30,900.0	8.0
FDCPA	11	9.0	1	10	782,699.7	7.0	42,150.0	10.9
EFTA	6	4.9	1	5	64,229.1	0.6	10,600.0	2.7
RESPA	21	17.2	4	17	101,764.5	0.9	70,467.0	18.2

^aConsumer relief and civil money penalty figures reflect the total awards generated in cases that included each type of enumerated statutory claim. These total awards may be attributable in part to other claims asserted in each case.

Source: Analysis of publically announced CFPB enforcement actions, 2012-2015

Table 7 provides further information about the CFPB's fair lending cases. The Bureau has asserted ECOA claims 3 times in mortgage related matters, 3 times in auto lending cases, and twice with respect to credit cards. Although fair lending cases in the auto finance market have generated considerable controversy,¹²⁷ these cases represent only 2.5% of the Bureau's public docket. While the Bureau's 8 ECOA cases accounted for about 6.6% of the Bureau's publically announced matters, the \$493

127. See Rachel Witkowski, *CFPB Overestimates Potential Discriminations, Documents Show*, AM. BANKER (Sept. 17, 2015), <http://www.americanbanker.com/news/law-regulation/cfpb-overestimates-potential-discrimination-documents-show-1076742-1.html> (citing internal CFPB documents that demonstrate "bias" in the agency's discrimination detection methods).

million in consumer relief generated in these cases amounted to 4.4% of all consumer relief. No defendant has contested a CFPB discrimination case after announcement. And, in every case where the Bureau pleaded a violation of ECOA, it proceeded in collaboration with another law enforcement or regulatory agency.

Table 7. Public CFPB Equal Credit Opportunity Act cases, 2012-2015.

Financial Product or service	Cases		Contested cases		Cases w/ enf. partner(s)		Consumer relief ^a	
	<i>n</i>	% of all	<i>n</i>	% of ECOA	<i>n</i>	% of ECOA	\$ × 1000	%
Mortgages	3	2.5	0	--	3	37.5	71,250.0	0.6
Credit cards	2	1.6	0	--	2	25.0	300,000.0	2.7
Auto financing	3	2.5	0	--	3	37.5	122,000.0	1.1
Total	8	6.6	0	--	8	100.0	493,250.0	4.4

^aConsumer relief figures reflect the total awards generated in cases that included ECOA violations and can include relief attributable to other non-ECOA claims as well.

Source: Analysis of publically announced CFPB enforcement actions, 2012-2015

Much of the CFPB's enforcement work has focused on stopping unfair, deceptive, or abusive financial acts and practices. Table 8 provides information on cases that pleaded claims either under 1 of 3 regulations with unfairness or deception related provisions or under the CFPA's general UDAAP standards. The Bureau has used the FTC's Telemarketing Sales Rule in 11 cases, which accounts for about 9% of the Bureau's public docket. All but one of these cases were against nonbanks and together they produced \$712 million in consumer relief. Five of the Bureau's 47 mortgage lending related cases asserted violations of the FTC's Mortgage Advertising Practices Rule. And, the Bureau has only had one occasion to assert a violation of the FTC's Credit Practices Rule.

Deception was by far the most common legal violation asserted in CFPB public enforcement actions to date. Bureau examinations and investigations uncovered deceptive acts or practices leading to public enforcement matters in 73 of the Bureau's 122 cases. Although cases that asserted illegal deception accounted for nearly 60% of the Bureau's public docket, these matters produced the overwhelming majority of financial relief for consumers. Cases pleading deception generated nearly \$10.5 billion in consumer relief, which constituted about 93% of all consumer relief awarded in public Bureau actions.

There are interesting distinctions in the Bureau's enforcement track record for unfairness and abusiveness. Cases that pleaded deception also generally pleaded unfairness, reflecting the simple reality that practices that deceive customers about material facts are often likely to satisfy the elements of unfairness claims as well. Conversely, the Bureau asserted abusiveness much more infrequently than deception or unfairness. Only 14 cases included an abusiveness claim representing about 11% of

the Bureau's public matters. Moreover, cases that did include abusiveness claims had much less at stake financially insofar as these cases generated about \$119 million in consumer relief—or, about 1.1% of the Bureau's overall consumer relief awards. Cases alleging abusiveness generated a somewhat higher proportion of the Bureau's civil money penalties, but these cases still only accounted for about 4% of all penalties awarded.

Table 8. Public CFPB enforcement actions pleading unfair, deceptive, or abusive practices claims: Rules and standards, 2012-2015.

Law	Cases enforcing		Cases against		Consumer relief ^a		CMPs ^a	
	<i>n</i>	%	<i>banks</i>	<i>Non-banks</i>	\$ × 1000	%	\$ × 1000	%
<i>FTC UDAP Regulations</i>								
Telemarketing Sales Rule	11	9.0	1	10	711,898.2	6.3	37,421.0	9.7
Mortgage Advt. Practices Rule	5	4.1	0	5	14,892.2	0.1	6,573.0	1.7
Credit Practices Rule	1	0.8	0	1	.0	0.0	.0	0.0
<i>UDAAP Standards</i>								
Unfairness	47	38.5	12	35	10,176,456.4	90.6	210,688.0	54.4
Deception	73	59.8	19	54	10,467,098.1	93.2	253,836.0	65.5
Abusiveness	14	11.5	0	14	118,531.5	1.1	15,553.0	4.0

^aConsumer relief and civil money penalty figures reflect the total awards generated in cases that included UDAAP violations and can include relief attributable to other claims as well.

Source: Analysis of publically announced CFPB enforcement actions, 2012-2015

Table 9 synthesizes CFPB public enforcement data on settlement, individual liability, and use of the abusiveness standard to contrast public enforcement cases against banks and nonbanks. Although CFPB cases against banks generated about 65% of all consumer relief and 63% of civil money penalties, the Bureau has individually charged a current bank employee in only one matter. No bank has ever attempted to contest a public CFPB enforcement action after announcement. And all 14 cases in which the Bureau alleged abusiveness were pursued against nonbanks.

Table 9. Settlement, individual accountability, and abusive practices in CFPB enforcement actions against banks and nonbanks, 2012-2015.

		All cases		Cases contested at filing		Cases w/ indivd. charged		"Abusiveness" charged	
		<i>n</i>		<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
2012	banks	5		0	0.00	0	0.0	0	0.0
	nonbanks	3		2	100.0	3	100.0	0	0.0
	total	8		2	25.0	3	37.5	0	0.0
2013	banks	9		0	0.0	0	0.0	0	0.0
	nonbanks	18		6	100.0	8	100.0	2	100.0
	total	27		6	22.2	8	29.6	2	7.4
2014	banks	5		0	0.0	0	0.0	0	0.0
	nonbanks	27		11	100.0	12	100.0	4	100.0
	total	32		11	34.4	12	37.5	4	12.5
2015	banks	11		0	0.0	1	7.1	0	0.0
	nonbanks	44		10	100.0	13	92.9	8	100.0
	total	55		10	18.2	14	25.5	8	14.5
Total	banks	30		0	0.0	1	2.7	0	0.0
	nonbanks	92		29	100.0	36	97.3	14	100.0
	total	122		29	23.8	37	30.3	14	11.5

Source: Analysis of public CFPB enforcement actions, 2012-2015

V. DISCUSSION: SEVEN NOTEWORTHY FINDINGS ON THE CFPB'S LAW ENFORCEMENT ACCOMPLISHMENTS AND CHALLENGES

Empirical analysis of public enforcement actions has the potential to help inform the ongoing debate over the CFPB's accomplishments and challenges. In particular, this section sets out seven findings that may be noteworthy for policy makers, scholars, students, consumer advocates, the financial services industry, and CFPB staff.

Finding 1: During the study period, the CFPB's Office of Enforcement Did Not Lose a Case.

Critics of the CFPB have frequently argued that the Bureau is a “runaway agency,”¹²⁸ which “continually oversteps its bounds.”¹²⁹ However, this claim is in tension with the CFPB’s enforcement track record. During the studied period extending from the Bureau’s inception to December 31, 2015, the Bureau did not lose any of its 122 publicly announced enforcement actions. To be sure, the agency has lost a handful of motions including a statute of limitations issue and a venue dispute.¹³⁰ And more recently, shortly before this article went to press but after the period of time studied, a federal district judge refused to enforce a Bureau Civil Investigative Demand against a college accreditation agency that acts as a key student lending gatekeeper for for-profit colleges.¹³¹ Nonetheless, if the CFPB were continually overstepping its bounds, then perhaps critics of the agency ought to be able to point to many decisions by district court judges, administrative law judges, or U.S. courts of appeal dismissing the agency’s unlawful actions. And yet, from its inception through 2015 the agency had a 122-and-0 track record in its publicly announced enforcement actions, and after the study period prior to publication of this article the Bureau had lost only one pre-complaint discovery dispute.

Nor is this track record diminished by the Bureau’s option of pursuing enforcement cases through administrative adjudication. The CFPB has frequently used administrative enforcement actions to conclude matters in which the defendant has agreed to a settlement. But, the Bureau has only very rarely used administrative adjudication in contested cases. Out of 122 public enforcement cases, the Bureau has brought only 3 relatively small administrative enforcement actions that defendants

128. Hiltzik, *supra* note 17 (quoting Senator Ted Cruz).

129. Ratcliffe, *supra* note 21.

130. Although the CFPB has not prevailed on every claim or motion, as of December 31, 2015, the Bureau had either reached a favorable settlement or was continuing to pursue contested matters in ongoing litigation. *See, e.g.*, CFPB v. ITT Educ. Servs., Inc., No. 1:14-cv-00292, 2015 WL 1013508 (S.D. Ind., Mar. 6, 2015) (denying defendant’s motion to dismiss on unfairness and abusiveness claims, but granting dismissal of TILA claim as time barred); CFPB v. CashCall, Inc., No. 13-13167-GAO, 2015 WL 5610813 (D. Mass. Sept. 23, 2015) (granting defendant’s motion to transfer venue to the Central District of California).

131. *Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools*, Memorandum Opinion, Civ. Case. No. 15-1838(RJL) (U.S. Dist. D.C. April 21, 2016). *See also* Annie Waldman, *Who’s Regulating For-Profit Schools? Execs from For-Profit Colleges*, PROPUBLICA, Feb. 26, 2016, <https://www.propublica.org/article/whos-regulating-for-profit-schools-execs-from-for-profit-colleges> (providing background on the role the Accrediting Council for Independent Colleges and Schools plays in facilitating for-profit school access to student loans).

contested after the Bureau filed notice of charges.¹³² Although the Bureau's administrative enforcement procedures are likely faster and less resource intensive than pursuing disputed cases in federal court, the agency has refrained from attempting to exploit either a real or perceived "home court" advantage.

None of this is to say that the CFPB's law enforcement efforts cannot improve. All organizations must continually strive to develop and refine their work. In many cases, reasonable minds can disagree about the meaning of the law, the nature of the business practices in question, or the appropriate process to follow. It is therefore inevitable that the CFPB will lose enforcement matters in the future. Indeed, some might argue that an agency which does not lose cases may be neglecting important and challenging problems where the law is uncertain. Either way, all large, complex organizations make mistakes, and the CFPB will surely prove no exception. Nevertheless, empirical analysis of the CFPB Enforcement Offices' body of work reveals no credible evidence that the agency has approached its law enforcement responsibilities with anything other than professionalism and objectivity.

Finding 2: Over 90% of All Consumer Relief Was Awarded in Cases Where the CFPB Uncovered Evidence that Defendants Illegally Deceived Consumers

Critics of the CFPB have suggested that the Bureau "dishes out malicious financial policy"¹³³ and "quibble[s] about 'hyper-technicalities.'"¹³⁴ However, the Bureau's enforcement focus—as measured by dollars returned to the U.S. public—has overwhelmingly been upon companies that illegally deceived consumers. In 73 out of 122 cases, the Bureau alleged that the defendant engaged in a deceptive act or practice. Deception was, by far, the most commonly pleaded claim in CFPB matters. Cases including deceptive practices claims generated over 93% of all relief provided to U.S. consumers: approximately \$10.5 billion. Far from a novel legal theory, the federal standard outlawing deceptive practices has been in effect since 1938¹³⁵ and has not

132. See cases cited *supra* note 112.

133. Lane, *supra* note 19 (quoting Senator David Perdue).

134. Derek Diaz, [Are Rumors About the Death of the 10-Factor Test for Affiliated-Business Arrangements Greatly Exaggerated?](http://www.realestateclassactions.com/2015/06/are-rumors-about-the-death-of-the-10-factor-test-for-affiliated-business-arrangements-greatly-exaggerated-2/) THE CLASS-ACTION & COMPLIANCE SENTINEL (June 7, 2015), <http://www.realestateclassactions.com/2015/06/are-rumors-about-the-death-of-the-10-factor-test-for-affiliated-business-arrangements-greatly-exaggerated-2/>.

135. Federal Trade Commission Act, Pub. L. No. 447, § 3, 52 Stat. 111 (codified as amended at 15 U.S.C. § 45(a)(1)) (amending the FTCA to state that "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful").

substantively changed in any meaningful respect since the Reagan Administration.¹³⁶ In every case alleging deception, the Bureau's examiners or enforcement attorneys found evidence showing beyond a preponderance of doubt that the defendant misrepresented or omitted material facts in a way that would deceive consumers acting reasonably under the circumstances. It is not malicious or hypertechnical for the U.S. public to expect that financial services companies refrain from lying to their customers.

Finding 3: Over 90% of All Consumer Relief Was Awarded in Cases Where the CFPB Collaborated with Other State or Federal Law Enforcement Partners

Some have suggested that the CFPB is an “economic Frankenstein monster,”¹³⁷ which acts as “a rogue agency”¹³⁸ with an “insular focus.”¹³⁹ These claims are in tension with the Bureau's track record of working collaboratively with other state, federal, and tribal law enforcement partners. Cases in which the Bureau cited the cooperation of another law enforcement or regulatory agency generated almost 95% of all relief provided to U.S. consumers: approximately \$10.7 billion. Moreover, in every case in which the Bureau charged a defendant with illegal discrimination against a protected class of consumers, the Bureau proceeded in partnership with another law enforcement agency.¹⁴⁰ In cases with the largest consumer relief awards, the Bureau was especially likely to proceed with some form of information sharing, joint pleading, or in some other form of collaborative partnership. The CFPB cited the cooperation of at least one state or federal law enforcement partner in 9 out of 11 cases with consumer relief awards in excess of \$100 million. Pursuing enforcement actions with multiple agencies in collaboration can be resource intensive and subject to redundant management structures. But, law enforcement partnerships can also provide an important check on the judgment and tactics of both agencies. Empirical assessment of the Bureau's track record reflects a consistent institutional commitment to investing enforcement resources in intergovernmental collaboration. Claims that the Bureau acts in a rogue capacity or with an insular focus should be carefully evaluated in light of the CFPB's collaborative track record.

136. See In re Cliffdale Assocs., 103 F.T.C. 110, 174 (1984) (including appended deception policy statement revising the FTC's deception test).

137. Edward Woodson, Congress Created a Frankenstein Bureau, BLAZE (June 25, 2015, 12:00 PM), <http://www.theblaze.com/contributions/congress-created-a-frankenstein-bureau/>.

138. Lane, supra note 19 (quoting Senator David Perdue).

139. Ross Uses Central Florida Example for Need To Reform Consumer Financial Protection Bureau, REP. DENNIS ROSS (Feb. 27, 2014), <http://dennisross.house.gov/news/documentsingle.aspx?DocumentID=371249>.

140. See supra Table 7.

Finding 4: No Bank Has Contested a Public CFPB Enforcement Action

Some have criticized the CFPB for using “intimidation tactics,”¹⁴¹ which are “sort of like showing up to a Sunday school picnic with a 12 gauge shotgun”¹⁴² in order to “bully banks.”¹⁴³ Banks are understandably reluctant to risk the reputational harm and financial investment needed to litigate against the U.S. government. However, in any civil enforcement action, a defendant has the option of presenting their defense to a judge. While litigation can be costly, banks in general are well funded and have access to excellent litigation counsel and public relations staff. In particular, the banks that are subject to CFPB enforcement jurisdiction each have over \$10 billion in assets—formidable reserves to draw upon in the face of alleged intimidation. And yet, through December of 2015, no bank has publically contested a CFPB enforcement case. This is not to say that the Bureau’s settlement negotiations have always gone smoothly, nor that these settlements were produced without sharp differences of opinion. Surely, at some point, a contested bank case is inevitable and will present the CFPB enforcement office with a difficult litigation challenge. Nevertheless, it is an empirically demonstrable fact that in its first 5 years the Bureau was able to reach a negotiated settlement agreement with every bank subject to a public enforcement action. Arguably, an agency that does not at times bring defendants to trial may weaken its bargaining leverage, as defendants discount the possibility of more costly sanctions.¹⁴⁴ The fact that CFPB enforcement attorneys have reached negotiated

141. Katie Pavlich, Consumer Financial Protection Bureau Grants Itself Authority To Shut Down Any Business at Anytime, TOWNHALL.COM (June 19, 2014), <http://townhall.com/tipsheet/katiepavlich/2014/06/19/consumer-financial-protection-bureau-grants-itself-authority-to-shut-down-any-business-n1853590> (quoting the U.S. Consumer Coalition).

142. U.S. Consumer Cop Says Not Bullying Banks, REUTERS (Mar. 29, 2012, 4:49 PM), <http://www.reuters.com/article/financial-regulation-cfpb-idUSL2E8ET7XL20120329> (stating that the CFPB practice of assigning enforcement attorneys to supervisory exams is “sort of like showing up to a Sunday school picnic with a 12 gauge shotgun”).

143. Newt Gingrich, CFPB Is No ‘Start-Up’ Agency, It’s the Same Old Bureaucracy and Should Be Repealed, DAILY CALLER (Sept. 17, 2014, 3:55 PM), <http://dailycaller.com/2014/09/17/cfpb-is-no-start-up-agency-its-the-same-old-bureaucracy-and-should-be-repealed/>.

144. See, e.g., Wall Street Reform: Oversight of Financial Stability and Consumer and Investor Protections: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs on Examining the Agencies’ Overall Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 113th Cong. (2013)

compromises in every public enforcement action against a bank suggests that Bureau staff have approached their work from a posture of reasonable compromise.

Finding 5: The CFPB Has Demonstrated the Willingness and Ability To Hold Senior Managers at Nonbank Financial Companies Individually Liable for Their Illegal Acts

A key lesson of the financial crisis was that regulatory and enforcement systems broke down, in part, because they allowed individual employee compensation systems “designed in an environment of cheap money, intense competition, and light regulation” that “too often rewarded the quick deal, the short-term gain—without proper consideration of long-term consequences.”¹⁴⁵ This lack of individual accountability for reckless financial practices “encouraged the big bet—where the payoff on the upside could be huge and the downside limited” from the perspective of individual financiers.¹⁴⁶ Taking this lesson to heart, Director Cordray has explained: “I’ve always felt strongly that you can’t only go after companies. Companies run through individuals, and individuals need to know that they’re at risk when they do bad things under the umbrella of a company.”¹⁴⁷ In keeping with this purpose, the Bureau’s enforcement track record shows that the agency has consistently charged individuals with illegal activity in 25% to 37% of public cases each year.¹⁴⁸ Overall, 30.3% of CFPB enforcement actions charged individuals with illegal activity.

However, nearly all of the Bureau’s cases that charged individuals with illegal activity were brought against nonbanks. The Bureau has charged current bank employees in only one RESPA matter, where bank loan officers accepted pay-to-play kickbacks from a title insurance company in exchange for mortgage lending referrals.¹⁴⁹ With the exception of RESPA, in most cases where the Bureau charged one or more individual defendants, the CFPB relied on the CFPB’s interrelated definitions of “covered person” and “related persons.” The definition of covered persons, which generally includes any company “that engages in offering or providing

(statement of Senator Elizabeth Warren, Member, S. Comm. on Banking, Hous. & Urban Affairs).

145. U.S. FIN. CRISIS INQUIRY COMM’N, supra note 2, at xix.

146. Id.

147. Emily Stephenson, U.S. Consumer Watchdog Says Committed to Stiff Penalties, REUTERS (Oct. 23, 2013, 7:19 PM), <http://www.reuters.com/article/us-washington-summit-cordray-idUSBRE99M1K520131023>.

148. See supra Table 9.

149. See CFPB and State of Maryland Take Action Against “Pay-To-Play” Mortgage Kickback Scheme, CFPB (Apr. 29, 2015), <http://www.consumerfinance.gov/newsroom/cfpb-and-state-of-maryland-take-action-against-pay-to-play-mortgage-kickback-scheme/>.

a consumer financial product or service,” is the most basic provision defining the scope of the Bureau’s enforcement authority.¹⁵⁰ For nonbanks, “related persons,” which include “any director, officer, or employee charged with managerial responsibility,” are subject to the same liability and standards of proof as “covered persons.”¹⁵¹ But Dodd-Frank carves bank employees out of the definition of related persons, leaving the burden of proof for bank employees less certain.¹⁵² Without the benefit of the related person definition, the Bureau would likely need to plead individual UDAAP liability claims against bank employees under 12 U.S.C. § 5536(a)(3), which requires proof that the employee “knowingly or recklessly provide[d] substantial assistance” to a covered person.¹⁵³ Through 2015, the Bureau has not imposed liability on a bank employee by demonstrating the added *mens rea* requirements for substantial assistance liability. Thus, although the Bureau has demonstrated a commitment to holding individuals liable for their companies’ illegal practices, the CFPB continues to face challenges in holding individual bankers responsible for unfair, deceptive, or abusive acts or practices.

Finding 6: The CFPB Has Proceeded Cautiously in Enforcing the Consumer Financial Protection Act’s New “Abusiveness” Standard

Perhaps no substantive legal issue has engendered more concern from the financial services industry than the CFPB’s legal authority to prohibit “abusive” acts or practices. Some financial services lawyers have urged the Bureau to use a notice and comment rulemaking to define the universe of potential abusive activities. Others have gone further, calling the abusiveness standard “dangerous”¹⁵⁴ and asserting that the agency’s approach “likely is not sustainable”¹⁵⁵ and is “reckless.”¹⁵⁶ However, these allegations are in tension with several facts that emerge in empirical analysis of all CFPB enforcement matters. Overall, CFPB cases alleging abusive practices have comprised

150. 12 U.S.C. § 5481(6) (2012).

151. *Id.* § 5481(25).

152. *Id.*

153. *Id.* § 5536(a)(3).

154. Zywicki, *supra* note 64, at 919.

155. Benjamin Saul, Kyle Tayman & Andrew Kim, CFPB Must Show Its Cards on Defining ‘Abusive.’ AM. BANKER (Nov. 6, 2015), <http://www.americanbanker.com/bankthink/cfpb-must-show-its-cards-on-defining-abusive-1077707-1.html>.

156. Phil Hall, U.S. Chamber of Commerce: CFPB “Failed.” NAT’L MORTGAGE PROF. MAG. (June 11, 2015, 3:35 PM), <http://nationalmortgageprofessional.com/news/54469/us-chamber-commerce-cfpb-failed>.

a relatively small proportion of the Bureau's public docket as measured by the number of cases (11.5%), civil money penalties (about 4%), and especially total consumer relief awarded (about 1%).¹⁵⁷

Moreover, the CFPB has exercised procedural and substantive restraint in developing the abusiveness doctrine through its administrative enforcement actions. For instance, the Bureau has never asserted an abusiveness claim in a contested administrative proceeding. Indeed, the Bureau has only charged defendants with abusive acts or practices in 3 administrative enforcement actions, all of which merely used administrative enforcement to enter negotiated consent orders settling the Bureau's claims by agreement.¹⁵⁸ And, although many financial services industry lawyers have bemoaned the uncertainty of the abusiveness standard, it is notable that every CFPB abusiveness claim through 2015 accompanied a traditional deception claim, an unfairness claim, or both.

Nevertheless, the strength of the abusive practices standard lies in the ability of the Bureau to flexibly adapt it to new and emerging methods of taking unreasonable advantage of consumers. Nothing in the CFPB Act requires the Bureau to commit this consumer protection tool to an inflexible—and easily evaded—list of particularly enumerated financial practices that will grow stale with time and technological change. Claims that the CFPB is a “schoolyard bully that singles out the quiet kid hanging out by the tire swing”¹⁵⁹ seem overwrought when the Bureau has never charged a single bank with any abusive act or practice in a public enforcement action. The Bureau's actual track record in developing the new abusive practices standard has been cautiously incremental, focused on peripheral companies with highly offensive practices, oriented toward protecting vulnerable consumers, largely concomitant with traditional deception or unfairness claims, and entirely advanced through either negotiated settlements or under the adjudication of federal judges.

157. See *supra* Table 8.

158. In all 3 cases, the defendant agreed to the settlement, and each case was announced with a consent order. See *In re* Fort Knox Nat'l Co., CFPB No. 2015-CFPB-0008 (Apr. 20, 2015) (consent order); *In re* Colfax Capital Corp., CFPB No. 2014-CFPB-0009 (July 29, 2014) (consent order); *In re* Ace Cash Express, Inc., CFPB No. 2014-CFPB-0008 (July 10, 2014) (consent order).

159. Jason Kratovil, *The School Yard Bully*, FIN. SERVICES ROUNDTABLE, <http://fsroundtable.org/school-yard-bully-cfpb/> (last visited Apr. 9, 2016). Jason Kratovil is the Vice President of Government Affairs for the Financial Services Roundtable. *Id.*

Finding 7. In 2015 Public Enforcement Cases, CFPB Law Enforcement Staff Generated Approximately \$9.3 Million per Employee in Refunds, Redress, and Forgiven Debts for American Consumers

Critics of the CFPB have often complained that the agency is just another “vast bureaucracy”¹⁶⁰ with “bloated, overpaid”¹⁶¹ employees who have “an abysmal track record in obtaining financial relief for consumers.”¹⁶² However, empirically grounded analysis of the Bureau and its work is in tension with these claims. While the term “vast” is subject to some interpretation, as a factual matter, the CFPB’s supervision, enforcement, and fair lending division has approximately 687 employees—a smaller group than the average U.S. high school.¹⁶³ In contrast, JP Morgan Chase, the largest bank subject to CFPB supervision and enforcement, has an estimated 240,000 employees working in 5,511 domestic branches.¹⁶⁴ Although the CFPB and the large banks it regulates are not comparable in size, JP Morgan Chase and CFPB employees are similar in one respect: both workforces make roughly the same average annual salary.¹⁶⁵ On average CFPB employees make “somewhat less than a third-year investment banking analyst.”¹⁶⁶

160. Jacobson, *supra* note 18 (quoting Carly Fiorina).

161. Robert Feinberg, House Subcommittee Argues over CFPB Budget, NEWSMAX (June 24, 2013, 2:28 PM), <http://www.newsmax.com/t/finance/article/511572>.

162. CFPB Ineffective in Obtaining Financial Relief for Victims of Debt Collection Violations, STREETINSIDER.COM (Apr. 22, 2015, 3:17 AM), <http://www.streetinsider.com/Press+Releases/CFPB+Ineffective+in+Obtaining+Financial+Relief+for+Victims+of+Debt+Collection+Violations/10477972.html>.

163. The Department of Education reports that the average U.S. high school has 854 students. Average Student Membership of Regular Public Elementary and Secondary Schools with Membership, by Instruction Level, Membership Size of Largest and Smallest School, and State or Jurisdiction: School Year 2009-10, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/pubs2011/pesschools09/tables/table_05 (last visited Apr. 9, 2016).

164. About Us, JPMORGAN CHASE & CO., <https://www.jpmorganchase.com/corporate/About-JPMC/about-us.htm> (last visited Apr. 9, 2016); Insured U.S.-Chartered Commercial Banks that Have Consolidated Assets of \$300 Million or More, Ranked by Consolidated Assets, FED. RES. (Dec. 31, 2015), http://www.federalreserve.gov/releases/lbr/current/lrg_bnk_1st.pdf.

165. See Matt Levine, Are Bank Regulators Overpaid?, BLOOMBERGVIEW (Apr. 22, 2014, 10:53 AM), <http://www.bloombergview.com/articles/2014-04-22/are-bank-regulators-overpaid>.

166. *Id.*; see also Kenneth Rapoza, How Much Do Wall Streeters Really Earn?, FORBES (Mar. 13, 2013, 1:47 PM),

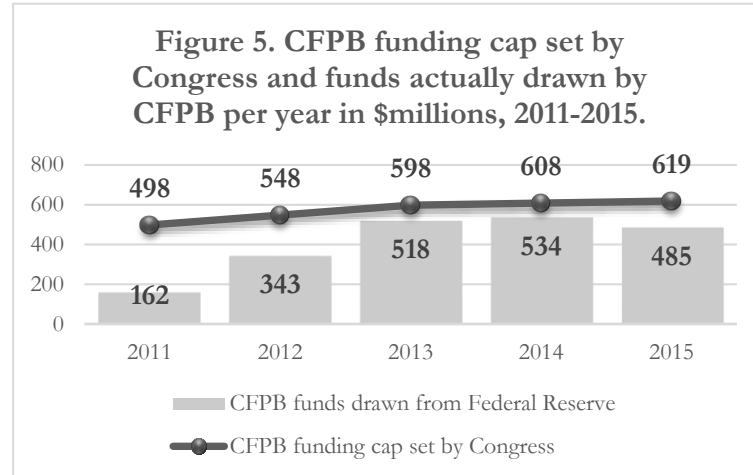
Moreover, in every year of the CFPB's operations, the Bureau spent far less than the total funding caps authorized by Congress.¹⁶⁷ Similar to other banking regulators, the CFPB's budget is not drawn directly from taxpayer funds. Instead, Dodd-Frank authorizes the CFPB to draw funds from the Federal Reserve up to a preset funding cap. On a quarterly basis, the Bureau sends a transfer request to the Federal Reserve Board, and on the basis of that request, the Board transfers funds to the Bureau. Congress set the Bureau's current funding cap at 12% of the total operating expenses of the Federal Reserve System.¹⁶⁸ If the Bureau does not transfer all the funds available to it under the funding cap, the surplus funds remain with the Federal Reserve Board and are ordinarily eventually transferred to the U.S. Treasury.¹⁶⁹ Figure 5 illustrates the CFPB's use of its available funding. Although there are important distinctions between Congressional and CFPB spending, it nonetheless bears mentioning that unlike Congress—which has incurred budget deficits from time to time—the CFPB has operated with a surplus based on its available funding cap in every year of operation.

<http://www.forbes.com/sites/kenrapoza/2013/03/13/how-much-do-wall-streeters-really-earn/#4c52f4d17f08> (listing the average pay for a Wall Street investment analyst).

167. Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2015, *supra* note 107, at 115; Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2014, *supra* note 109, at 103; Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2013, CFPB 36 (2013), https://www.files.consumerfinance.gov/f/201312_cfpb_report_financial-report.pdf.

168. Congress set the CFPB's funding cap at 10% of the Federal Reserve's operating expenses in fiscal 2011, 11% of these expenses in 2012, and 12% per year thereafter subject to annual adjustments for inflation. *See The CFPB Budget*, CFPB, <http://www.consumerfinance.gov/budget/> (last visited Apr. 9, 2016).

169. *See, e.g., Press Release*, BD. GOVERNORS FED. RES. SYS. (Jan. 11, 2016, 12:00 PM), <http://www.federalreserve.gov/newsevents/press/other/20160111a.htm> (announcing payments of \$97.7 billion net income to the U.S. Treasury). Although the Federal Reserve Board is required to transfer a majority of its profits to the U.S. Treasury, the Board also funds its own operating expenses in addition to funding the Bureau's operations.



Last year, although the Bureau's funding cap increased by \$11 million, the CFPB elected to draw \$49 million less from Federal Reserve funds. Nevertheless, CFPB's estimated 687 supervision, enforcement, and fair lending employees generated substantial refunds, redress, and forgiven debts for U.S. consumers. As illustrated in Figure 2 *infra*, the CFPB generated \$6.4 billion in consumer relief last year. This amounts to about \$9.3 million in relief provided to U.S. consumers per CFPB law enforcement employee. Put another way, every dollar spent last year paying CFPB supervision, enforcement, and fair lending employees produced a fifty-threefold return in consumer relief from illegal financial practices for U.S. consumers.¹⁷⁰ Counting only those cases where the defendant illegally deceived consumers, Bureau law enforcement staff generated an estimated \$8,960,400 in consumer relief per employee last year. Thus, speaking colloquially, for every dollar spent on CFPB law enforcement staff last year, the U.S. government forced banks and other financial companies to repay or forgive over \$50 for deceiving American consumers.¹⁷¹

170. The Bureau's 2015 fiscal report estimates \$266 million in total expenditures on salary and benefits for all CFPB staff. Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2015, *supra* note 107, at 63. SEFL division employees comprise 45% of the Bureau's 1529 reported employees. *Id.* at 13. Assuming SEFL-division employees have roughly the same compensation and benefits costs as other CFPB staff, the division incurred an estimated \$119,700,000 in employee costs. This estimated per employee return does not include other nonpay expenses such as facilities or contract support services.

171. Those public CFPB enforcement actions alleging deceptive acts or practices concluded in 2015 generated approximately \$6.1 billion in total consumer

VI. CONCLUSION

Congress created the CFPB to help heal the scars left by the Great Recession and to prevent similar harm to Americans in the future. This Article presents an empirical analysis of the Bureau's law enforcement track record in pursuing this mission. Drawing upon pleadings, consent orders, settlement agreements, press releases, and other publically available documents, this study classified every public enforcement action announced through 2015 based on over 70 variables. The data reported in this Article should serve as an analytical benchmark against which future Bureau action can be measured and as a needle to deflate the absurdly overheated political rhetoric used to grandstand against the CFPB's mission and accomplishments. Vapid allegations that the new consumer protection agency is a "Frankenstein monster,"¹⁷² based on "the Stalin model,"¹⁷³ or taking the first steps toward "socialism"¹⁷⁴ are thoughtlessly untethered from reality. While the quantitative nature of this analysis leaves much room for additional research and discussion, this study suggests that the CFPB has built an effective and professional law enforcement staff.

Among other results, this study includes the following findings: (1) In 122 matters that generated over \$11 billion in consumer redress and forgiven debts, the CFPB did not lose a case from its inception through 2015; (2) Over 90% of all consumer relief was awarded in CFPB cases in which the defendants illegally deceived consumers; (3) Over 90% of all consumer relief was awarded in cases where the CFPB collaborated with other state, tribal, or federal law enforcement partners; (4) No bank has publically contested a public CFPB enforcement action; (5) The CFPB has demonstrated the willingness and ability to hold senior managers at nonbank financial companies individually liable for illegal acts; (6) The CFPB has proceeded cautiously in enforcing the CFPA's new "abusive" acts and practices standard; and (7) In public cases challenging illegal financial practices concluded last year, CFPB supervision, enforcement, and fair lending staff generated approximately \$9.3 million per employee in refunds, redress, and forgiven debts for U.S. consumers.

Nevertheless, like all organizations, the CFPB's law enforcement program will continue to face ongoing challenges. For example, to date the CFPB has not announced any public enforcement actions in the pawnshop industry or against international remittance providers and has had relatively modest success in the market for payday loans—all industries that profoundly affect the financial lives of lower

relief. This estimated per employee return does not include other nonpay expenses such as facilities or contract support services.

172. Woodson, *supra* note 137.

173. Lardner, *supra* note 22 (quoting Representative Sean Duffy).

174. Jacobson, *supra* note 18 (quoting Carly Fiorina).

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CFPB ENFORCEMENT

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income Americans. Although the Bureau has effectively pursued individual liability in nonbank matters, the CFPB continues to face challenges in holding individual bank employees accountable for illegal activity. Moreover, the Bureau also faces a challenge in plotting a useful trajectory for the new statutory prohibition of abusive acts and practices. While the Bureau has understandably proceeded with caution, Congress adopted this potentially innovative law in recognition of the terrible suffering of Americans caused by defective financial products in the Great Recession. Deploying our national prohibition of abusive finance to serve the public welfare should remain a top supervisory and enforcement priority for the CFPB.

APPENDIX

PUBLIC CFPB ENFORCEMENT ACTIONS: CHRONOLOGICAL LIST, 2011-2015

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