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The Consumer Financial Protection Bureau: An Examination of CFPB under the current Federal Administration and Options for California to Better Protect its Consumers

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Thank you, Chair Limon and members of the committee for the opportunity to testify today. My name is Suzanne Martinale, Senior Policy Counsel in the West Coast Office of Consumer Reports, formerly known as Consumers Union.

After the 2008 financial crisis, we worked very hard with our coalition partners to lobby for the creation of the CFPB. Since it opened its doors, we have engaged on a regular basis with the CFPB to provide information and policy recommendations, as well as engage with staff at public hearings and stakeholder meetings around the country.

We have seen what the CFPB can do when it brings to bear all of the tools given to it under the Dodd-Frank Act, to discharge its important mission of protecting consumers - us, regular people! - in a financial marketplace that can be complex, confusing, and rife with problematic industry actors.

I want to kick off this portion of the hearing to suggest how we should conceptualize the task ahead - as we identify highlights from the CFPB's tenure to date, and how they can guide us as we consider our options for improving oversight of the financial industry in California.

This panel is ostensibly about enforcement. Now, there are two ways we can talk about "enforcement." In the narrower sense, there are the tools of investigation and litigation for bringing discrete actions - as we already do through our existing agencies. For example, the CA AG is suing Navient for servicing practices that have exacerbated borrowers' struggles to repay their student loans; and the Department of Business Oversight just took action last week against auto title lender Fast Money, seeking to revoke their lending license and void their loan contracts due to allegations of illegal charges and deceptive marketing practices.

But there's another, broader way to talk about "enforcement" that includes all the additional tools my co-panelists have already highlighted - such as supervision, research and market monitoring, complaint handling, and public engagement - that can help inform an agency's decision about how to act in order to stop bad behavior and protect consumers.

Therefore, as we discuss what a California consumer protection framework could look like, we need to identify the broader tools that create the *conditions of possibility* for smart and diligent enforcement.

The CFPB's unique structure and authorities can offer rich lessons for us, as we determine where we already have those capacities at the state level, and where we could use additional capacities or improvements.

To begin conducting this inquiry - which will be challenging, and incredibly important to get right - it will be helpful to center ourselves around a few "north star" concepts that have surfaced throughout witness testimonies today: (1) comprehensive and (2) coordinated mechanisms for enforcement.

- <u>Comprehensive</u>: a unified vision for financial industry oversight, focused on relevant activities more so than charter or business type, with a full suite of tools to achieve the best outcomes;
- <u>Coordinated</u>: processes that encourage information sharing and collaboration both within the divisions of a particular agency, as well as across agencies when appropriate, to leverage resources and maximize impact.

Before the CFPB came into existence, we did not have a comprehensive and coordinated national framework for protecting consumers in the financial marketplace - and it enabled all kinds of abuses that went unchecked. We had banking agencies focused mostly on supervision for safety and soundness, not so much on rulemaking or enforcement. We had agencies focused mostly on enforcement and some rulemaking (e.g., FTC or DOJ), but without supervision powers. And then we had agencies ill-equipped to apply a consumer protection lens to a problem where such a lend was increasingly needed - exhibit A, the Dept of Education.

The 2008 financial crisis provided a wake-up call, and spurred efforts to look anew at our federal financial oversight framework. The CFPB's resulting structure reflects Congress' intent to establish a <u>comprehensive approach</u> to consumer financial protection that gives the CFPB jurisdiction over the entire industry, and diverse tools to wield to discharge its mission.

- CFPB has complaint handling and market monitoring powers, to learn about problems and compel responses from industry
- CFPB has supervision authority over
  - Large banks and credit unions,
  - Specific nonbank actors mentioned in statute
    - Mortgage lenders/servicers
    - Private education lenders
    - Payday lenders

    - And can generally supervise “larger participants in other markets,” which has resulted in it implementing regulations to define and supervise larger participants in markets for:
        - Debt collection
        - Consumer reporting
        - Student loan servicing
        - Remittances
        - Auto financing
- CFPB has both general and specific rulemaking authorities
    - Implementing federal consumer financial laws, and
    - General UDAAP rulemaking authority
- CFPB also has statutory to focus on certain special populations (12 U.S.C. 5943 - Administration)
    - Office of Servicemember Affairs
    - Office for Older Americans
    - Private Education Loan Ombudsman; implied focus on Students and Young Americans)
    - Office of Fair Lending; mandates to protect people from “traditionally underserved” communities, including unbanked and underbanked consumers

Although the CFPB replaced some duties previously held by other agencies, such as rulemaking under existing consumer protection statutes, the CFPB also complemented the ongoing work of those agencies - and in some cases, helped make them better. I wholeheartedly agree with my co-panelists that it’s not duplicative per se to have concurrent authorities in some places in order to ensure that laws are properly enforced.

Under Director Cordray’s leadership, the agency discharged its mission not just by bringing cases and seeking monetary judgments, but also by conducting the research and supervision activities that helped other agencies do enforcement - demonstrating a <u>coordinated approach</u> that enabled the CFPB to be a “force multiplier” in our regulatory system.

<u>CFPB and predatory lending/Military Lending Act violations</u>

One example of the CFPB’s coordinative capacity, under original leadership: its supervision program included procedures for uncovering violations of the Military Lending Act, which caps interest rates at 36% APR for loans made to active duty servicemembers.

The Department of Defense (DOD) administers the MLA but consults with financial regulators when conducting rulemakings and ensuring compliance. Although DOD had the ability to consult with other agencies with supervision authorities prior to Dodd-Frank, it wasn’t until the

CFPB was up and running - with both supervision authority AND a mandate to protect consumers - that the conditions were ripe for smart enforcement.

Soon after taking on the responsibility to examine covered institutions for MLA compliance, the CFPB unearthed evidence that certain banks and nonbanks were trying to circumvent the law: for example, by offering high-cost "deposit advance" products structured as open-end lines of credit, or auto title loans with extended repayment periods, so they would fall just outside the scope of the regulations DOD had implemented at the time. The CFPB's findings, summarized in a 2014 report, led DOD to amend its regulations and clarify requirements for lenders to comply with the MLA.

CFPB and the student loan industry

The CFPB's ability to coordinate with other agencies has proven crucial in addressing the runaway student debt crisis. With no one agency previously responsible for the entire student loan industry, the CFPB's entrance onto the scene provided a much-needed focus on what happens to students when "financial aid" really equals debt for most people going to college today.

Although the Dept of Education administers the federal financial aid programs - by implementing standards for schools, determining student eligibility for aid, and creating loan repayment plans, it has never been set up to act as a financial regulator, or consumer protection agency. Furthermore, Dept of Ed does not oversee the private student lending market.

For these reasons, the CFPB's coordination with the Dept of Ed produced strong results. Through its supervisory activities and complaint handling activities, the CFPB issued many public reports detailing troubling findings of widespread problems, particularly for borrowers in repayment, and in 2012 issued a joint report with the Dept on private student loans that included policy recommendations.

The CFPB also uncovered evidence of predatory lending and debt collection schemes at the notorious for-profit chain Corinthian Colleges, and worked with the Dept of Education as it conducted its own probe into Corinthian's finances. By working together, the agencies developed an agreement to close Corinthian campuses and write off $480 million in private loans that students had incurred based on Corinthian's false promises, and which would have otherwise been difficult to discharge (because only federal loans come with a right to discharge if a school closes).

As these examples help illustrate, comprehensive and coordinated tools for enforcement can result in powerful wins for consumers. As we proceed to update and improve our state-level framework for consumer financial protection, these concepts will serve as useful guides.

Of course, it is important not just to think about comprehensive and coordinated tools for enforcement in abstract, but how they can be used to promote certain values. Recall again the specific populations that the CFPB is tasked to prioritize: servicemembers, students and seniors, as well as traditionally underserved communities. Here we find an important cue that is baked into the design of the CFPB, toward *equity*.

We need to imbue our state-level enforcers with the proper tools, and foster an orientation toward enforcement that ensures Californians can manage their financial lives without predation, discrimination, or uncertainty - with a cue toward equity, or put another way, "economic justice for all."

Thank you.