Senate Banking, Housing, and Urban Affairs Committee hearing The Consumer Financial Protection Bureau's Semi..,sked FINAL

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TRANSCRIPT

April 26, 2022

COMMITTEE HEARING

SEN. SHERROD BROWN, D-OHIO

SENATE BANKING, HOUSING, AND URBAN AFFAIRS COMMITTEE HEARING THE

CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT TO

CONGRESS

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THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT

TO CONGRESS

APRIL 26, 2022

SPEAKERS:

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SEN. RAPHAEL WARNOCK, D-GA.

SEN. PATRICK J. TOOMEY, R-PA., RANKING MEMBER

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SEN. STEVE DAINES, R-MONT.

WITNESSES:

ROHIT CHOPRA, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

BROWN: (OFF MIKE) ...come to order. I -- as I just mentioned to colleagues on the dais, we do not have enough members present for a quorum to vote on the nominees this morning. The committee will postpone our markup to a new time.

I spoke with the ranking member about trying to do it at some point in the next day or two and in the easiest way possible. There doesn't seem to be opposition to them so we hope we can move pretty quickly on it.

So we'll proceed to today's hearing. Today's hearing is in a hybrid format. Our witness is in person as we can see with Director Chopra. Members have the option to appear either in person or virtually.

Welcome back, Director. Nice to see you in front of us. American workers need a strong Consumer Financial Protection Bureau on their side. With you at the helm they finally have one again.

We know how much power corporations and wealthy CEOs have in this country. In 2021, last year, CEOs made 254 times more than the average worker. In the same year corporate profits reached unprecedented levels, the highest ever recorded.

Predictably, too many corporations are growing profit margins on the back of families. CEOs complain about rising costs. They blame workers. They claim they just have to raise prices, all while funneling more profits to themselves more than ever.

I guess that CEOs just have to make 250 -- 254 times more than workers who make their company successful. That's no coincidence. After decades of growing market concentration, consumers and small businesses are at the mercy of ever larger ever, more powerful, ever more unaccountable corporation.

Senator Tester is discussing the Ag Committee right now what this means for farmers. They raise your cost. They mislead you. They even scam you too often with little accountability and no meaningful consequences. They have armies of high-priced lobbyists and attorneys ready to fight anyone who dares to take them on.

Normal people don't have these kinds of resources. They don't have a white shoe law firm on retainer. They don't have an insider on K Street looking out for them, but now they have you, Director.

They have you and the dedicated public servants with you at the CFPB fighting to make sure to keep Americans keep more of their hard-earned money. For four years, CFPB was run by a director and pressured by an administration that always -- always looked out for corporations over workers.

The director was a favorite of payday lenders. Instead of being a voice for consumers they turned their agency into yet another arm of corporate power. Your work for consumers could not be more different.

Let me run through that. When you testified in October you introduced your agenda to usher in a new era of consumer protection. We're seeing the results.

The Bureau challenge junk fees that banks and credit card companies collect. According to CFPB's research, in 2019 major credit card companies charged consumers $14 billion in punitive credit card fees.

Bank charge -- banks charge consumers more than $15 billion in overdraft and non-sufficient fund fees. Americans pay tens of billions -- that's billions with a B -- in credit card and overdraft fees.

By pushing banks to stop taxing consumers with junk fees the CFPB keeps money in America bank accounts, not not on corporate profit statements. You've worked as part of the PAVE Interagency task force to examine the process behind the value -- valuation of what is the single biggest source of families' wealth -- their homes.

You worked to identify and root out discrimination and bias in the appraisal process that hurts homeowners and communities and contributes to the wealth disparities we see today.

And you started the long-overdue work to ensure consumers in our housing system aren't subject to defective appraisal models with discrimination baked in.

CFPB is also doing important and effective work to address the growing crisis of medical debt that burdens American families. Forty-three million Americans hold $88 billion of medical debt on their credit reports. It's been a problem for decades.

In just a few short months you've already successfully pressured companies to make meaningful changes. After increasing scrutiny from you and your staff, last month the three credit reporting bureaus, Equifax experience -- and Experian and TransUnion all announced they'd finally change how they report medical collection debt.

These changes are subject -- or are expected to remove nearly 70 percent of medical debt in collections from people's credit reports, a positive first step that will make that people with medical debt don't see their credit ruined simply because they or their loved ones got sick.

It's also why Congress passed the No Surprises Act which took effect in January. The CFPB wasted no time in letting debt collectors and credit bureaus know they can't surprise consumers with medical bills. They have their responsibilities under the new law.

You put companies on notice if they try to cheat consumers you'll be going after them. Yesterday, you announced CFPB will use its congressional authority to examine non-banks. As their market share increases it's important that fintechs and other non-banks are properly supervised to ensure that consumers are protected from shady companies.

One of your first major items -- agenda items was to make sure repeat violators of a consumer protection law don't keep getting away with scamming and stealing and scamming and stealing from consumers.

I look forward to hearing about the steps you've taken to crack down on repeat offenders with -- whether they're big banks or credit reporting agency. That's who we ought to be talking about today.

I expect my Republican colleagues to do what they've done for years, launch baseless attacks against CFPB's existence and question the authorities, transparence and accountabilities -- accountability.

It's not that surprising they want to distract people with convoluted process arguments. They did it with Sarah Bloom Raskin and they're doing it now.

When people hear the plain truth about CFPB, it's a pretty simple contrast. It's whose side are you on? Are you on the side of corporations that scam people? Are you on the side of hardworking Americans who want to keep more of their money?

Congress created the CFPB to protect consumers and help level the playing field with powerful, unaccountable corporations. Congress places CFPB director in the FDIC board so the FDIC will act with consumers in mind.

Last year, a majority of that board on which Congress placed you put forth a proposal to request information from the public on the bank merger process.

In an unprecedented move, the former chair ignored the board's long history of bipartisanship and collegiality and refused to make this request an agenda item, even though it was proposed according to FDC -- FDIC rules and backed by a majority -- a majority -- of the board.

As the CFPB director and a member of the FDIC board you're doing your job. You're fighting and standing up for the hundreds of millions of consumers and small banks and businesses and their communities, rather than the most powerful, largest corporations in town.

You've shown you're willing to meet and work with anybody, Republicans and Democrats, to fulfill that mission. We hear a lot of talk from the other side of the dais about the virtues of capitalism. But for markets to work, they have to be fair. They have to be transparent. They have to be competitive.

That's why CFPB was created to ensure that the financial marketplace is fair to all and that corporations used to getting their way cannot rig the system and getting -- getting away with it. I look forward to hearing your testimony.

Senator Toomey?

TOOMEY: Thank you, Mr. Chairman.

The CFPB began its existence under the Obama administration as a lawless and unaccountable agency, and unfortunately under Director Chopra the CFPB is more out of control than ever before. It is once again pursuing a far left agenda by abusing and exceeding its authorities.

Three weeks ago, the CFPB announced an unprecedented claim of new authority without congressional authorization or even so much as a public notice and comment rulemaking process. Rather, it simply issued a fiat. The CFPB claimed the authority to sue financial services providers for discrimination without any evidence of discriminatory intent.

Now, I want to make clear that Congress charged the CFPB with enforcing laws that protect against discrimination in consumer finance, and the CFPB should enforce those laws. That is not what's going on here.

Instead, the CFPB unilaterally decided that Dodd-Frank's grant of authority to prevent unfair, deceptive or abusive trade practices, known as UDAAP, now includes disparate impact liability. Now, the idea of disparate impact liability is that a statistical difference in outcomes between demographic groups is proof of discrimination, even when there is no discriminatory intent.

For example, if more Asian than Hispanic customers happen to use a bank's overdraft service and thus pay more in overdraft fees, the CFPB could claim the bank's overdraft policy has a disparate impact and then issue harsh punishments.

Or in many American households women might manage the checkbook so in theory the CFPB could claim overdraft policies have a disparate impact on women.

In the past when overseeing auto lenders, the CFPB discovered discrimination even on the part of lenders who didn't know the race of the borrowers they were accused of discriminating against. The problem is Dodd-Frank did not authorize disparate impact liability under UDAAP. In the 12 years since Dodd-Frank was enacted, the CFPB has never claimed that the law did, and Congress never contemplated that it would.

We know that because Dodd-Frank's unfair practices -- unfair acts or practices language was taken from the Federal Trade Commission Act of 1914, and for over a century the FTC has never once treated that language as including disparate impact liability.

Now to make matters worse, the CFPB implemented this very controversial change in law without an open and transparent rulemaking. Instead, the CFPB issued a press release announcing it had updated its supervision manual.

This is all even more troubling when you consider the Obama CFPB's controversial history with disparate impact enforcement against lenders under the Equal Credit Opportunity Act.

That enforcement campaign was not authorized by statute and it was based on bad data and a fatally flawed methodology. This notably led Congress to overturn the CFPB disparate impact guidance for auto lending in 2018.

But now invoking UDAAP, the CFPB is attempting to supervise for disparate impact not only in lending but in all consumer financial services and products, in effect, extending the very policy that Congress recently overturned.

A harmful -- one of many harmful consequences of this unauthorized self-rulemaking is that it will create tremendous uncertainty among regulated entities. Every decision and action businesses take, including even their advertising and marketing, may subject them to disparate impact liability, despite their often having no way of knowing whether a disparate impact will occur.

Unfortunately, we can expect the CFPB to continue disregarding its rulemaking obligations in the future. the CFPB recently changed its rules of adjudication to make it easier to engage in regulation by enforcement.

This grossly unfair practice occurs when agencies fail to set clear rules of the road before bringing enforcement actions. Under these new rules, Director Chopra can bypass an administrative law judge in enforcement cases and rule directly on substantive legal issues.

As a result, he can now authorize his staff to bring an enforcement case based on a completely novel legal theory and then he could just personally rule that it's a valid theory.

These aren't the only examples of the CFPB's overreach under Director Chopra. He has consistently sought to involve the CFPB in competition in the antitrust law, which is outside its jurisdiction.

For example, the CFPB has falsely justified its campaign against bank overdraft fees as a means of, quote, "promoting competition," end quote. And its demanded information from tech companies operating payment systems to examine whether they're acting anti-competitively.

At the same time, the CFPB is taking actions that will actually harm competition. It's proposed an overly burdensome data collection rule for small business lending that will likely increase credit costs and adversely affect competition by driving lenders out of the market.

Unfortunately, the CFPB is not the only agency that's out of control because of Director Chopra. Last year he helped lead a hostile and illegitimate takeover of the FDIC where he sits on the board.

Director Chopra and FDIC Director Marty Gruenberg, whose FDIC term expired over three years ago, took unprecedented actions to force out FDIC Chairman Jelena McWilliams.

Upon seizing control, they're now using the FDIC to advance their left-wing partisan agenda. In the process they recklessly destroyed institutional norms built up over the FDIC's 88-year history and severely damaged the longstanding principle that financial regulators should operate free from partisan politics.

King Louis XIV famously said, " L'etat c'est moi." It roughly translates as I am the state. All political authority rested with one man. Sometimes it seems the CFPB under Director Chopra believes it has similar authority.

Under Director Chopra the CFPB is more out of control than ever before and the contagion is spreading. It is past time for Congress to bring accountability to the CFPB by making it subject to the appropriations process and enacting other needed reforms.

The current Congress won't do that. The next one should.

BROWN: Thank you, Senator -- Senator Toomey.

I'll introduce today's witness. The Honorable Rohit Chopra is director of the Consumer Financial Protection Bureau. Previously served as an FTC commissioner.

After the passage of Dodd-Frank, Director Chopra joined the CFPB as assistant director then was appointed the CFPB student loan ombudsman. He subsequently served as a special adviser to the Department of Education.

Director, please proceed.

CHOPRA: Chairman Brown, Ranking Member Toomey and members of the committee, thank you for inviting me to appear today.

American households and businesses continue to recover from the economic devastation caused by the pandemic. Jobless claims are hitting record lows and consumer spending has accelerated. At the same time, ongoing supply chain disruptions, geopolitical strife and inflation pose real challenges.

The CFPB is working hard to fulfill the mandate Congress has entrusted the agency with to ensure that markets are fair, transparent and competitive. The agency is supervising financial entities for compliance with federal consumer financial laws, handling heavy volumes of complaints, issuing guidance and rules to implement federal law and bringing enforcement actions where appropriate.

In my written testimony I detail some of the highlights of the direction of our work to protect consumers and law-abiding businesses. Perhaps most importantly, the CFPB is deeply engaged with market participants and others about the future of the consumer finance ecosystem and will be very focused on what the future holds and how we can collectively shape it in ways that align with American values.

Currently, the United States is lurching toward a market structure where finance and commerce comingle fueled by uncontrolled flows of consumer data. This is the market structure that has emerged in China where dominant Internet conglomerates play an outsized role.

These tech giants have extraordinary access to data about businesses, banks and consumers, including financial businesses that they compete with.

Over the last several years, Chinese tech and finance giants have developed so-called social scores that goes beyond credit performance and relies on analyzing user habits unrelated to credit and banking. These developments raise a host of questions about privacy, fraud discrimination, and much more.

The CFPB is currently studying these issues as part of our inquiry into big tech's entry into consumer payments in the United States. We expect to issue reports on our research to contribute to the critical policy discussions about the future of consumer finance and relationship banking in our country.

In addition, we're shifting our enforcement scrutiny away from small firms and instead focusing on repeat offenders and large market actors engaged in widespread harm. We are particularly focused on entities that violate formal law enforcement and court orders.

Our recent lawsuits against TransUnion, one of the nation's largest credit reporting companies, FirstCash, one of the nation's largest pawn lenders and MoneyGram, one of the nation's largest international remittance providers illustrate this shift.

The CFPB is also dramatically increasing its issuance of guidance documents. These efforts help entities comply with laws passed by Congress by either providing further clarity where needed or drawing attention to an already clear legal requirement.

They also promote consistency among the many government actors responsible for enforcement of federal consumer financial law, including other faith -- federal regulators and state and tribal attorneys general across the country.

The CFPB is especially interested in areas where guidance can support compliance efforts by small institutions and new entrants and startups.

The agency is also rethinking its approach to regulations by prioritizing rulemaking that implements congressional directives. For example, we are heavily focused on making progress on implementing provisions under Section 1033 to give consumers more control of their data and facilitate more competition.

In addition, I have repeatedly expressed concerns about excessively complicated rules put forth by the banking regulators, and I've asked CFPB staff to put a high premium on simplicity and bright line bands whenever possible.

In closing, we must remind ourselves that our consumer finance ecosystem serves as critical infrastructure for the growth and prosperity of the United States. I am optimistic that the CFPB can live up to the directives that Congress established at the agency's creation.

Thank you again for the opportunity to appear before you, and I look forward to your questions.

BROWN: Thank you, Director.

Well, the purpose of this hearing is to discuss CFPB's work for consumers. It's clear that for some of my colleagues consumers are not at the forefront of today's conversation.

With that, would you like to just begin by taking a minute to explain your own words what happened on the FDIC board? Then I'd like to talk about consumer protection.

CHOPRA: Well, I appreciate that. You know, it was all very sad but it was all pretty simple. Never before has a chair or a board member of the FDIC purported to be able to nullify a supermajority of the board of directors without any legal justification other than "because I say so."

If any bank board tried to do this, if any corporate board tried to do this, there would be serious litigation and serious problems. I am disappointed that the rule of law was not followed, and it is important that this never happens again. And the board must make sure of it.

BROWN: Thank you for clearing that up and explaining it so succinctly and so well. Protecting Americans from medical data is a priority for this administration. Just this year, CFPB released several reports on medical debt highlighting inaccuracies on credit reports and wrongful attempts by debt collectors to go after people for medical debt that they don't actually owe.

What -- what's CFPB planning to do to address both the misconduct and the mistakes related to medical debt?

CHOPRA: Well, I appreciate that. Today in the United States the most common collection item on an American credit report is actually medical debt and many of us are concerned based on the data we see, the research we see and the complaints we see that much of this is not even really owed.

Many Americans are caught in a doom loop between their insurance company and their medical provider and they're coerced to pay once it's put on that credit report. We need to make sure that that debt is accurate and we are looking to determine whether the law should be changed or -- or adjusted accordingly when it comes to medical billing.

And with respect to the CFPB's authorities, we are looking at whether medical debt should be included at all unless -- absent further requirements or changes.

BROWN: Thank you, Director. Let me shift to -- to junk fees. This year, thanks to your work spotlighting banks' over-reliance on overdraft and non-sufficient fund fees, many of the banks announced they would drastically reduce, in some cases even eliminate these fees entirely -- a welcome change. The fees average about $34 per transaction.

What efforts will you take to curb the use of junk fees beyond what you've done with overdraft and non-sufficient funds fees?

CHOPRA: Well, across the economy what we see is fee creep, fees that pop up on the back end that are not clearly advertised upfront or provide no value whatsoever. We have solicited public comment, received over 80,000, and we're starting to see some of these fees that some may not even be disclosed, some may be charging for services that people don't even want.

We want banks to make money when they're providing services for bona fide activities that consumers want. And we are starting to see, Senator, banks compete on offering overdraft services at lower and lower fees and some eliminating those fees altogether.

BROWN: Thank you for that answer. And one last question, as you know from your work on the Property Appraisal And Valuation Equity Task Force there's been significant research, as well as many publicly reported individual accounts showing differences in home appraisals based on race and ethnicity.

Your staff may have mentioned to you a story I told I will not repeat about a family in the Cincinnati area in southwest Ohio and what happened to them. How can we make sure that any technology used to help in the appraisal process makes the system more fair and just doesn't bake in the bias that we've seen for decades?

CHOPRA: One of the things Congress has passed is authorizing the regulators to make sure that so-called automated valuation models have adequate controls for safety and soundness for consumer protection. One of the things that is under discussion is whether those controls should assess whether models are accurately looking at potential discriminatory effects.

That process and -- is ongoing and we are working with the regulators on potential proposals that we would jointly -- jointly propose.

BROWN: Well, talk -- talk a little further about that appraisal system because. Does it present a clear way for people to report errors and discrimination? Or if it doesn't, how do we improve the process for consumers? Expand on your last answer.

CHOPRA: Yes. No. No, I think it's a real challenge where, especially based on types of neighborhood, there has been even incidents where people get a completely different appraisal based on, you know, the pictures that are displayed in their home or the people that are there.

So some of it is about the algorithms. Some of it is making sure that we have more appraisers and we use the best of the human appraisers to be able to get accurate appraisals amidst, particularly an issue in rural areas where many times appraisals have severe inaccuracies and consumers often have very little recourse.

So we're working with HUD and other agencies to think about how this can be beneficial to lenders and homeowners alike.

BROWN: Well, thank you.

Senator Toomey?

TOOMEY: Thank you, Mr. Chairman.

Let's go back to the episode when shortly after you assumed office at C -- at the -- as CFPB director and with that the ex-officio role on the FDIC board. You and now interim Chairman Gruenberg began orchestrating your hostile takeover of the FDIC board.

Now, I understand that at the time you circulated a document purporting to provide a legal justification for bypassing the chairman and moving matters to a vote. Did the FDIC general counsel write that document?

CHOPRA: So with respect to the legal justification around board members' responsibilities, the bylaws are obviously public. The legislation is obviously public.

TOOMEY: Yes, OK. But I'm asking you for...

CHOPRA: The FDIC general counsel...

TOOMEY: ... specifics.

CHOPRA: ... did not provide any legal justification for any interpretation, so...

TOOMEY: OK. But -- but you acknowledge that you did distribute a document purporting to provide a legal basis for this?

CHOPRA: Yes. So based on the...

TOOMEY: OK. Now, I -- I've got very limited time.

CHOPRA: Sorry.

TOOMEY: Let me move it.

CHOPRA: Yes.

TOOMEY: Let me ask you this. Did Todd Phillips or anybody at the Center for American Progress contribute to the drafting of this legal document to your knowledge?

CHOPRA: No.

TOOMEY: They did not. So who did?

CHOPRA: So the general counsels of all of the agencies involved in the board were obviously concerned about the lack of legal justification proffered by the FDIC's general counsel. We also understand the FDIC's general counsel muzzled many of the career staff...

(CROSSTALK)

TOOMEY: OK, but I asked a simple question. Who -- who -- who worked on drafting this document?

CHOPRA: So the -- the general counsels and legal advisors of...

TOOMEY: OK, so the CFPB...

CHOPRA: And the OCC.

TOOMEY: ... and the OCC general counsels. Since 1933, the FDIC board had a history of trying to work collaboratively without partisan political influence. As Chairman McWilliams has stated, when you demanded the FDIC issue an RFI relating to bank merger policies, the chairman expressed a willingness to work with you.

You submitted a draft the FDIC found was filled with omissions, misrepresentations and technical inaccuracies, and they drafted a version reflecting their expertise.

But then you forced an unprecedented and illegitimate vote on your draft, disregarding the draft that reflected the expertise and knowledge of the staff of the FDIC.

But I have to say I have difficulty believing that you tore down the FDIC's rules and norms simply over a question of the wording of a merger RFI, particularly because a few months previously, the Center for American Progress began to very publicly urge Democrats to seize unprecedented control of the FDIC board in order to eliminate all obstacles to the Democrats' radical agenda.

Your and your Democratic colleagues' actions smacked of a planned partisan power grab to enact this agenda, and your politicization of the FDIC has done lasting damage to its independence and its credibility as a financial regulator.

Now, I want to get to this UDAAP expansion, to disparate impact. Thank you.

CHOPRA: Senator, may I respond to...

TOOMEY: I understand -- I'm going to run out of time so I -- I...

CHOPRA: But actually you've leveled quite a -- and I don't believe any of it is in -- in accordance with the facts. And I think it's only fair...

TOOMEY: Well, as long as I'll get time to ask my second question.

CHOPRA: So when it comes to process there was long and established process for 90 years about how the board operates. Sometimes Congress has changed the composition of the board.

Every single process was followed and what we heard back was staff is not going to be able to talk to you, disrupting all of the norms about how career staff engaged. This was unbelievable and sad and, honestly, we have to be committed to upholding the rule of law on how these agencies are governed. We cannot simply make up the fact that a chair can overrule a supermajority...

TOOMEY: OK. Well...

CHOPRA: ... of the board.

TOOMEY: ... your -- your version of the events is extremely different from the version of -- of others and so this is not a -- a productive path to go down.

Let me move on to this recent expansion, unprecedented expansion of UDAAP. This month, the CFPB announced that it would extend disparate impact theory to cover all financial services effectively reversing Congress' legislative decisions.

And as I noted in my opening statement, this is also at odds with over a century of FTC precedent on UDAAP. The FTC did not use UDAAP to pursue disparate impact before the Dodd-Frank Act created the CFPB and gave it the same authority the FTC had to pursue, quote, "unfair or deceptive acts or practices."

What's more, if the FTC already had blanket authority to prohibit the discrimination and disparate impact for a century, Congress would have had no need to enact the Equal Credit Opportunity Act, the Americans with Disabilities Act, Title 7 of the Civil Rights Act or other targeted laws it passed to address discrimination.

But Congress did enact those measures precisely because UDAAP does not already address these harms. Given that disparate impact is a contested but well-understood policy with far-reaching consequence, if Congress had intended to give that power to the CFPB it would have done so explicitly.

Equally concerning is the way the CFPB made this unprecedented change. When an agency imposes new substantive requirements on regulated entities, the Administrative Procedure Act requires it to conduct a transparent notice and comment rulemaking, taking public comment into account and explaining the legal and policy basis for the change.

In this instance, the CFPB simply updated its manual to instruct examiners to apply this new policy when conducting supervisions. And because the CFPB didn't engage in rulemaking, there's now significant regulatory uncertainty regarding the implementation of the new rule.

Without a rule it's unclear how financial institutions are supposed to implement disparate impact and what universe of business decisions they now have to run through a gamut of regression analysis.

The cost of regulatory uncertainty include reduced innovation and market paralysis which only harms consumers in the long run. So, obviously, you made the decision not to conduct a rulemaking. Let me ask you, did anyone in your legal or regulatory department suggests that you shouldn't proceed this way because it might conflict with the Administrative Procedures Act?

CHOPRA: So, Senator, I take these procedural questions very seriously as a matter of law and policy. To be clear, if we receive complaints that suggest that, for example, someone is being discriminated against and not being given a bank account, the compliance manual is a transparency tool, essentially giving the financial institution what the test is.

We give them exactly what we would be looking for in order to ascertain their compliance management system and their adherence to existing law.

TOOMEY: You -- you've...

CHOPRA: There is decades of precedent...

TOOMEY: ... totally ignored my question.

CHOPRA: Well, let me get to it. There are decades of precedent about the application of the unfairness standard which dates back to the 1930s. There have been in many instances where the prongs have been analyzed for a wide range of conduct and certainly discriminating against someone based on their race to open a bank account would meet those threats.

So I don't know exactly what you're referring to in terms of...

(CROSSTALK)

TOOMEY: No, I think you know exactly what I am referring to.

CHOPRA: No, I don't. Please?

TOOMEY: This -- this you -- do -- what -- what have -- what occasion in the hundred and some odd years at the FTC was UDAAP ever used as a justification for using disparate impact?

CHOPRA: That -- that's not what is in the manual, respectfully.

(CROSSTALK)

TOOMEY: Yes, it is.

CHOPRA: That is not what is in the manual. I'm happy...

TOOMEY: All right. And -- and you...

CHOPRA: ... to take questions for the record.

TOOMEY: ... didn't answer question as you said you would about whether anyone in your legal or regulatory department suggested that you follow the Administrative Procedures Act and actually have a rulemaking.

CHOPRA: Not to my recollection.

TOOMEY: They didn't.

BROWN: Thank -- thank you, Senator Toomey.

Senator Warren is recognized five minutes from Massachusetts.

WARREN: Thank you, Mr. Chairman.

So, Director Chopra, on March 28th you gave a speech in which you focused on repeat offenders, not the little guys but the giant banks and corporations that repeatedly break the law even after regulators had imposed fines, consent orders and lawsuits.

Now, this is a really serious problem, and I want to talk today about one of the worst repeat offenders in our entire financial system -- Wells Fargo.

In 2016, Wells Fargo's fake account scandal was exposed. The company's leadership had squeezed their employees to create three and a half million unauthorized bank accounts. Director Chopra, do you recall how much Wells Fargo was fined in 2016 for this fake account scandal?

CHOPRA: I -- I want to say it was $180 million, a $185 million.

WARREN: That's right, including a hundred million of that was from the CFPB. Now, that was a big fine and CFPB and other regulators were right to impose it. But keep in mind that Wells Fargo booked more than $5 billion in profits that year.

So maybe we shouldn't be surprised that a fine alone was not enough to persuade Wells Fargo to follow the law because over the next few months the following scandals came to light.

Wells forced consumers to buy unneeded car insurance. They changed information on customers' documents without authorization, and they illegally repossessed cars from servicemembers.

In 2018, the regulators finally said enough and under then-chair of the Federal Reserve, Janet Yellen's leadership, the Fed put a cap on Wells Fargo's growth.

Now, that was pretty shocking at the time, but it still wasn't enough to get Wells to follow the law. Since that time Wells has closed customers' accounts without authorization, damaging people's credit reports and to just rub salt in the wound, continued to charge them overdraft fees even after those accounts were closed.

Wells has also been fined by the SEC for recommending unsuitable products to mom-and-pop investors. It put up to 1,600 customers into forbearance without their consent.

And just a few months ago, Wells was hit with another fine by the OCC and a new consent order because the bank is still screwing over consumers. It appears that cheating customers is simply in Wells Fargo's DNA.

Director Chopra, the asset cap on Wells was a much-needed step, but it's clear we're dealing with the baddest of the bad here. What other steps should regulators consider to hold Wells Fargo and other corporations that break the law over and over to hold them accountable?

CHOPRA: Well, I don't want to cover -- comment on any specific case, but here's what I see. I see federal enforcers and regulators are very quick to lay the hammer down on small guys and small businesses. They will name people individually. They will ban them from certain business practices and often criminally refer them for prosecution.

But there is a totally different standard for large firms who break the law over and over again. Yes, they do pay a fine but often it is less than the profits that they made from the misconduct. We have to look at a broader array of remedies in banking.

The Federal Deposit Insurance Act talks about limitations on FDIC insurance. There is asset caps like we see that the Federal Reserve Board did or that the OCC has done. We have to look at structural remedies that stop the lawbreaking from continuing.

Fines are not going to solve this with the biggest players and, frankly, I think if we care about equal justice we should treat small firms and large firms the same.

WARREN: I agree with you. Thank you. You know, I think it's clear that fines have just become a cost of doing business for giant corporations like Wells, and we can put a stop to that. The Fed has the power to break Wells Fargo up and they should use it.

And in addition, I'm reintroducing my Corporate Executive Accountability Act to hold big bank executives personally liable when the companies they run repeatedly break the law.

But we're not going to get any changes in corporate America unless we change the rules for repeat offenders and their CEOs. And I appreciate your leadership on this, Director Chopra, and I look forward to working together with you.

I also would like to address the comments from my Republican colleagues who accused Director Chopra of a, quote, "hostile takeover of the FDIC," a coup and a lawless overreach. You know, they can call it whatever they want, but here are the facts.

The previous FDIC chair acted in violation of the FDIC's bylaws to block the committee's majority and to choose to -- and she chose to resign when it became clear that she didn't have a leg to stand on.

We need regulators who are going to follow the law and who are going to use their authority to safeguard the financial system. And I'm glad that we have that kind of regulator now. Thank you.

Thank you, Mr. Chairman.

BROWN: Thank -- thank you, Senator Warren.

I -- I believe that Senator Tillis is joining us from his office from -- from North Carolina. He's joining us from his office. Senator Tillis? If not -- if he's not ready yet...

TILLIS: Mr. Chair, I'm here.

BROWN: You are ready. OK. Senator Tillis?

TILLIS: Thank you, Mr. Chopra. Thank you for coming before the committee. I -- I have to say I have to share some of the concerns some of my colleagues have expressed about the number of troubling themes that are already apparent in your brief tenure at the CFPB.

I think your actions regarding, and maybe in conflict with Senator Warren's comments, I think your actions regarding the leadership of the FDIC go against about 88 years of agency norms.

Now, you're a smart man. There's no doubt about that, yet I feel like you've chosen to poison the well in an effort to oust a congressionally confirmed head of a federal financial regulator.

In the process you went so far as to post proposed policy updates for the FDIC on the CFPB website. I don't think this is how we should -- serious people should run these organizations. It reminds me more of some of the countries that I visited in my recent codel last week, not something I expect from U.S. financial regulators.

And unfortunately, I don't think the FDIC, the event at the FDIC has been an outlier in your behavior at the CFPB. More recently, you authorized wholesale rewrite of portions of the CFPB's examination manual to apply death -- disparate impact to all consumer financial products and services, specifically under the unfairness prong of CFPB's unfair, deceptive or abusive acts or practices, UDAAP.

But Dodd-Frank does not authorize disparate impact liability under UDAAP. In nearly a century of FTC precedent in enforcing identical unfairness language has never contemplated authority to regulate disparate impact.

So Mr. Chopra, I do have a couple of questions for you. And if you can keep them brief I'd like to stay within the time constraints. What industry -- industry feedback process did you initiate when updating the examination processes?

CHOPRA: So, Senator, I really appreciate the questions on this. So just to be clear, as a matter of course I'm also appalled at what happened at the FDIC. I think never before has there been such an egregious violation of corporate governance, and I think as someone who believes in the rule of law and who takes an oath, we need to make sure that never happens again.

With respect to the examination...

TILLIS: I -- I do think -- I will -- I will say, though, I think the manner in which you operated there is something that's outside of the norms of over 88 years of -- of past practices. But I'll let you get to the question.

CHOPRA: Yes, and I'm happy to discuss this further with you. I think it may take more than five minutes, and I'm happy to meet with you.

Let me just say with respect to the examination manual, the examination manual is a vehicle that gives institutions a lens into what specifically examiners are going to look for, for example, when investigating complaints of discrimination.

So unfairness, as you say, does derive from the FTC Act. It's identical language and it has multiple prongs. The first, is there substantial injury? The second...

TILLIS: Mr. Chopra, I'd...

CHOPRA: Yes?

TILLIS: ... I wanted to get to the specific question. I was kind of curious about -- I -- I understand what you're leading to in terms of the practices, but what specific industry feedback process did you initiate prior to updating the examination practices? What specific industries? What sort of vetting public comment interactions did you have?

CHOPRA: Well, we hear from all sorts of industries, and let me share with you, Senator Tillis, across the spectrum our regulated institutions really don't believe that discrimination should play any role. And many acknowledge that it already violates multiple laws, not just federal consumer financial laws, not just civil rights laws.

So for me this is already a clear legal prohibition, and I have not heard any -- any suggestion that discrimination based on someone's race or the like does not violate the unfairness prohibition. It is clearly spelled out.

There are three prongs and that type of discrimination violates those three prongs.

TILLIS: Mr. Chopra, I -- I think you're -- you're talking about outcome, and I think that is a legitimate discussion and it can be accomplished within the five-minute constraints, but I'm a little bit concerned with process.

It's almost as if you had the solution and didn't need to seek impact. In your first 120 days in office you met with only three industry groups. By comparison, Director Cordray met with 40 industry groups during his initial 120 day period.

CHOPRA: That's not true, sir.

TILLIS: I've gotten feedback from a number -- I've gotten feedback from a number of groups who said that you've generally been unwilling to meet. Do you deny that that's the case?

CHOPRA: Absolutely. I deny -- deny that. We have met with banker associations in multiple states, credit union leagues. We have met with trade associations ranging from mortgage lenders to...

TILLIS: When you say we do you mean you...

CHOPRA: I mean I. I myself.

TILLIS: ... or your...

(CROSSTALK)

CHOPRA: I have personally done that. And, Senator Tillis, I'm happy to have a conversation with you. We try and make staff available, and I personally meet with so many industry players. If you look at my testimony, I talk about how we have gone beyond and listened to a broader range of the business community.

And I -- again, if there are specific folks that we have not been able to schedule yet, we are prioritizing the smaller financial institutions who do not have a supervisory relationship with us but that are impacted by us. But again, we meet with all sorts of business associations. We are attending...

TILLIS: Well, I'm...

(CROSSTALK)

TILLIS: I'd be very interested -- I want to be mindful of the time. I'm a minute over. But I'd be very interested, particularly with respect to dialogue with those that were most negatively affected by some of the changes, but I could -- if possible, I'd like to get that for the record.

Thank you, Mr. Chair.

CHOPRA: That's fine. Thank you, Senator Tillis.

BROWN: Thank you, Director.

Senator Warner from Virginia is recognized from his office.

WARNER: Thank you, Mr. Chairman.

Director Chopra, it's good to at least see you remotely. I've got three questions in separate areas, so I'll try to be quick on the question so you can have time to answer.

First, you know, we've seen a number of the major banks start to outsource a -- a number of their back office procedures. Mass data storage, cloud computing and a host of other applications are now being outsourced. It makes, in many cases, good business sense.

I do worry, though, from a -- a regulatory standpoint and a consumer protection standpoint as these traditional in-house applications are outsourced, do you feel like you or the other regulators have enough visibility into the -- these outsourced functions? Are -- are there additional tools that are being needed? Can you -- can you speak to that?

CHOPRA: Yes, I -- I -- I do think it's a business imperative often to, you know, find service providers, outsource to stay competitive. At the same time, we hear from some community banks that there are sometimes only four core service providers.

We see three major cloud providers, Amazon Web Services, Microsoft Azure and Google Cloud. That does create some resilience issues should there be an attack or a shock. It's important that the regulators have visibility.

I don't think we do enough now, but we are working with the other regulators to make sure that we can withstand a shock, potentially even if it's a state or non-state actor that attacks.

WARNER: Well, I'm -- I'm interested not only from the, kind of, potential for a state or non-state actor in the cyber domain, but I'm also -- concerns like you are about the concentration of -- of some of these services.

And, you know, if the community bank says a -- not our problem anymore because we outsource it to entity X ,do we have visibility into what is still a critical component of the whole banking system? So I hope we can continue that -- that conversation.

CHOPRA: Absolutely.

WARNER: The -- the second, and I know you mentioned this in your testimony, and this is around payment systems for big tech, again, an area where we're seeing both consolidation and -- and potentially growth of opaqueness.

When do you think that review of some of the payment systems around be -- big tech will be done? And then I'd like you to, as you answer that more specifically, address -- I'm particularly current -- concerned on a national security standpoint of some of the Chinese models around Alipay and WeChat Pay.

And are you, you know, looking at not only payment systems in the more American and western big tech companies but also in the Chinese companies?

CHOPRA: Yes, Senator, and in my testimony I mentioned how the U.S. consumer finance ecosystem appears to be lurching toward a Chinese-style market structure and that really is a concern for a lot of small institutions, a lot of startups.

What we see with WeChat Pay and Alipay I don't think is a -- a structure we necessarily want to replicate. We will be reporting on some of our analysis around the Chinese models, as well as what we're learning in our own study about payments.

I am actually quite optimistic that the new FedNow service which will give small institutions, small banks more ability to offer some of those real-time payment services that are not yet available to the United States.

So it is something that is concerning, especially when it comes to privacy, and we look forward to reporting to all of you on our findings.

WARNER: Well, I'm very anxious to follow up with you on that matter. I -- I feel like particularly pre-COVID as -- as we saw an enormous emergence of Chinese tourism around the world that, particularly in Europe, that the default system may become the WeChat or Alipay system.

And I think that has the potential both in terms of digital yuan and a host of other privacy and other issues that if that becomes default outside of China and other parts of the world where does that put us in a -- in the hierarchy. So I hope we'll come back to that.

Last -- last question, I saw you came out recently with a -- a report on financial challenges facing rural communities. You know, I think some of those challenges may be addressed because those of us who worked on the bipartisan infrastructure bill we're going to be able to finally get the broadband capabilities so no community should be left behind.

But both in terms of the fact that folks in rural communities disproportionately work for small businesses so they may have bigger challenges around credit scores and also the -- the lack of -- of online banking services offered in rural communities.

Can you in these last few seconds address what you report has found and where we need to do some more work?

CHOPRA: Yes. There are serious challenges facing rural banking right now. I think across multiple administrations the regulators have been a little bit blind on this.

Rural communities need banking in a very different way than metropolitan areas, particularly family farmers who are dealing with, you know, commodity spikes or, you know, various exogenous factors. We need to preserve relationship banking even as we need to use technology to serve people better.

There's a broad range of issues from banking deserts to appraisals and more. We need to all figure out what we want to do to make sure that rural counties have access to small business credit, to farm credit and consumer credit.

So, Senator, I -- I'm eager for us to work hard on this and address those problems.

WARNER: Thank you.

And, Mr. Chairman, I know my time's up but I do think we, as you -- we all know, we're seeing the diminution of branch banking and I think that the idea of banking deserts is this is really, kind of, discover the concept of food deserts, is something that we as a community ought to take a look at. Thank you, Mr. Chairman.

BROWN: As -- as we should, Senator Warner. Thank you.

Senator Rounds from South Dakota is recognized.

ROUNDS: And thank you, Mr. Chairman.

Director Chopra, good morning. I'd like to begin by looking back at your confirmation hearing where you pledged to have absolute transparency when it comes to the CFPB's Civil Penalty Fund to make certain all funds go to victims or for promoting financial literacy.

Can you share with us what steps you've taken or plan to take in the next six months to improve transparency regarding the fines paid into the fund and how the money is spent?

CHOPRA: Well, thank you so much for this. So, Senator Round, actually based on feedback from you I have put a pause and essentially a moratorium on any spending from the Civil Penalty Fund that does not directly go to victim redress.

I think it is worthwhile for us to take a hard look at that process. And personally, we see so many consumers who are badly harmed by scammers, including the elderly, including servicemembers. Those funds, I think, primarily should be used to redress them when the defendant has run off with the money or spent it. So yes, we have put a complete pause on that.

ROUNDS: Would you expect that within the next six months you'd be able to share with us your plans moving forward with how those funds would be spent?

CHOPRA: Yes, and I can pledge to you that if we undo that pause or moratorium you will be one of the first to know. I will share with you that I do think that there is a lot of -- those civil penalties when they go back to redress it's -- it's not, you know, a bonanza for somebody. They're often getting back the money that was stolen from them, often through a really egregious scam.

So we're also working with state attorneys general, state banking regulators when they identify judgment-proof defendants. When we work together that may be a way that those monies can go locally and redress victims rather than going through, you know, for other purposes.

ROUNDS: Yes. I would look forward to having that report. Thank you, sir.

You also committed to respecting the statutory prohibition against the CFPB regulating insurance, however, in respect to the Section 1071 rulemaking in premium financing, I'm concerned that you may get -- very well be taking a rather broad view of financial activity, that this rulemaking will cover state-regulated insurance brokers and agents. Do you believe that the CFPB can or should regulate insurance premium financing?

CHOPRA: Yes. So let me just say that this is subject to an ongoing rulemaking. That rulemaking was proposed before I arrived. We are receiving a very broad range of comments, including on the issues that you have raised. I'm going to personally look at that.

I'll say as a general matter we have insurance regulators. They're primarily responsible for regulating insurance. There are some, you know, nuanced examples where there's financing and insurance comingled and we can provide your staff with some of those examples.

But generally speaking I completely respect the prohibition that's in the Consumer Financial Protection Act, and we will look hard at this issue before finalizing this rule, which we're under a court order to finalize.

ROUNDS: OK, because, you know, in -- in the vast majority of cases most individuals want either semi-annual or annual policies issued, and sometimes it's difficult for them to actually get the premium to pay it up front.

And so if -- and -- and in most cases it's regulated by state -- by state insurance regulators who do require full disclosure.

But if it then becomes more limiting or challenging for those carriers to finance that and if they decide not to do that, I -- I think it -- it's a challenge for consumers who in many cases when they walk on, and particularly for a commercial operator such as someone that's -- that's got a business that's starting up or is in the process of trying to move forward, if they don't have the money available to them in their bank account for them to get insurance it's rather difficult unless somebody agrees to finance.

And so I -- I -- I'm -- I'm really concerned that we allow those state regulators to include or to continue to be the primary regulator of those services.

CHOPRA: And again, we're looking at those comments. And by the way, if there's specific language that you see in the proposed rule that, you know, you want to give us feedback -- any member of Congress obviously should do that -- and we're looking at all of them before we finalize that rule.

We do have to finalize it. It's in Dodd-Frank. It's an act of Congress. We're under a court order to finalize because we're -- you know, essentially haven't done it for 10 years, but I take your feedback very seriously on this issue.

ROUNDS: Thank you. I have one more question. Is it true that the CFPB -- let me put it this way. I believe that the CFPB already requires banks, credit unions and other providers of consumer financial services to disclose terms and fees in a clear and conspicuous manner. I think you would agree with me that that's included today.

CHOPRA: Well, it depends on the law. Often it is not clear and conspicuous and sometimes it is not disclosed upfront, unfortunately.

ROUNDS: That changes my question a little bit because I had assumed the CFPB already required it. I'm concerned about overdraft protection and right now there's a lot of our financial institutions, credit unions, banks and so forth, to consumers will provide an overdraft protection plan.

Right now that seems to be working fairly well and it does provide some short-term liquidity to consumers who may very well be living paycheck to paycheck.

If the overdraft protection goes away, will consumers have access to fund -- to funds to cover that particular item? a lot of people do use it.

And in -- in the case of credit products designed to reach low and moderate income consumers and consumers with rather difficult credit histories in some cases, how does the CFPB expect financial institutions to bear the cost and offset the risk of these products in a safe and sound manner without allowing for a fee assessment?

So I mean, I -- I and I think it -- it is there and I think it's pretty clear that you expect them right now to make those disclosures. But if you make it more difficult for those fees to be assessed you may very well be limiting that short-term credit availability and push them into other alternatives that are not near as appealing.

CHOPRA: And -- and I know I'm out of time, but you raised an important point. It is -- it is short-term credit, and we want to make sure that people have the availability to access credit, but what we are seeing is actually banks across the board are starting to compete on this.

Many are reducing their overdraft fees. Many of them are offering grace periods. So the competitive process, I think, is going to yield a lot of benefits for people and that's exactly what we want to see.

We also want to make sure that consumers actually want the service. In some of the research it shows that the fee is assessed even when they don't want it. So I'm happy to, again, have a conversation with you because I agree that credit is needed short-term on this.

ROUNDS: Yes, and I would just point out, Mr. Chairman, that -- that right now those fees that banks receive, it only makes up about two percent of what they actually receive in fees right now. So that's as of the 2019 reporting period.

BROWN: Well, thank you, Senator Rounds.

CHOPRA: Thank you, Senator.

Senator Menendez from New Jersey is recognized.

MENENDEZ: Thank you, Chairman.

Director, I want to thank you and the CFPB staff for your work on the proposed rule to implement the Debt Bondage Repair Act. Senators Cornyn, Lujan, Cortez Masto and I worked hard to get the legislation passed so that victims of human trafficking won't have detrimental marks on their credit reports that result from financial exploitation by traffickers.

Can you give us a brief summary of the proposed rule and what it will mean for trafficking victims?

CHOPRA: Yes. So survivors of human trafficking will be able to get certain rights to be able to remove adverse information from their credit reports. After the law was enacted and the president signed it it started a 180-day clock. We have proposed a rule and intend to finalize it by the deadline.

I think this will be a huge help for those victims where often financial exploitation is a key part of the process and their lives can be ruined permanently if we can't fix some of our credit report.

MENENDEZ: Well, I appreciate that. This is an example that shows exactly why we need the CFPB out there to protect victims of trafficking and really all Americans from abuses that can take place in the financial system. And I appreciate your diligence on the issue and seeing the rule finalized.

Now, as -- Director, as part of its announcement of changes to income-driven repayment, the Department of Education stated that it will, quote, "work in partnership with the CFPB to better examine whether student loan servicing companies are systematically driving borrowers into expensive forbearance instead of the income-based repayment options that may serve them better in the long term."

As you know, the Navient settlement put the scope of these deceptive practices into perspective. The Bureau stated that "From January of 2010 to March of 2015 Navient, the nation's largest student loan servicer, added up to $4 billion in interest charges to the principal balances of borrowers who were enrolled in multiple consecutive forbearances, noting that a large portion of these charges could have been avoided had Navient followed the law."

Can you comment on how the Bureau plans to more thoroughly monitor the student loan servicing market and prevent future abuses in services' use of forbearance?

CHOPRA: I -- I appreciate the question. I don't want to comment on Navient. The CFPB is still in active litigation on that matter, but here's the deal. Consumers don't get to choose their servicer. It's chosen for them, and they're -- they're stuck with them.

And we depend on servicers whether it's in the mortgage context, student loan context and others to be able to make sure they're being truthful about what the borrower's options are, particularly when they get in trouble. Servicers should not be deceiving borrowers about their alternatives to default and should actually be helping them in order to stay on the road to repayment.

That's often what's best for the creditor and what's best for the borrower and we need to make sure that they are not illegally cutting corners for their own profits at the detriment of both creditors and borrowers alike.

So we will be examining them. We are working, of course, with the Department of Education on the servicers that they contract but there are many other private servicers as well, and we expect them to be prepared and to make sure they're giving accurate information about borrower benefits.

MENENDEZ: Given that deferments work similarly to forbearance, has -- has the Bureau looked into whether student loan servicing companies were also driving borrowers into deferments when they could have been placed in income-based repayment plans, especially when their IBR payment would have been zero dollars monthly?

CHOPRA: Yes. So that is something that is -- has long been a concern. I once remember hearing from a servicer employee who told the Bureau that, you know, their job was to get the borrower off the phone as quick as possible.

And often it was faster to be able to put them into a deferment and often call center representatives are rated on how fast they process calls. So there's an incentive mismatch there and we do need to make sure that there is not only not forbearance steering but also not deferment steering, particularly when the borrower can make some payment.

MENENDEZ: Yes. Finally, recent reports show scams have become widespread on Zelle, a money transfer platform owned by the largest banks in the nation. In many of the scams fraudsters impersonate bank employees. They trick Zelle users into authorizing money transfers.

According to the reports, the banks are well-aware of these scams but have done little to enhance Zelle's security or reimburse defrauded consumers.

Today, Senator Warren and I are sending a letter to the company that manages Zelle asking why it hasn't done more to protect its users from scammers. Are you familiar with the rampant fraud happening on Zelle?

And has the CFPC seen a resultant increase in complaints? And would any regulations like Regulation E of the Electronic Fund Transfer Act apply in these situations to help refund customers?

CHOPRA: So, Senator, I want to be careful on this one. It's about a -- a particular company, but I'm certainly aware of the complaints. The fraud has get -- gotten more egregious that we're seeing through P2P payment transfers. It's something we're highly attuned to.

And again, I -- I'm happy to take some questions for the record but want to be -- want to be careful.

MENENDEZ: OK. I -- I mentioned them because the greatest amounts of growth that I understand are taking place is that but, of course, generically I would care about how we are working to make sure that consumers don't get ripped off in that regard.

Thank you, Mr. Chairman.

CHOPRA: Thank you, Senator.

BROWN: Thanks, Senator.

Senator Kennedy from Louisiana is recognized.

KENNEDY: Thank you, Mr. Chairman.

What do I call you, Mr. Director or Mr. ...

CHOPRA: You can call me whatever you want, sir.

KENNEDY: Well, I'd rather call you by your proper title.

CHOPRA: Yes. I serve as a director. Yes, yes.

KENNEDY: OK, thanks, Mr. Director. I want to ask you about this rule 1071. I understand it's not finalized yet. You're in the middle of it. You proposed -- you -- you propose to have banks guess the -- the race of a small business owner if the small business owner elects not to provide race information. Is that right?

CHOPRA: I -- I didn't -- I was not at the Bureau when this was proposed.

KENNEDY: Do you support that?

CHOPRA: I -- I don't want to talk about an open rulemaking. We are looking at all the comments related to this, and I believe what you're referencing is the visual observation provision when data is missing. I -- I take it very seriously. There is a lot of comments about this. We will look hard at that and...

KENNEDY: You're asking -- you're asking -- you have small business owners that don't want to -- to declare their race. And you've got a proposal your agency does to make to -- to -- to make the banks guess. Is that right?

CHOPRA: I don't think that's exactly how it works .

KENNEDY: I do.

CHOPRA: The bulk of it...

KENNEDY: I do. I've talked to -- to many bankers. Do you -- do you support that concept? Let's take it away from the rule. Do you support that concept?

CHOPRA: Well, I -- I'm not going to -- I'm not going to make decisions about a rulemaking that's open right now when we are supposed to look at all the comments fairly and not prejudge.

KENNEDY: Yes, I -- I know how objective you are.

CHOPRA: But that -- that -- that's the process we're going to follow and that's -- that's what we have to do.

KENNEDY: Yes, I understand. I -- I know about your objectivity. Have you ever been in business?

CHOPRA: Yes.

KENNEDY: What -- what kind of business were you in?

CHOPRA: A number of it. Before I was in government I was, you know, a management consultant for multiple firms. I served clients in financial services, pharmaceuticals...

KENNEDY: You were a consultant? I mean, have you ever been -- had to make a payroll?

CHOPRA: I don't know if I've ever paid employees, but I believe I've been self-employed a long time ago.

KENNEDY: Yes, yes. You just paid yourself. Is that what it was?

CHOPRA: Well, and vendors, yes.

KENNEDY: Yes. OK. Tell -- tell me about this approach at -- at your agency. I'm going to get the -- I didn't have time to look up the -- the correct term. I -- I think of it as statistical discrimination.

In other words, you look at a set of numbers and if there's a disparate racial impact you assume discrimination. Is that -- do you understand what I'm talking about?

CHOPRA: I -- I think I know what you're referencing. In our laws...

KENNEDY: Yes. We've got -- you guys do it all the time.

CHOPRA: I don't know if we do it all the time, but...

KENNEDY: You do it a lot, don't you?

CHOPRA: I don't think so.

KENNEDY: You don't -- you -- you -- but -- but you -- do you believe in that approach?

CHOPRA: Well, the regulation that implements the Equal Credit Opportunity Act specifically has provisions around unintentional discrimination or discrimination where you don't have hard evidence.

KENNEDY: So you -- you think there can be discrimination without intent?

CHOPRA: Well, that's what actually -- we do think that many of these algorithms, especially that we see with all this surveillance, Big Data, I mean, certainly what we see in China (ph)...

KENNEDY: Yes, but I'm talking about humans. I'm talking about human beings. Do you think human beings can racially discriminate without trying to race -- without intending to racially discriminate?

CHOPRA: I -- I think that's a philosophic -- I don't really understand the question. But the question is is if the outcome is...

KENNEDY: Do you have to have -- does a human being have to have intent to discriminate on the basis of race? You understand that don't you?

CHOPRA: Well, I think -- I think if you're saying they discriminate then they are intending to do it.

KENNEDY: No. No they're not. You can -- you can make a distinction among human beings of different races on -- on factors other than immutable characteristics.

CHOPRA: Oh, of course, of course, and that's...

KENNEDY: You don't think all people of a different...

CHOPRA: ... exactly...

KENNEDY: ... race have a particular characteristic, do you?

CHOPRA: Of course. That's exactly, I think, what the law is saying, too. The law is saying that if it's not explained by other factors then the courts have established a burden (inaudible) framework to...

(CROSSTALK)

KENNEDY: It has to be race.

CHOPRA: Sorry?

KENNEDY: It has to be race if it can't be explained by other factors?

CHOPRA: No, no, no. The -- the idea is that if it's not explained by other factors the courts have established that there can be liability. Does that make sense? I'm sorry.

KENNEDY: None of what you do over there makes sense.

CHOPRA: OK. Well, we're happy to take questions for the record, and I'm happy to meet with you...

KENNEDY: I know.

Thank you, Mr. Chairman.

CHOPRA: ... (inaudible).

BROWN: Thank you, Senator Kennedy.

Senator Smith of Minnesota is recognized.

SMITH: Thank you, Chair Brown.

And welcome to the committee, Dr. Chopra. It's Director Chopra. It's very good to see you again. I enjoyed our conversation and I'm grateful for your strong advocacy for consumers in this country.

One thing that I pay a lot of attention to is the access to financial services and -- and credit, particularly in rural communities. You know, you may know that my grandmother was the president of a small community bank so I think a lot about how important it is to have access to banking services in -- in rural communities.

And I really applaud -- I'd like to applaud the CFPB for calling attention to the financial challenges of folks living in rural communities.

You know, rural banking deserts, in particular, make it almost impossible for people to get access to capital and financial services that you need if you're going to grow a business, do all the things that you want to do.

And as banks are consolidating and shipping services out of rural communities, like (inaudible), my mom's small town, Community Development Financial Institutions, CDFIs are increasingly important in filling this gap.

I am -- have worked on a bill, The CDFI Bond Guarantee Program Improvement Act which would permanently authorize the program, CDFI Bond Guarantee Program to make it easier, more accessible for small CDFIs.

But, Director Chopra, could you talk a little bit about the -- how unequal access to capital and financial services in rural communities, what impact that has and how you think about the role of the CFPB in addressing economic empowerment in rural communities?

CHOPRA: Yes. It's a great question, and I -- I think we all should be -- live up to reality and realize that there has been devastating effects of so many branch closures in rural counties.

While we don't know if it's directly correlated, we know that there is often issues with, you know, farmers not being able to, you know, weather a tough season and go bankrupt.

We know that small businesses there which, you know, are disproportionate employers may not be able to survive. You know, with the cost of fertilizers, fuel, automobiles, this can be really hard for rural areas to actually stay -- stay afloat.

And so I think we have not paid enough attention as policymakers and as -- as regulators. We have launched an initiative focused on the unique issues facing rural communities, farmers and financial institutions and, you know, we really look forward to working with you and the other regulators on this.

SMITH: Well, thank you. I think that that is attention very well-placed as we look at -- look at increasing consolidation in the financial services industry and the impact that this has on small rural communities that might be losing a community bank because it got gobbled up by a big bank. That means that there's just much less access to these services that people need.

I want to follow up also on an issue that you and I have talked about before, and this is the abusive purchases of these structured settlements. We talked about this a little bit yesterday, and I understand that this is a federal as well as a state issue and you've been in conversation with state attorneys general about this.

But just for my colleagues, you know, this is what happens when firms prey on people who have suffered a grievous or life-altering injury and they're awarded a settlement to help cover the income that they've lost or the portion of the income that they've lost, but then these companies come in and they offer victim -- victims a paltry lump sum in exchange for the rights to future payments under a structured settlement. And on average they're getting only about 40 percent of the value of the total settlement.

Now, a lot of states have restrictions on the sale of structured settlements. My home state of Minnesota is working on this right now. Our attorney general Keith Ellison, who is a strong consumer advocate, has been working on this at well and -- working on this as well.

And I'm really glad to know that the CFPB has been taking some -- has took action, I believe, last year against one firm that paid an advisor who was supposed to be providing independent counsel yet they're being paid for this. That's just one example.

So could you just address this issue? Let us know the work that you've been doing on this and how you see collaboration with states' attorneys general?

CHOPRA: Yes. When it happens it can be devastating to someone. Often they may be deceived about the benefits that they're getting and not really knowing what they're trading away, and it can actually make the difference of hundreds of thousands of dollars and threaten their retirement security or their ability to actually feed their family.

So there is important state law issues here. They are important contract law issues. It is a topic certainly that has come up with the state attorneys general. Others are interested in it, too, the Federal Trade Commission as well.

So I think we will figure out where the right targets and what are the right policies to be able to tell people here's how to stay on the right side of the law. But if you're not in -- engaging in fraud you have to face some serious consequences.

I'll also add, some of the conduct may also involve criminal law, and I think that will be important for us to explore as well for the most egregious fraud.

SMITH: Well, thank you. I appreciate your attention to that issue, and I look forward to continuing to talk with you about it.

BROWN: Thank you, Senator Smith.

Senator Daines of Montana is recognized.

DAINES: Mr. Chairman, thank you. And before I turn to my questions I want to briefly mention that, as some of you may know, I was the first U.S. senator to step foot in -- inside Ukraine since Russia's invasion of February 24th.

The bloodshed and the evil that I witnessed firsthand, what came with the hands of Vladimir Putin, I'm more convinced than ever that we need to increase and strengthen our sanctions against Russia and Putin directly. The Senate Banking Committee has jurisdiction over such sanctions and for the most part this should be a bipartisan issue and has been.

The U.S. and our allies need to be more aggressive about turning off the gravy train to Russia. And we should use our voice on this committee to hit Putin where it hurts the most and that's his piggy bank. That includes sanctioning Russian energy companies.

I hope to see both sides the aisle here work together on this important issue in the weeks and months ahead as this ongoing and unprovoked invasion of Ukraine occurs.

One more point before I turn to my questions, I was very pleased to see the Biden administration nominate Ambassador Bridget Brink to be the ambassador to Ukraine. I met with her in Bratislava in the last couple of weeks. She is currently ambassador to Slovakia.

She is 26 years career state. She served in Serbia, Cyprus, Georgia. She's served in the National Security Council. She's been in Uzbekistan, now most recently Slovakia. She speaks five languages, including Russian.

I spoke with her yesterday, and she wants to see that diplomatic mission return to Ukraine and specifically Kyiv. I applaud her boldness, her leadership, and I hope that we can come together on both sides and move her through as quickly as possible because time is of the essence. It's time to have that diplomatic mission reopened in Ukraine.

Director Chopra, I want to start by discussing an issue that I raised with you during your last appearance before the committee, which is the CFPB small business data collection rulemaking pursuant to Dodd-Frank, Section 1071.

Subjecting small entities to a new and complex data collection framework is likely to cause small lenders to retreat from the market leaving business borrowers with fewer options or higher costs.

So my question is, first of all, is how is the Bureau balancing its consumer protection mission with the need to ensure the continued availability of credit for local businesses?

CHOPRA: So, Senator, thanks for the question and also thanks for meeting with me yesterday to discuss some of this. I -- I will tell you it is so critically important that small businesses are able to get loans.

We saw how important this was during the pandemic and with PPP. We saw how well some small financial institutions did in serving them. I do want to be clear, though.

We have to implement the CFPB a -- this rule by directive of Congress. It's in the law, and actually the CFPB is under a court order to make progress on that.

So we are doing our best to make sure we're in adherence to, you know, the statute, to the court deadline. I'm not sure there's really a balance between consumer protection and others. We have to faithfully implement congressional directives and do it in a timely fashion.

I am trying to look -- the rule was proposed before I arrived. I'm trying to look what are the ways in which it can be easy for lenders to report this data, to be streamlined? What are ways to be more simple?

I want to make sure that -- we have a lot of experience under the Home Mortgage Disclosure Act of how mortgage lenders do this. We need to know what lessons can we learn from that and make sure...

DAINES: So specifically (inaudible).

CHOPRA: Yes.

DAINES: Thank you. I just want to...

(CROSSTALK)

CHOPRA: Yes, sorry, Senator.

DAINES: No, no. It's helpful but -- but how does the Bureau plan to address concerns from our community-based lenders that this proposed 25 transaction thresh -- threshold -- it's -- it's far too low. Thoughts?

CHOPRA: Well, we are looking at all the comments around what is the right threshold, but I think there's more than the threshold. There's also the issue of what is it going to take to do the reporting? What are -- what is the process by which they have to go through systems? What type of data will they have to collect?

All of this will help make determinations about how do we faithfully implement this statute.

DAINES: Thank you. The Bureau, in my observation, seems to pride itself on being a modern data-driven government agency. It's clear that a critical path of that effort, a critical part of it, is ensuring that rulemakings are grounded in evidence and research, including meaningful cost-benefit analysis.

Under the prior leadership, the CFPB established an office for this very purpose. So as CFPB director, how are you ensuring the costs of a regulation do not outweigh any potential benefits, especially since those costs will be passed on to consumers?

CHOPRA: Yes. So I believe you'll see in the proposed rule there is some analysis based on the data that has already been analyzed by our economists and by our market analysts. That's information that all of us look at very carefully.

I will acknowledge it can sometimes be hard to get that specific data, but we really do try and get through our comment periods but also our own market analysis and really anyone who will contribute that data so we can assess its validity and make an informed determination.

And I should say, Senator, there is specific language in the statute, you know, about the analysis of costs that we make sure we comply.

DAINES: And just a final comment, I'm over time but, you know, as I've spent many, many hours, thousands of miles driving around my state, having meetings with small businesses, I would say over and over again their -- one of their top concerns has been the regulatory burden that's been placed on them by the federal government, even more so than taxes.

I hear more about regulatory burden than taxes. And of course, nobody likes higher taxes, but I hear a lot about the regulations. So I appreciate your -- your thoughtful analysis as you look at the cost-benefit because ultimately those costs will get passed on a consumers. So...

CHOPRA: Yes. And just if I can add, in my written testimony I -- I have shared with CFPB staff that my observation across the board is that rules, you know, if they're so complicated of course the large players they have all the ability to figure it all out, comply with it and sometimes they like the complex rules because it keeps small guys out.

And I think the more we can move to simplicity and bright lines the better.

DAINES: No, I appreciate it because as you know, the -- the compliance in large -- large corporations can be three floors of a building. The compliance department in a small business might be the owner of the business. So thank you.

BROWN: Thank you, Senator Daines.

Senator Cortez Masto from Nevada is recognized from her office.

CORTEZ MASTO: Thank you. Thank you Mr. Chairman for this hearing.

And Director, thank you. Thank you for -- I was listening to you this morning and thank you for your candor and your -- your commitment here to getting the -- the facts right.

Let me just say something I've observed. In the less than six months that you've been there you have established a more fair consumer finance ecosystem. Under your determined leadership the Consumer Financial Protection Bureau has restored its mission to protect people and consumers from surprise charges, from predatory pricing and unfair terms in financial products.

And just listening to you this morning, it's clear the Consumer Bureau's actions keep money in people's pockets and their bank account. So thank you for that.

One of the things I want to talk to you about is -- is payday lending. Nevadans, unfortunately, are charged an average of 602 percent on a $500 payday loan. This is the second highest amount in the country.

Nevadans who take out $500 installment loans paid over four months could spend $924. And now other states have 36 percent interest rate caps.

So I -- I know the Bureau established some national protections for payday loan borrowers and payday loan borrowers are supposed to receive no-cost extended payment plans, for example, but can you talk a little bit about what did the Consumer Bureau's research find about payday lenders complying with these borrower protections?

I -- I'm curious. And what else can I be doing or should we be doing to address what I see happening in Nevada right now?

CHOPRA: Yes, thank you, Senator. So the CFPB did conduct a study about the impact of certain state laws that require extended repayment plans for certain payday-type loans. And the analysis looked at uptake and the efficacy of those.

And one of the findings was that there is extremely low uptake and there were certainly -- in our own supervisory work have found that payday lenders often did not make those available, even though it is required under state law.

So, you know, one of the thoughts was, you know, in many cases the lender may have a strong incentive not to move it into an extended repayment plan and instead move into a reborrowing situation. We're continuing to, as we do with every market, analyze the latest developments, see what's happening at the local and state level.

And ultimately we want a market that is fair, transparent and competitive, that people can get credit at lower costs in ways that they can successfully pay back. So I -- we're happy to brief you further on that state law analysis, but generally speaking it -- it appears that in many circumstances it was not meeting the state law's intent.

CORTEZ MASTO: OK, thank you. And then let me talk a little bit about the work that you've done. I know recently to CFPB issued a report on the challenges faced by Americans in our rural communities.

One of the suggestions from the rural report was having the Consumer Bureau help rural areas access and use to CFPB's complaint tool more effectively. And another suggestion from the rural report was holding roundtables in Native American communities.

Can you -- can you tell me what the plan is for this little -- these listening events and what more we should be aware that you're doing in our rural communities?

CHOPRA: Yes. So again, I will just say that it's a huge problem for our country and our family farmers if we are not able to have access to rural branch banking. Branch banking is different in rural communities than it is in urban areas.

Of course, all banks are competing to keep up with technology, but when some communities have no banks at all or banking deserts the implications can be serious.

Senator, we are definitely eager to work with more in -- in rural areas, especially family farmers, especially tribal communities, to understand what can be done to actually address the needs of those -- of those communities and make sure that they can take part in all of the economic growth that we hope to see.

I have raised concerns with our staff that rural communities are less likely to file complaints. We suggest -- we believe that that could be due to a lack of awareness or a lack of knowledge about the ability to get help.

You know, certainly there may be fewer complaints there, but we want to make sure that when people have problems with their credit report or when facing debt collection that they know where to go for help.

CORTEZ MASTO: Thank you. And I know my time is almost up, but I want to talk to you on one other thing that I -- that the report touched on it, although it was on the rural report focus of it. But I -- I have concerns that there's a number of manufactured home communities in my state and across the country that are being bought up by private equity firms.

And some of these firms have dramatically increased rents and tacked on costly fees. And we know that the impact of these residents is they feel stuck.

And so I am hopeful that the Bureau is -- is also taking a look at this and would love further conversation with you about what we can do to address some of the concerns for -- particularly for these residents.

CHOPRA: I -- I'm happy to meet with you further about that. There's no question that there has been a shift to larger private investment firms that are further engaged in the housing market rather than local landlords.

You know, my focus is on the mortgage market but again, Senator, I'm very happy to discuss that with you further.

CORTEZ MASTO: Thank you.

Thank you, Mr. Chair.

BROWN: Thank you Senator Cortez Masto.

Senator Hagerty from Tennessee is recognized.

HAGERTY: Thank you, Chairman Brown, Ranking Member Toomey.

And Director Chopra, thank you for being here and appearing with us today. Let me go back to the foundation of the CFPB. It was created in a way that intentionally shielded it from accountability to elected officials. It was, in fact, buried inside the Federal Reserve, I think, with the intent to exempt it from the congressional appropriations process.

Last year I introduced the CFPB Accountability Act, and I was joined by 17 of my colleagues in doing so. Our goal is to make the CFP -- CFPB's baseline budgets subject to the congressional appropriations process. I serve on the Appropriations Committee here in the Senate.

I think that I'd like to get your opinion, given that effort, would you support making the CFPB's baseline budget more transparent and more accountable by subjecting it to the appropriations process? And could you think of any reason that the CFPB should not be fully included in the appropriations process?

CHOPRA: Yes. So, Senator, I appreciate the question. And just as a factual matter, you know, that is really the role for Congress to design what the structure of agencies are, but specifically though, the OCC, the FDIC, the Fed they are generally not appropriated agencies. None of the banking regulators are.

The FDIC is funded through the Deposit Insurance Fund. The OCC actually sets its own fees about what it's going to collect from banks and thrifts in order to fund its operations. And the Fed, obviously, has a totally different system.

So I think there have been a number of proposals about should the CFPB be funded by fees or -- or another mechanism? As you know, right now, there is a baseline that certainly comes from the Fed but anything there -- it is subject to the appropriations process inasmuch that the agency makes a request beyond that.

So the -- I think, as I understand from the legislative history, this is so that the CFPB can cover its basic functions and for our functions that it seeks, you know, to go beyond does seek that from Congress. So that is a -- a supplemental appropriations process.

HAGERTY: Well, we would certainly like to see more accountability, more -- more direct accountability on this front. I understand the point about fees and some of the other agencies that do operate by fees, but my understanding is that fees are perhaps 10 percent of your revenue at this point, if -- if that.

CHOPRA: But -- so we do not charge any fees on regulated institutions. I think actually a fee-based system would be challenging because our oversight is over non-banks as well, so there is not even necessarily a registry...

(CROSSTALK)

HAGERTY: So there's zero penalty or fee income that comes -- comes to your organization.

CHOPRA: Oh, sorry, sir. If you're referring to civil penalties, civil penalties are segregated and I just discussed this with Senator Rounds. And we'll be using that for victim redress. It's not for, you know, discretionary expenditures. It's limited in the statute of what it can be used for.

HAGERTY: So you've got a specific bucket of...

CHOPRA: That's right, sir.

HAGERTY: ... (inaudible). I think that you've got, you know, some -- some major concern regarding what occurred at the FDIC. I know you've spoken to this earlier.

The FDIC is -- the FDIC board is operated in a bipartisan fashion and worked effectively regardless of its political makeup. Nut in December you broke this precedent and you successfully led a coup at the FDIC which a number of Federal Reserve officials have acknowledged in front of this committee. I've asked this question many times amongst other nominees that have come before this committee. They've all committed to me not to let this happen again at the -- at -- at their particular point of jurisdiction.

Last October you and then Director Gruenberg claimed that the FDIC board approved a request for information on bank mergers that broke decades of precedent, and frankly, was -- was -- was claimed as being a false claim.

And I want to know why this was done in order to seize control of the agency's agenda as you threatened to, quote, "take further steps to exercise independence from management." Can you explain to me your thought process?

CHOPRA: Well, Senator, I would -- I would totally dispute the -- the -- what you've laid out. I will tell you this. You're right. What happened at the FDIC was sad but it is, again -- it's not a hard story.

The law is clear. The bylaws are clear and the precedent is clear. The chairperson does not have the right to simply nullify the supermajority of the board. That's not even how any corporate board works either.

And in fact, one needs to always operate under a core principle of the rule of law and the rule of law can ask to be grounded in statute and in precedent, not simply because I say so.

It is so important that our regulators operate under what Congress has established for its governance structure. The FDIC is operated by a board and that means that when there are valid actions no individual can simply say no thank you. That's not how it works.

That's not how orderly government works. And we need to...

HAGERTY: Actually, I've served on many corporate boards...

CHOPRA: ... make sure it never happens again.

HAGERTY: ... and -- and -- and nonprofit boards. And working with the chairman of the board is a key part of...

(CROSSTALK)

CHOPRA: Of course and that's what I sought to do, too. You know, you -- you want -- you ultimately want a -- a ability to be able to compromise and you can't -- one board member can't simply say, well, I'll only compromise but you need to know I can crush or suppress or muzzle anything you want to do. I mean, this isn't actually the American system.

HAGERTY: What are your thoughts about the precedent that this sets, particularly in ...

BROWN: Answer that last last question and then we need we're going for Senator Warnock.

CHOPRA: So I'm -- could you repeat that? I'm sorry.

HAGERTY: Your thoughts about the precedent that it -- that this sets, particularly when there's another change of -- of control of the White House?

CHOPRA: Well, I think it's extremely important that we always adhere to the law, bylaws and precedent. And the precedent at the FDIC is that board members make motions, that board members vote and that board members can consult with the career staff. Never before has that been violated before and we need to make sure it doesn't happen again.

BROWN: Thank -- thank you, Director.

Thank you, Senator Hagerty.

Senator Warnock of Georgia is recognized.

WARNOCK: Thank you so much, Chairman Brown.

Director Chopra, great to see you again. Thank you for the work that you are doing to protect the people in my home state of Georgia and all across our country from deceit and fraud perpetrated by bad actors in the financial industry.

According to the Kaiser Family Foundation, nearly 1 in 10 adults or roughly 23 million people owe medical debt. And as of 2020, American families collectively owed over $140 billion in medical debt. In Georgia there's over $120 million in medical debt for over 100,000 people.

Last month in this committee we heard from experts that people in states like Georgia that have not expanded Medicaid suffer from higher medical debt, not surprisingly.

What state you live in should not determine whether or not you have access to free or affordable healthcare or whether or not you are forced deeper into medical debt, but that is the situation we're in right now.

That is why I introduced the Medicaid Saves Lives Act, and it's the reason I'm fighting to close the coverage gap to ensure that everybody everywhere is able to see the benefits of Medicaid and to receive health coverage.

We're talking about a law that's been on the books now for a decade and making sure people have access to healthcare through the expansion of Medicaid.

Director Chopra, in the CFPB's work on medical debt is there a difference that you're seeing in debt burdens among residents of states that have expanded Medicaid and states like Georgia and the other state -- the other 11 states that have been not?

CHOPRA: So, Senator, I -- I don't have that analysis offhand. What we do know is that for those who are uninsured they're much more likely to have higher levels of medical debt and more likely to, I believe, have collections items on their credit reports, and I'm happy to check with you on that.

The big -- the big challenge I also think is that much of the medical debt that appears on credit reports may not actually even be owed. In many cases these individuals may qualify for certain charity care under the nonprofit rules that hospitals have to adhere to.

In some cases they may benefit from their own insurance that they may have. And so we need to make sure that credit reports are accurate and not used as a weapon to coerce people to pay debt that they don't even owe.

WARNOCK: And I -- I would agree with that, certainly, but would you agree there if -- if people are less like -- if they're -- if they are not covered they're more likely to be in debt? So that would obviously include...

CHOPRA: That sounds right.

WARNOCK: ... people in states that haven't expanded Medicaid, that don't have any kind of coverage and they would be more likely to have to resort to high interest credit cards.

CHOPRA: That's right.

WARNOCK: Have you seen that in your work?

CHOPRA: That's right. So in -- in some cases actually medical debt is even blocking people from getting care altogether. I am particularly concerned that inaccurate medical debt reporting is actually preventing people from even being able to pass an employment verification check, to be able to pass a tenant screening check, to be able to get credit.

The credit reporting system has serious issues with accuracy and medical debt is -- is high among them.

WARNOCK: Right. So because of lack of access to care, lack of coverage, people find themselves in medical debt which also impacts, as you point out, their credit reporting, impacting employment. So they're caught up in a cycle not only of debt but unemployment and a whole range of other cascading issues. Is that...

CHOPRA: Yes. And after you get sick you should want to be able to get back on your feet, to get back to work, to move to a place where you can be near your job, to be able to rebuild your life.

And it -- and it -- and for many people they're so frustrated that they also felt I already paid this or I never even got this service or this is sitting with the insurance company. People are going nuts over how to deal with this, and it's harming people.

WARNOCK: Yes. I -- I appreciate your -- your observations there. I -- I think that health care is a human right. And obviously if it's a human right it's not a human right in some of the states. It's a human right in all 50 states.

The Affordable Care Act has been on the books now for a decade and the situation is that people in states like Georgia who find themselves in the coverage gap are more likely to be carrying this huge medical debt.

And so I look forward to working to make sure that we get health care passed for -- for all Americans.

I see that our chairman is -- is not here, and I want to call on my colleague from the state of Maryland, Senator Van Hollen.

CHOPRA: Thank you, Senator.

VAN HOLLEN: Thank you, Senator Warnock.

Welcome, Director Chopra. It's great to see you and -- and that's a good launching point for some of my questions, taking a little deeper dive into medical debt. And I certainly agree with Senator Warnock that we need to expand access to a new Affordable Care Act, including states like Georgia that are current -- not currently covered.

But to pick up on your point, we have seen, including in your own report, that medical debt is less predictive of creditworthiness than non-medical debt. And you did a pretty extensive series of findings in this regard.

And we have seen some credit scoring companies, like FICO and VantageScore update their models to reflect the latest research. But despite the fact that we have some of these updated models, we still see many lenders are not adopting those models that reflect the latest research.

So my question to you is is, number one, why is this? And number two, what tools do you have to help move these lenders in the direction that essentially reflects the latest research with respect to -- to medical debt? And can you work with the FHFA and with Fannie Mae and Freddie Mac to encourage the use of more accurate scoring models?

CHOPRA: Yes. It -- it's -- it's interesting. So many lenders, you know, they are quite dependent on credit scores and other algorithms that help predict -- predict creditworthiness.

And one of the things we have seen is that FICO did change one of its versions to exclude certain medical debt items, but much of the -- much of the industry does not use that version. Mostly -- there's a whole host of reasons why.

I think we're -- a lot of creditors are worried that they are not able to give a good explanation to borrowers who they might have given adverse terms to or denied them as to why. It is often really challenging for individuals to dispute through the credit reporting system to say, look, I already paid this.

See this service with this procedure code and this co-pay? I paid it. It's so much red tape and they feel that they just are stuck in a doom loop. And, you know, it really, really harms people.

So I think there's all sorts of things that are happening cross the government to take a harder look about the appropriateness of excluding people because of allegedly owed medical debt.

The Department of Veterans Affairs has dramatically changed its policies with respect to how it reports medical debt for veterans. There's work being done at the USDA and, yes, we are in discussions with the FHFA about how should they think about medical debt in the mortgage origination process.

And I really think we have to fix this because this is a major consumer pain point. It is the number one collections item now on people's credit reports and people -- so many people just feel coerced into paying something they don't owe when they're applying for a mortgage or a job or an apartment.

VAN HOLLEN: Right. And look, as you say, there are lots of cases that are being disputed for good reasons and yet people still get penalized on their credit reports. And -- and the data shows and that -- that -- and that's why these companies have -- credit scoring companies have -- have moved in the direction of the new research.

I -- I just hope you'll use the tools available to you and that others in the government will use the tools available to them to encourage lenders who may be denying people credit because of outdated information that we -- we move in the direction that you're talking about.

So I just -- I look forward to -- to your leadership in -- in that effort because I know the issue of medical debt is something of great concern to you.

So let me also turn to another issue that you and I have discussed in the past -- overdraft fees. And we've made some progress in this area. You know, I've often used the example of somebody going to buy a a cup of coffee and it ends up costing them 35 bucks and then later in the afternoon they go buy some more snacks and it costs them another 35 bucks because of either overdraft fees or -- or non-sufficient fund fees.

And I have been pleased to see a number of banks begin to move away from the exploitation of that, but nevertheless, we're talking about 15 -- $15 billion in revenues from overdraft fees as a result of these, the use of these fees. Can you talk more about what your plans are to ensure that we don't see abuse in this area?

CHOPRA: I -- I see we're out of time, but we're looking at a whole assortment of fees that, you know, many people don't even want the service that is allegedly being provided.

So we're looking at this holistically. We've solicited comments on the issue of junk fees and have gotten 80,000 comments. We're looking at that carefully but, you know, we are starting to see the market compete.

The market is competing down. The level of these fees -- some institutions are even offering the same service and giving people a grace period without even charging a hefty fee. And I think the benefits of competition are -- are huge when it comes to this.

VAN HOLLEN: Well, I hope there's a -- a race to -- among the different providers in -- in that direction.

Thank you, Mr. Chairman.

BROWN: Thank you, Senator Van Hollen.

Senator Toomey has couple of minutes he wants to ask in (inaudible), and then Senator Reed will be back and then we'll wrap.

So Senator Toomey?

TOOMEY: Thank you, Mr. Chairman, really just a closing thought on my part about this ongoing dispute we have over the application of disparate impact under UDAAP.

I think what became clear during the course of the conversation here is that the director repeatedly, I think directly and implicitly, equates disparate impact with discrimination. The problem is they're two very different things.

Disparate impact is a statistical difference and some kind of outcome between different demographic groups. And these occur all the time for reasons that have nothing to do with discrimination.

Now, Congress has rightly enacted all kinds of legislation to forbid discrimination, and if someone thinks that there are gaps in our legislative framework to ban discrimination it should come to Congress and we should fix it.

But the decision to invent a new authority and enforce this controversial disparate impact theory under UDAAP, in my view, this is entirely inappropriate. It's not authorized.

And let me be clear about what I think is really going on here. It's not just an attempt to unilaterally expand CFPB's authority, but it seems to be an attempt to impose uniform financial outcomes despite real and legitimate difference in financial situations, financial needs, financial preference and to use a false characterization of discrimination to justify that.

Thank you, Mr. Chairman.

BROWN: Thanks, Senator Toomey.

Senator Reed, last questioner? Here, let me help you.

REED: Thank you very much, Mr. Director. And one issue that I want to just not only raise but commend you is -- is the issue with respect to Military Lending Act. I know you've taken a much more positive approach. Could you give us some sort of fill in what you've been doing with respect to the Military Lending Act?

CHOPRA: Yes. So we have actually filed a lawsuit against FirstCash, one of the nation's largest pawn lenders for violating a past law enforcement order related to the Military Lending Act and continuing to violate the Military Lending Act.

The Military Lending Act is actually quite clear with many respects, and that entity's order was even crystal clear. So I think it's important that we stop repeat offenders of the Military Lending Act. We have also with respect to another entity that violated the Military Lending Act banned them from certain types of activities.

We are also making sure that institutions are following it. We will use our supervisory and enforcement tools as appropriate.

There are also other agencies that enforce this as well, and we hope that that can have a broad enforcement effort to root out those violations. We -- we know the evidence, Senator.

And you know it better than me that when we have people who lose their security clearance or get their credit report killed, it is not just a harm to them, it is a direct harm to our force readiness as well. We really appreciate the Department of Defense working with us on this because this is so important to our whole country.

REED: Thank you. Just a -- as you know, I -- the essence of the Military Lending Act is the 36 percent cap on -- on interest, and I have legislation which I've tried to propose that would apply not just to servicemen and women but to everyone because I think, in fact, everyone deserves that -- that kind of protection from excessive rates. Would you be in favor of that?

CHOPRA: Well, you know -- you know how it is. I don't know the specifics of the legislation but, of course, as we saw in the Military Lending Act, you know, servicemembers are still able to get credit. In many cases they use what almost everyone is using for short-term, small dollar lending a credit card that is subject to significant consumer protection.

We've seen a number of states enact rate caps, and I think this is an important area for you all to look at. Of course, the CFPB cannot establish that under our law, and we're happy to work with you to provide any analysis or feedback on your bill.

REED: Well, thank you very much.

And I want to thank Senator Brown and Senator Toomey for graciously extending (ph) the hearing so I could ask my questions and I want to commend you for the excellent work you are doing. Thank you very much.

CHOPRA: Thank you so much, sir.

BROWN: Well, Senator Toomey come -- grew up in your state and my grandchildren live in your state so it was an easy decision. Thank you.

REED: And Senator Toomey went to my high school.

BROWN: He went to your high school?

REED: Way after. Way after.

TOOMEY: Well -- well before you.

(LAUGHTER)

REED: He's the senior.

TOOMEY: He -- he just looks better but it...

BROWN: Director, thank you for your testimony today and your patience always. Few government agencies, few jobs in -- in our country, private or public, have the kind of positive impact in so many lives that you do so -- and your agency does.

Senators wishing to submit questions, they are due one week from today, Tuesday, May 3rd. Please submit your responses to these questions, Director Chopra, for the record 45 -- no more than 45 days after you receive them.

Thank you again. The committee is adjourned.

END

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