

## SENATE BANKING COMMITTEE CONDUCTS OVERSIGHT OF THE CFPB

### EXECUTIVE SUMMARY

On November 30, the Senate Committee on Banking, Housing, and Urban Affairs held a [hearing](#) on the Consumer Financial Protection Bureau's (CFPB) Semi-Annual [Report](#) to Congress, featuring testimony from Director Rohit Chopra. During the hearing, discussion covered several rules already promulgated or under consideration by the CFPB including its: (1) Section 1071 small business lending [rule](#); (2) credit card late fees [rule](#); (3) proposed [rule](#) on increased supervision of digital wallet and payment app providers ("larger participants" rule); and (4) upcoming proposal on overdraft fees, among others.

Committee Democrats lauded the CFPB's efforts pertaining to hidden and other "junk" fees, non-bank supervision, and ensuring financial protections for servicemembers, veterans, and their families, as well as expressing support for the Bureau's proposal to prohibit the inclusion of medical debts on credit reports. For their part, the panel's Republicans expressed concerns about the possible negative impacts of the CFPB's rulemakings on financial firms and consumers while suggesting that the agency is acting outside of its statutory authority.

Some additional topics discussed included: (1) student loan servicing; (2) Buy Now, Pay Later (BNPL) borrowing practices; and (3) the risks posed by artificial intelligence (AI) to the financial system and credit decision-making, among others.

### OPENING STATEMENTS

**Chair Sherrod Brown (D-OH)** ([statement](#)) particularly emphasized the CFPB's efforts to help protect servicemembers, veterans, and their families from "predatory" financial entities, highlighting the existence of the Bureau's Office of Servicemember Affairs and recent action against TitleMax for purportedly violating the Military Lending Act. He further expressed his support for the CFPB's proposal to remove medical debt from credit reports and actions regarding "junk fees," including credit card late fees.

**Ranking Member Tim Scott (R-SC)** ([statement](#)) criticized the CFPB for what he characterized as a lack of accountability and history of circumventing statutory mandates. He noted that, earlier this year, he helped lead other lawmakers in filing an [amicus brief](#) to the Supreme Court urging it to uphold a Fifth Circuit decision that the CFPB's funding structure is unconstitutional. The Ranking Member further predicted that the CFPB's larger participants proposed rule would serve to hinder innovation and accused the Bureau of seeking "sweeping" regulatory changes under the Fair Credit Reporting Act (FCRA) in contravention of "longstanding" legal interpretations.

## WITNESS TESTIMONY

CFPB Director Rohit Chopra ([testimony](#)) shared that his agency is: (1) increasing its focus on changes in U.S. household debt and borrowing practices; (2) monitoring the impact of repayments on, and the servicing of, student loans; and (3) exploring ways to facilitate residential mortgage refinancing. He also briefly noted the CFPB's recent efforts to: (1) promote open banking and financial data rights; (2) address concerns about accuracy in credit reporting, particularly regarding data brokers and medical bills; and (3) respond to hidden fees across various sectors. While underscoring the extent of non-banks' role in financial services today, especially in the payments space, Director Chopra further highlighted the Bureau's shift toward greater supervision of these entities.

## DISCUSSION AND QUESTIONS

### Small Business Lending

- Director Chopra assured **Sen. Katie Britt (R-AL)** that any public reporting or analyses by the CFPB of data collected under its Section 1071 small business lending rule will be aggregated and not allow for the identification of individual credit applicants.
- When Sen. Britt raised concerns about the potential impact of the small business lending rule on community banks, Director Chopra pointed out that small banks will have a delayed implementation date given that community banks have fewer compliance resources compared to larger banks.
- While claiming that many small businesses will not want to report data requested under the CFPB's small business lending rule, **Sen. Steve Daines (R-MT)** wondered whether lenders would be penalized for a low response rate. Director Chopra stated that there is no "intent" to penalize lenders and pointed out that, under the rule, small businesses can refuse to provide the requested data.
- When prompted by Chair Brown and Sen. Britt, Director Chopra indicated a willingness to comply with requests to meet with more community bankers or the associations they are affiliated with about the Bureau's Section 1071 small business lending rule.

### Credit Card & Bank Overdraft Fees

- **Sen. Mike Rounds (R-SD)** wanted to know when the CFPB intends to publish its proposed rule on overdraft fees, as well as whether the rule will consider how potentially subjecting overdraft protections to Regulation Z requirements will impact access to those protections. Director Chopra agreed on the need to ensure people's access to overdraft protections but declined to offer a timeline for the proposed rule, saying that it was still being worked on.
- While acknowledging that some banks have reduced or altogether eliminated their overdraft fees, **Sen. Bob Menendez (D-NJ)** claimed that many banks and credit unions still charge large amounts of overdraft fees and said that he was "looking forward" to the CFPB's proposed rule limiting these fees.
- **Sen. Elizabeth Warren (D-MA)** lauded the CFPB's efforts directed at "junk fees" across a variety of sectors and expressed her support for the CFPB's proposal on credit card late fees,

urging for it to be finalized “as soon as possible.” When prompted, Director Chopra agreed with her that banks have tools other than these fees — such as credit report marks and litigation — to push borrowers to make timely payments.

- Sen. Daines was worried that the CFPB’s credit card late fees rule would result in consumers facing increased annual fees, reduced rewards, and lower credit limits from their banks. Director Chopra countered that the rule would permit banks to recoup fees if they can justify them, reiterating that firms could lower credit limits or raise interest rates on those who do not make payments on time.
- Director Chopra was unable to offer Sen. Daines specifics on the CFPB’s conversations with prudential regulators around its credit card late fees rule, offering to follow up with the senator after checking on the details of those communications. However, the Director also shared that the regulators had determined the rule would not affect the safety and soundness of the financial system.

### Credit Reporting

- Chair Brown prompted Director Chopra to speak about what the CFPB is doing about the inclusion of medical debts on credit reports and attempts by “predatory” debt collectors to collect on medical debts that people do not actually owe. Director Chopra pointed to previous enforcement actions his agency has taken, sharing that the Bureau will pursue more of these actions. He also noted that the CFPB is considering, but has not yet decided on, developing a rulemaking to prohibit the inclusion of medical debts on credit reports, suggesting that those debts lack predictive value.
- **Sen. Jack Reed (D-RI)** raised concerns about credit reporting agencies’ selling of “trigger leads” — whereby potential lenders are essentially notified by the agencies that a consumer is seeking credit. He suggested that this may warrant establishing protections around the consumer data being used to facilitate this activity. Director Chopra voiced his understanding that the CFPB’s authority to address this concern is limited but added that he was willing to explore ways to make it clear that credit reporting agencies, not lenders, are the ones sharing this information.
- Sen. Rounds wanted to know whether, as a part of its analysis around a potential rule on medical debt reporting, the CFPB is considering whether some health care providers may require cash or up-front payments if credit reports cannot include medical debts for collectors to then pursue. Director Chopra acknowledged that some providers are already making this switch and confirmed that this is a concern that will receive consideration.
- **Sen. Bill Hagerty (R-TN)** asked which statutory authority would allow the CFPB to make some of its proposed changes to Regulation V, including: (1) creating a new definition of “data broker” that he said would “significantly expand” what qualifies as a consumer report and consumer reporting agency; and (2) classifying credit header data as a consumer report. Director Chopra referred to the FCRA but did not delve into any specific provision.
- **Sen. Raphael Warnock (D-GA)** brought up his and **Sen. John Kennedy’s (R-LA)** recent “Insulin Deserts” [report](#) in expressing interest in how Congress might work with the CFPB on medical debt collection and reporting practices affecting, in particular, people with chronic illnesses such as diabetes.

### Fintech & Non-Banks

- While acknowledging a need for supervision and rules around new technologies, Ranking Member Scott reiterated his opposition to the CFPB's proposed larger participants rule. Rather than proceed with that rule, the Ranking Member suggested that the Bureau should have retained its No Action Letter (NAL) and Compliance Assistance Sandbox (CAS) programs. Director Chopra defended the proposed rule as necessary to better address alleged fraud and data surveillance in payment apps and ensure that existing laws are being enforced consistently across financial institutions. He also purported that, under the NAL program, companies receiving no-action letters were claiming that they had government endorsement.
- Sen. Reed brought up the borrowing practice of BNPL, suggesting that it is currently largely regulated at the state level and asking what the CFPB might do to ensure this practice does not harm consumers, to which Director Chopra emphasized an interest in scrutinizing data collection around BNPL and ensuring that BNPL loans receive the same federal protections as credit card loans. Sen. Reed encouraged him to provide information around "insidious" BNPL data collection and use, indicating an interest in giving the CFPB more authority to address this concern.
- Sen. Menendez expressed his support for the CFPB's proposed larger participants rule, stating that it is an "important first step" in ensuring a "more secure and fair" digital payment ecosystem. He also noted that the rule will help address what he claimed were "rampant scams and fraud" on digital payment apps. Director Chopra shared that he will also be looking at these apps' treatment of remittances to ensure that those sending remittances are receiving the same protections as other consumers.

### Artificial Intelligence

- **Sen. Mark Warner (D-VA)** raised concern that AI tools — generative AI in particular — could be used to undermine public confidence in or manipulate financial markets. Director Chopra agreed that AI could exacerbate market disruptions, especially if many firms depend on the same foundational, or base, AI model. He predicted that AI could be used by malicious actors to purposefully disrupt the U.S. financial system. The Director further suggested to Sen. Warner that, even if there is no proven intent, actors could be held liable for harmful AI use.
- Director Chopra agreed with Sen. Warner that the threat posed by AI is such that it warrants examination and potential action by the Financial Stability Oversight Council (FSOC).
- Chair Brown expressed concerns about the risk of bias when AI is used by lenders and pointed to recent [guidance](#) issued by the CFPB regarding credit denials by lenders who use AI or similar technologies. Director Chopra affirmed that there are "no exceptions" for the use of AI or other technologies under a legal requirement that lenders provide accurate explanations when they take adverse actions such as credit denials.

### Servicemembers & Veterans

- When prompted by Chair Brown, Director Chopra confirmed that it was his view that servicemembers were not receiving required benefits, including interest rate reductions, under the Servicemembers' Civil Relief Act (SCRA) and Military Lending Act. He added that the Bureau has been pursuing litigation against "repeat offenders."

- **Sen. Jon Tester (D-MT)** brought up a [letter](#) that he and Chair Brown sent to the Department of Veterans' Affairs (VA) raising concerns about servicemembers and veterans who used their VA home loan guarantee benefits being at risk of foreclosure. Director Chopra confirmed to him that he was aware of this concern and shared that his agency is working with the VA on their home loan program guidelines. CFPB and the VA are also exploring ways to prevent avoidable foreclosures, the Director noted.
- Director Chopra also confirmed to Sen. Tester that he was aware of concerns about unaccredited VA claims consultants targeting veterans by alleging to be able to help them access their VA benefits. He shared his understanding that these entities reach out to veterans through social media and expressed concern about the CFPB's ability to identify perpetrators in that context.
- In a dialogue with Chair Brown about servicemembers' payroll allotments, Director Chopra claimed that some lenders have "abused" the allotment system. He said that the CFPB has been working with the Department of Defense (DoD) on its allotment policy to ensure that this does not happen moving forward.
- Director Chopra told Sen. Tester that the CFPB is exploring ways to streamline mortgage servicing rules to make it easier for veterans and others to receive loan modifications and avoid foreclosures.

#### Additional Matters

- **Sen. J.D. Vance (R-OH)** brought up the CFPB and Justice Department's [joint statement](#) contending that "unnecessary or overbroad" consideration of credit applicants' immigration status by lenders may violate the Equal Credit Opportunity Act (ECOA). He expressed concern that this will pressure banks into making "riskier" loans to undocumented immigrants.
- Sen. Vance asked Director Chopra if he would be able to share what the numerical difference was between PNC and JPMorgan's bids to acquire First Republic Bank. Director Chopra noted that there were multiple bidders for that purchase but declined to offer specifics. He acknowledged concerns around tradeoffs between limiting costs to the Federal Deposit Insurance Corporation (FDIC) and promoting competition in banking, contending that, although the FDIC was required to accept the least-cost option, "ordinarily" JPMorgan's purchase of First Republic would have been prohibited under the Bank Merger Act.
- Sen. Menendez said that he was "pleased" to see the CFPB open investigations into the Missouri Higher Education Loan Authority (MOHELA) and asked what the Bureau is doing to hold student loan servicers accountable and ensure they are supporting borrowers. Director Chopra declined to comment on the MOHELA case but assured him that the CFPB is working with the Department of Education (DOE) and state authorities to address any law violations around student loan servicing.
- Sen. Hagerty sought an update on the CFPB's recent data breach, including as to whether: (1) there has been any indication that it involved a foreign actor; or (2) that any compromised data was sold or transferred. While Director Chopra did not directly answer the latter question, he attested that he has not seen evidence indicating that the breach involved a foreign agent or intelligence operation.