

Invest Fair

ISSUE: Oppose Efforts to Undermine Fair Housing Enforcement, Including HUD's Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact Rules

In 2015, HUD released its Affirmatively Furthering Fair Housing (AFFH) rule, which implements two of the primary goals in the Fair Housing Act of 1968. The first goal is to end housing discrimination and promote diverse, inclusive communities. A second, less well-known goal is meant to affirmatively further fair housing – to actively dismantle segregation and foster integration in its place. Until 2015, the second goal had been largely forgotten, neglected and unenforced for decades.

The AFFH rule is a locally driven evaluation and goal-setting process that requires cities and towns across America to analyze and publicly report racial bias in their housing patterns every three to five years, and to set goals to reduce segregation. The rule is a tool provided to the local communities for them to implement in the best way possible for their communities. HUD's strong AFFH rule provides clarity and teeth to the law's long-standing obligations while also providing a number of tools communities can leverage to implement strong local fair housing programs.⁶⁷

Disparate Impact: In 2013, HUD also finalized a Disparate Effects rule – a uniform standard for analyzing evidence of disparate impact in cases brought under the Fair Housing Act. In 2015, the U.S. Supreme Court upheld the disparate impact doctrine under the Fair Housing Act in *Texas Department of Housing and Community Affairs vs. Inclusive Communities Project*. The disparate impact doctrine bars policies that have a discriminatory impact even if there is no intention to discriminate. This tool is very important to fair housing and fair lending advocates combating modern-day redlining where an intention to discriminate can be nearly impossible to prove.

Congressional opponents of HUD's AFFH rule and disparate impact rules have repeatedly sought to undermine them through "riders" or amendments in the annual appropriations process by barring HUD from spending any money to enforce them. More broadly, Congress has sought undermine fair housing enforcement by not funding or underfunding it.

⁶⁷ "Affirmatively Furthering Fair Housing." Affirmatively Furthering Fair Housing Final Rule. Retrieved from https://www.huduser.gov/portal/affht_pt.html#final-rule.

Who Can Act:

The U.S. Congress, the House of Representatives and Senate Appropriations and Budget Committees, the U.S. Department of Housing and Urban Development (HUD)

NCRC's Position:

NCRC opposes H.R. 482 (Rep. Paul Gosar (R-AZ-4)) and the companion S. 103 (Sen. Mike Lee (R-UT)), the Local Zoning Decision Protection Act and any similar bills that would block HUD from implementing and enforcing its AFFH rule.

NCRC also urges Congress to oppose all amendments in the FY 2018 budget and appropriations process to defund HUD's AFFH or disparate impact rules, and also to defund or underfund the Fair Housing Initiatives Program (FHIP) and broader fair housing enforcement.

NCRC urges HUD Secretary Ben Carson to continue to implement the Assessment of Fair Housing process under the AFFH rule. HUD must finalize the assessment and geospatial tools immediately, including the assessment tools for states and Public Housing Agencies (PHAs).

ISSUE: Protect the CFPB and its Director From Attacks That Limit Their Ability to Ensure a Fair and Transparent Financial System

The Consumer Financial Protection Bureau (CFPB) has been under fire from Wall Street and some members of Congress since its very inception. The agency was created by the Dodd-Frank Act in 2010 and aims to ensure that financial markets work for consumers, responsible providers, and the economy as a whole. It protects consumers from unfair, deceptive, or abusive practices and takes action against companies that break the law. The CFPB's jurisdiction includes traditional lenders such as banks and credit unions, but extends also to securities firms, payday lenders, mortgage servicing operations, foreclosure relief services, debt collectors, and other financial companies operating in the United States.⁶⁸

CFPB Director Richard Cordray: Currently, there are calls from across the financial services sector and by some in Congress to fire the agency's inaugural director, Richard Cordray. Congress supported the CFPB's independence by enacting protections against the removal of its director. The Dodd-Frank Act permits the president to remove the director only "for inefficiency, neglect of duty, or malfeasance in office."⁶⁹ CFPB Director Richard Cordray has not met that definition, and has been a tireless and effective leader of the CFPB.

⁶⁸ CFPB, *Institutions Subject to CFPB Supervisory Authority*, CFPB Website.

⁶⁹ 12 U.S.C. § 5491

CFPB's Funding and Structure: While no other bank regulator is subject to the annual appropriations process in Congress, opponents of the CFPB have suggested making the CFPB subject to annual appropriations, thereby tying its funding to the political winds of Congress instead of letting it operate as the independent agency it was designed to be. Along with the CFPB, the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) are funded independent of Congress' annual appropriations process through bank fees, in order to insulate them from political pressure and manipulation by big-bank political donors.

Another proposal would replace the single, accountable director with a board of directors or make it a commission. There is nothing unprecedented about the current structure of the CFPB. In fact, the much larger OCC has been led this way since it was established in 1863.⁷⁰ In addition to the OCC, single directors head both the Federal Housing Finance Agency (FHFA) and the U.S. Social Security Administration.

Other congressional proposals designed to undermine the CFPB's effectiveness include efforts to strip the agency of supervisory authority, remove its enforcement authority over unfair and deceptive acts and practices, and limit its rulemaking power, among others.

There are multiple mechanisms already in existence to ensure the CFPB's accountability and transparency. The CFPB must report twice a year to Congress⁷¹ – an obligation shared only with the Federal Reserve System. The Financial Stability Oversight Council (FSOC) has the authority to veto the CFPB's (and no other financial regulator's) rules.⁷² The CFPB is also accountable to the independent Inspector General for the Federal Reserve System's Board of Governors and to the Government Accountability Office (GAO). The GAO, both on its own behalf and in response to congressional requests, has conducted oversight and audits of the CFPB on repeated occasions. Also, CFPB rules and enforcement actions can be and have been challenged in federal court.

CFPB's Payday Lending Rule: Among the rules that the CFPB is working to finalize is its proposed rule to better regulate high-cost consumer lending, including payday loans. The agency's payday lending rule is critical to addressing the rise in predatory lending seen following the financial crisis.

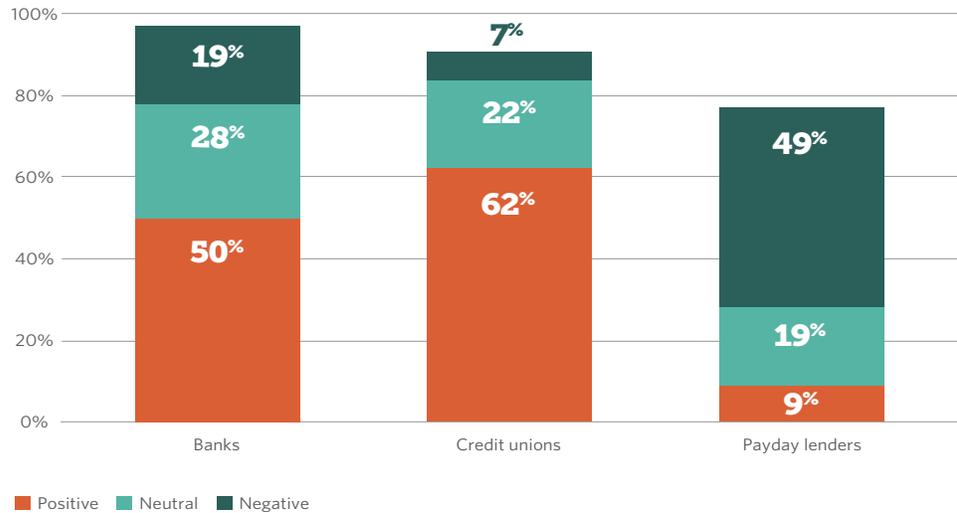
⁷⁰ OCC: *About the OCC*, OCC Website.

⁷¹ Cutter, Stephanie. "Fact Check: The Real Reasons Republicans in Congress are Blocking Richard Cordray at CFPB." The White House. October 6, 2011.

⁷² Financial Stability Oversight Council, *About FSOC*, FSOC Website, see <https://www.treasury.gov/initiatives/fsoc/about/Pages/default.aspx>; Board of Governors of the Federal Reserve., *Is the Federal Reserve accountable to anyone?* see https://www.federalreserve.gov/faqs/about_12798.htm (June 17, 2011).

Only 1 in 10 Americans View Payday Lenders Positively

Attitudes toward financial institutions, by type



Note: Respondents were read the following statement: "I'm going to read you the names of some types of financial institutions. For each, please just tell me if your opinion of that institution is very positive, somewhat positive, neutral, somewhat negative, or very negative." Results are based on 1,018 interviews. Data do not add to 100 percent because "don't know" and "refused" were omitted from this chart.

© 2015 The Pew Charitable Trusts

FIGURE 15. Source: The Pew Charitable Trust

Who Can Act:

The U.S. Congress, the U.S. House of Representatives and U.S. Senate Appropriations and Budget Committees

NCRC's Position:

Congress should not attempt to weaken the power of this critical agency that has already done a great deal to protect consumers and create a safer financial system free from fraud and abuse.

NCRC opposes the Financial CHOICE Act 2.0, to be sponsored by Representative Jeb Hensarling (R-TX-4), Chairman of the House Financial Services Committee, and any similar proposal by Senator Mike Crapo (R-ID), Chairman of the Committee on Banking, Housing and Urban Affairs. The Financial CHOICE Act proposes a rollback of numerous critical provisions of the Dodd-Frank Act, including those related to the CFPB. NCRC also opposes various stand-alone bills seeking to undermine the agency, including: S. 370 (Sen. Ted Cruz (R-TX)); S. 387 (Sen. David Purdue (R-GA)); H.R. 1031 (Rep. John Ratcliffe (R-TX-4)); and H.R. 1018 (Rep. Scott DesJarlais (R-TN-4)).



FACTSHEET

Consumer Financial Protection Bureau: By the numbers

- **\$11.8 billion:** Approximate amount of relief to consumers from CFPB supervisory and enforcement work, including:
 - \$3.7 billion in monetary compensation to consumers as a result of enforcement activity
 - \$7.7 billion in principal reductions, cancelled debts, and other consumer relief as a result of enforcement activity
 - \$371 million in consumer relief as a result of supervisory activity
- **29 million:** Consumers who will receive relief as a result of CFPB supervisory and enforcement work
- **\$589 million:** Money ordered to be paid in civil penalties as a result of CFPB enforcement work
- **1,080,000+:** Complaints CFPB has handled as of January 1, 2017
- **13 million:** Unique visitors to [Ask CFPB](#)
- **4.4 million:** Mortgages consumers closed on after consumers received the CFPB's [Know Before You Owe](#) disclosures
- **135:** Banks and credit unions under the CFPB's supervisory authority as of September 2016
- **12 million:** Consumers who take out payday loans each year; the CFPB has proposed rules to put an end to payday debt traps
- **70 million:** Consumers who have debts in collection on their credit record; the CFPB is developing proposed rules to protect consumers from harmful collection practices
- **3,244** Colleges voluntarily adopting the CFPB and Dept. of Ed [Financial Aid Shopping Sheet](#)
- **145:** Visits to military installations by the Office of Servicemember Affairs since 2011
- **62:** Times senior CFPB officials have testified before Congress
- **38:** Cities where CFPB has held public town halls or field hearings

FIGURE 16. Source: Consumer Financial Protection Bureau

ISSUE: Protect Section 1071 of the Dodd-Frank Act to Ensure Better Access to Credit for Small Businesses

Section 1071 of the Dodd-Frank Act requires that the Consumer Financial Protection Bureau (CFPB) centralize the collection of small business lending data and to make that data public. It also requires new data including the race and gender of the small business owner to be reported.

The purpose of this section is to “facilitate the enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” Currently, the collection of small businesses lending data is spread across a number of federal agencies, is not comprehensive, and is not readily available to the public.

Small, women-owned, and minority-owned businesses (SBEs, WBEs and MBEs) drive economic and job growth. Small businesses accounted for approximately 60 percent of net new jobs created from mid-2009 to mid-2013.⁷³ Women, African-American, and Hispanic entrepreneurs represent a larger share of small businesses than ever. By one estimate, women entrepreneurs are adding more than 1,000 new businesses in this country every day, and women of color account for roughly 80 percent of those.⁷⁴ Nonetheless, the country continues to rebound from a 40-year decline in startup activity.⁷⁵

Despite their significant role, small, women-owned, and minority-owned businesses struggle the most with access to safe and sustainable credit. Bank balance sheets showed a 20 percent decline in small business lending by 2014, while loans to larger businesses had risen by about four percent over the same period.⁷⁶ Also, small businesses, women-owned, and minority-owned businesses face lower approval rates on loans than male-owned and non-minority-owned businesses. For example, available research on minority business lending generally indicates that African-American business owners are denied loans more often or pay significantly higher interest rates than white-owned businesses with similar risk characteristics.⁷⁷

Despite disparities in lending, a 2008 GAO report found that the lack of data frustrates regulators ability to address it. Better data on lending markets improves access to credit.

Who Can Act:

The U.S. Congress

73 SBA, Frequently Asked Questions about Small Business (March 2014).

74 SBA Cabinet Exit Memo, SBA: Smart , Bold, Accessible (January 5, 2017)

75 Ibid.

76 Mills, Karen Gordon and McCarthy, Brayden, Harvard Business School, *The State of Small Business Lending: Credit Access During the Recovery and How Technology May Change The Game*, p. 4, (July 2014)

77 GAO, *Fair Lending: Race and Gender Data Are Limited for Nonmortgage Lending*. (June 2008)

NCRC's Position:

NCRC opposes the Financial CHOICE Act 2.0, to be sponsored by Representative Jeb Hensarling (R-TX-4), Chairman of the House Financial Services Committee, and any similar proposal by Senator Mike Crapo (R-ID), Chairman of the Committee on Banking, Housing and Urban Affairs. The Financial CHOICE Act proposes a rollback of numerous critical provisions of the Dodd-Frank Act, including a repeal of Section 1071. NCRC opposes any repeal of Section 1071. Better small business lending data must be defended.

SBE, MBE and WBE Procurement: Additionally, to ensure that small, women-owned, and minority-owned businesses can continue to grow, the federal government should increase their contracting and procurement goal with small business from 23 percent to 25 percent and actually adhere to that standard. For years, the government has failed to meet its goals of awarding a mere 23 percent of federal contracts to these businesses, depriving them of at least \$25.7 billion. In addition, many federal programs aimed at providing technical assistance have arbitrary and unnecessarily limiting constraints.

ISSUE: Make Public Better Data About the Mortgage Market and Loan Products

Prior to the 2007-2009 financial crisis, it became evident to the U.S. Government Accountability Office (GAO) and others that the current data collected under the (Home Mortgage Disclosure Act) HMDA data was insufficient for use in monitoring predatory lending practices. Primarily, a lack of information on the various types of loan products being offered and the credit history of applicants left regulators and advocates without the tools needed to discourage lenders from offering high-cost mortgage loans with abusive terms and conditions to vulnerable consumers.⁷⁸ As a result, the Dodd-Frank Act of 2010 made a number of improvements to mortgage market data collection under HMDA.

In October 2015, the CFPB issued its final rule improving the quality and the type of HMDA data it collects. This new information includes the property value, the term of the loan, and the duration of any teaser or introductory interest rates to help identify emerging risks and discriminatory lending practices.⁷⁹ Fair lending screenings could also be enhanced because financial institutions will be required to provide more information about mortgage loan underwriting and pricing, such as an applicant's debt-to-income ratio, the interest rate of the loan, and the discount points charged for the loan.

Opponents of the new and better HMDA data are seeking to repeal the Dodd-Frank authority for expanded HMDA reporting, to exempt more financial institutions from having to report at all under

⁷⁸ See GAO, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, GAO-09-704 (Washington, D.C.: July 15, 2009); and *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending*, GAO-04-280 (Washington, D.C.: Jan. 30, 2004). See also Adam J. Levitin, *The Consumer Financial Protection Agency*, Pew Financial Reform Project Briefing Paper #2 (Georgetown Law Center: 2009).

⁷⁹ CFPB HMDA Final Rule, <https://www.consumerfinance.gov/data-research/hmda/>

the law, and to delay the public release of the new HMDA data that the CFPB is now collecting for further study on protecting borrower privacy.⁸⁰

Making Better HMDA Data Public: The effectiveness of the new rule will be contingent on how the CFPB chooses to disclose data to the public. This year, the CFPB will determine how and what data to release to the public. HMDA data is a powerful tool in fighting for a more just economy. In 2016, 6,913 financial institutions reported information about approximately 14.3 million mortgage applications, pre-approvals, and loans.⁸¹

The CFPB is taking key steps to protect borrower privacy. The agency interprets HMDA to call for the use of a balancing test to determine whether and how HMDA data should be modified prior to public release in order to protect privacy while also fulfilling the public disclosure requirements of the statute.⁸² The CFPB uses anonymizing techniques and other steps to protect data from being reverse-engineered to identify consumers.⁸³

Who Can Act:

The U.S. Congress, the Consumer Financial Protection Bureau (CFPB)

NCRC's Position:

NCRC opposes congressional efforts to repeal, delay or block the release of the new and better HMDA data or to exempt more financial institutions from having to report under the law.

The CFPB has issued a strong final HMDA rule, which could do much to shed light on lending activities. HMDA is a public disclosure statute, and the CFPB should lean towards full public disclosure while taking steps to ensure that the privacy interests of borrowers are protected.

ISSUE: Provide Incentives for Financial Institutions to Adopt Age-Friendly Banking

With an expected 72 million older adults living in the United States by 2030,⁸⁴ the “Silver Tsunami” of American seniors will need age-sensitive financial products and services in order to continue living healthy and independent lives.

80 Independent Community Bankers of America (ICBA), *2017 Plan for Prosperity* (p. 15). See also American Bankers Association, *Bank Regulatory Evaluation Tool*. <http://www.aba.com/Compliance/Pages/BkRegBurden.aspx>.

81 Background and Purpose of HMDA. (September 29, 2016). Retrieved from <https://www.ffiec.gov/hmda/history.htm>. Federal Financial Institutions Examination Council

82 CFPB Final Rule on Home Mortgage Disclosure. <https://www.consumerfinance.gov/data-research/hmda/>

83 GAO 14-758 Consumer Financial Protection Bureau Report. <http://www.gao.gov/assets/670/666000.pdf>

84 *The State of Aging and Health in America* (2013)

Who Can Act:

The Federal Deposit Insurance Corporation (FDIC), the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the U.S. Congress in its oversight role

NCRC's Position:

The financial industry must do more to ensure that they are equipped to meet the unique banking needs of older adults. In its report *Staying at Home: The Role of Financial Services in Promoting Aging in Community*, NCRC defines six core Age-Friendly Banking principles to effectively serve the older adult population:⁸⁵

- Make financial management affordable;
- Ensure older adults' access to critical income supports;
- Implement financial abuse protections and training;
- Facilitate aging in the community;
- Support aging services and advocacy; and
- Increase the accessibility of locations and services.

⁸⁵ Kali, K., & Zdenek, R. (2016, August). *Staying at Home: The Role of Financial Services in Promoting Aging in Community*. Retrieved from http://www.ncrc.org/fleeced/wp-content/uploads/2016/09/NCRC_Aging_in_Community.pdf National Community Reinvestment Coalition