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# THE FUTURE OF CONSUMER PROTECTION: THE CFPB AND BEYOND

## REMARKS AT THE LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW

MARCH 22, 2019

*Richard Cordray\**

I am glad to have the chance to kick off today's discussion about the future of consumer financial protection. You have set three excellent panels, filled with excellent panelists, on student loan debt, usurious lending, and fintech innovation, and I join everyone here in having a deep interest in what each of them will have to say. I happen to know some of these people very well, having had the chance to work alongside them, and I know them to be deeply committed to the interests of the consumer public. We need more of that in America today.

Let's face it – right now we are in the middle of an Administration whose commitment to consumer protection seems questionable at best. So, at a time when we are seeing some amount of retreat at the federal level, I think you are quite appropriately emphasizing in this conference that we must focus not only on the CFPB, but beyond. And so, I am going to talk a bit today about three things. First, what is the CFPB doing or not doing? Second, how should we regard the innovative financial providers – known as the “fintech” companies – and the ways they may be using technology to advance the interests of consumers? Third, what should we think about consumer financial protection “beyond” the CFPB, most particularly at the

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state level? And after I finish my remarks, of course, I am happy to spend the rest of the time answering your questions about anything you want to talk about.

First, then, as to the CFPB. We have seen that it has taken a definite turn of direction. That was especially the case during the transitional leadership of Mr. Mulvaney, an adamant opponent who seemed proud of his personal hostility to the Consumer Bureau. But the full extent of that turn is not yet entirely clear under the newly-confirmed director. I have criticized some of her decisions thus far, such as the move to roll back the payday lending rule and the claim that the Bureau lacks authority to supervise companies for compliance with the Military Lending Act – two topics that our panelists will discuss further. I am disturbed at the lack of zeal for exerting meaningful oversight over sloppy and abusive treatment in student loan servicing – another topic we will cover in more detail. But so far, the jury is still out on many other issues. At a minimum, however, it seems clear that the Bureau has adopted a different stance in two key areas: enforcement and regulation. The number of enforcement actions has declined sharply in the past sixteen months, and the pace of pro-consumer regulations appears to have slackened as well. There has been an avowed rebalancing away from the interests of the consumer public to a greater solicitude for the interests of the financial industry.

To be clear, I disagree with the main thrust of this shift toward federal *inaction* on consumer protection. It is very much out of step with the approach we took during the early days of the Bureau and throughout my tenure. We were painfully aware of the failings of the unreformed system that precipitated the terrible financial crisis, with a deplorable race to the bottom in mortgage lending that was not counteracted at all by lax regulatory oversight. So, I think that aggressive policies for protecting consumers in the financial marketplace are clearly needed and justified in the economy of the 21<sup>st</sup> century. We needed to rebalance the financial marketplace, where individual consumers face off against some of the most powerful companies in the history of the world. That need has not slackened. But if the federal government is sounding the retreat now for the first time since the Great Recession, then we need to look beyond the CFPB and see how else we can find ways to protect consumers. In short, where does the shifting policy environment at the federal level leave the issue of consumer financial protection in this country?

One place many are encouraging us to look is to the

advances made by new technology. The nature of the marketplace has been transformed in the past generation. People have always craved speed, ease, and convenience. But nothing before can compare to life in the computer age, where our physical limitations are simply melting away. Online commerce, built on the mysterious power of big data, is solving the logistics and reducing the costs of speed, ease, and convenience, and the result is to make them increasingly available to the consumer public.

This is an impressive and positive development in many ways. It means that more financial choices are more broadly available to more people. More types of consumer credit are now available than ever before, and some very smart people are intent on finding new ways to extend credit and financial services to those who lack access to them. These developments also have the potential to reduce costs, provide more consumer control, and improve customer service. It also feels like we are experiencing an extended Schumpeterian moment. New technology is creating unprecedented waves of creative destruction, as many moats and walls that previously protected stodgy rent-seekers in the financial marketplace are starting to be torn down.

What is more, many fintech providers are quite idealistic about seeking to disrupt the existing consumer finance markets to make them work more effectively on behalf of consumers. They see shortcomings and inefficiencies in the status quo, and they believe they can figure out how to do things better. They are commendably fearless in tackling these challenges, and they are getting the best of many of them. The incumbent companies often lack the same drive and initiative to try new things, because they fear that drastic innovation may cannibalize their existing position atop the marketplace. New startups, fueled by the astonishing power of technology, have no such qualms.

How do these consequences of financial innovation intersect with consumer protection? We used to spend a lot of time talking about this at the CFPB, because we had as one of our congressional purposes the task of helping to foster innovation in financial services. But it was not clear how a government regulatory agency with enforcement authority could do that. Our typical focus was on the baseline of what companies need to do to avoid violating the law. But that is a low threshold that leaves much to be desired. Beyond that, companies compete against one another for market share. Winning market share requires satisfying the needs of customers better than your competitors, including through innovation. We had no power to

compel any financial providers to do that, but we could at least seek to remove the overhang of regulatory uncertainty that might be preventing them from serving consumers in more beneficial ways. Therefore, we sought to do that where we could.

But we were also cognizant of the dangers of this new computerized marketplace. And that is why I am skeptical of some of the proposals we hear that are supposed to help jumpstart the fintech sector. One danger is posed by the financialization of our economy – the mass availability of consumer credit – which creates both opportunities and risks for people who may get in over their heads and ruin their financial lives. More types of credit, and more complex credit products, are now available to more consumers than ever before. And once again I will stress that though that can be a very good thing, it also raises new and substantial concerns about people’s ability to manage their credit and the effects on their financial health. Another danger comes from the very nature of speed, ease, and convenience. Many consumer choices are small and simple enough, but some are more complicated, and can be quite consequential. For consumers who don’t understand all the ramifications, hasty decisions can lead to lasting regrets. Yet another danger stems from the nature of the online medium, where greater anonymity or sheer unfamiliarity with the other party can facilitate fraud and other forms of exploitation, further encouraged by the evidently greater difficulties in effectively enforcing the law, in a borderless world of commerce where the enforcement officials are still quite border-constrained. Yet another source of danger is the threat to our data security and our privacy in all the information that is being amassed about us, often without our full awareness of what may happen to us as a result.

It has become fashionable for regulators to think and talk about all these technological developments in the financial marketplace as something that might be best addressed by the concept of a “regulatory sandbox.” One thing that I recall about a sandbox, from when our twins were small, is that nobody quite knows what exactly is going on in there. The same seems to me true of the regulators who bounce that term around rather casually in their conversations. But one thing it certainly should not be is a mindless “regulation-free” zone. There are many dangers in this post-modern abstract marketplace, and people can get hurt in a sandbox just as much as they can anywhere else. So as regulators seek to foster innovation for consumers, they should encourage fintech companies to meet high standards and

principles of conduct. They should make efforts to maintain close communication and understand and ameliorate reasonable obstacles to their progress. But they should not do it by stripping away the protections that have been built slowly and carefully for consumers over many years of painstaking work.

The other place we can look for the consumer protections that people need in the financial marketplace is to the States, now that the CFPB and other federal regulators are in retreat. It is worth making the effort to understand whether and how this can work. After all, in countries like Great Britain, with a unitary system of government, which means they lack a system of federalism, a shift in policy at the center would be decisive, settling the issue for the entire nation. But that is not necessarily true here in the United States. As Justice Brandeis famously noted, "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country."

That is a promising direction. We have fifty additional sources of law to contemplate, and we have fifty distinct sets of public officials that we can encourage to enforce those laws vigorously. Certainly at least some of these laws and some of these officials are inclined to carry forward the banner of consumer financial protection, even in conflict with the contrary views of their federal counterparts. So, what are their prospects of success? Can the states decide to exercise the "happy incidents" of our federalism to step into the breach and make up the difference?

The answer depends on the particulars of the legal framework that controls a specific area of policy. The Supremacy Clause stipulates that federal law is supreme and controlling, regardless of anything to the contrary embodied in state law. Does that mean any state law purporting to protect consumers in a way that is different from federal law would be rendered invalid as contrary to the federal law? Does federal preemption thus negate state efforts to provide broader financial protections for consumers?

Prior to the Dodd-Frank Act, it seems that the answer to that question might well have been "Yes" – that even anemic federal laws would preempt stronger state laws to the contrary, because of the inconsistent rules of conduct they would pose for individuals and corporations. That is the doctrine of "conflict preemption," which the Supreme Court has laid down to control any instance of a state law that would interfere with the intended

objectives of federal law. As has been determined with such diverse commercial areas as medical devices, or cigarette labels, or airbags in motor vehicles, even so with consumer financial protection: if the federal law conflicts with state laws – even more protective state laws – then a court might well hold that federal preemption negates those conflicting state laws. That would be true, for instance, if the federal policy were that consumer protections should extend only so far, and no farther, as part of a uniform national policy on how to balance the interests of the consumer public against those of financial providers. And in the current Administration, there is no doubt that some federal financial officials prefer this view.

Another potential problem is where federal officials, including at the CFPB, decide that they no longer have the same zeal to enforce the law as was shown previously. In the field of consumer financial protection, a shorthand phrasing of this view might be whether federal officials should “push the envelope” in advancing consumer protections in the financial marketplace. Mr. Mulvaney stated explicitly that he believed I had done so, that such an approach was undesirable or even improper, and he made clear that he would not do so during his interim tenure. On traditional theories of dual federalism, it was up to federal officials to enforce federal law; state officials were authorized to enforce state law; and never the twain shall meet. Hence a voluntary pullback in enforcement at the federal level was dispositive of the continued efficacy of federal law, at least while those federal officials remained in position to impose their views. And if federal officials could thus effectively undermine the force of the federal laws while also claiming to preempt state laws protecting consumers, then the depressing result would appear to be checkmate.

But interestingly, the Dodd-Frank Act imposed important changes in the federal-state landscape that governs consumer financial protection. Notably, Congress changed the “default rules.” Ultimately, the controlling view on federal preemption always lies with the Congress, and where it speaks clearly, that is the end of the matter.

Two provisions in the Dodd-Frank Act embody these crucial changes. The first is section 1041(a)(2) of Title X, which says that “a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this [Act] if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this [Act].” This is a tell-tale provision, because it

effectively speaks in the language of “rights.” To explain this, let me make an analogy to state constitutional law. It has been long established that the rights guaranteed under the U.S. Constitution are distinct from the rights guaranteed under state constitutions and each can be given their own independent construction. And the relationship between them is governed by a one-way ratchet: wherever federal rights are interpreted one way, and state rights are interpreted some other way, the state rights can protect individuals beyond the scope of the federal rights, but they cannot operate to undercut the scope of federal rights. Put differently, and more simply, the federal constitutional rights are a floor but not a ceiling of constitutional protection against the actions of state officials.

That is exactly what this language in the Dodd-Frank Act provides as well. If states wish to confer broader consumer financial protections against private individuals and corporations, they can now do so, regardless of whether the U.S. Congress or federal officials have done so. That is the new baseline of fairness that Congress has created under federal law in this special realm of consumer finance. The decision by state officials to confer broader protections on consumers as a matter of state law is “not inconsistent with” federal law, meaning there is no preemption of the more generous state laws.

Why should this be the new baseline? To put it bluntly, this language reflects the notion that consumers deserve certain rights, and where state officials choose to recognize and protect these rights, they should have latitude to do so. In other words, the default rule now is that “more” consumer protection conferred by states is considered a good thing and thus is legally permissible, despite the text of the Supremacy Clause. And since the new default rules appear in the statute – explicitly declared by the Congress itself – it would seem to control any efforts by regulators to act to the contrary by trying to preempt such state laws on their own authority, unless they have countervailing statutory language they can cite in support.

The second major change embodied in the Dodd-Frank Act has to do with enforcement of the consumer laws. Section 1042(a) essentially says – I am paraphrasing here – that in any state, either the top legal official or the top financial regulator can take action in a federal or state venue to enforce the provisions of the Consumer Financial Protection Act and its implementing regulations against anyone who violates the Act or such regulations, and secure remedies for any violations. The lone exception is for nationally chartered banks, but even they can be

subject to an action by a state's top legal official for violating not the Act itself, but its implementing regulations. And the exception is construed narrowly to omit any of the chartered bank's subsidiaries and affiliates. This political compromise was the Congress' considered response to the Supreme Court's surprisingly pro-state holding in the *Cuomo v. Clearing House* case.

Now that is a bit complicated, and it merits several observations. First, this is a novel form of federalism, which authorizes state officials to take the initiative to enforce federal law directly. Why would Congress do that? I submit that it was a farsighted response to precisely the shifting policy environment we now have, where the federal government itself may now be disinclined, for one reason or another, to engage in tough enforcement of federal consumer law. Those reasons might include an adherence to free-market ideology, or an anti-government bias, or a desire to support the financial industry, or agency capture, or perhaps some other reason. Maybe all of the above. Whatever the reason may be, the Congress that enacted the Dodd-Frank Act spoke clearly to say that it was not willing to put all its enforcement eggs in the federal basket. It made the express determination to authorize fifty other sovereign entities to enforce federal law as well, at least for the most part.

This is a departure from strict notions of dual federalism, where federal officials enforce federal law and state officials enforce state law. Yet it seems natural enough that Congress would want to see more robust enforcement of the laws that it has enacted. It disrespects Congress when the executive branch hollows out valid laws on the books through mere inaction, as though the federal officials had not taken a constitutional oath to faithfully execute those laws. Indeed, this provision suggests that Congress was concerned that the consumer financial laws would be systematically under-enforced, and so sought to expand and strengthen the team of officials engaged in giving them teeth. Perhaps all federal law is systematically under-enforced, since crossing the line is subject to judicial correction and sanctions, which may prompt caution about treading into grey areas close to the line. Anyone who works with enough government lawyers knows the type. Or we might recognize that limited resources and unlimited problems tends to lead to a futile game of catch-up that law enforcement officers never quite win.

However, all of that may be, the bottom line is that in our enhanced system of federalism applicable to consumer financial protection under the Dodd-Frank Act, state officials now have

more tools and more resources than ever before, which reflects Congress' embrace of the importance of protecting consumer rights. For our purposes here, I am leaving aside section 1044 of the Dodd-Frank Act, which further governs preemption issues under the National Bank Act and contains no fewer than seven subsections and nine sub-subsections. I will throw up my hands and just leave the details of that classic legislative punt for the courts to decide.

But stepping back from looking too closely at all these intricacies, the bottom line is this: even if the CFPB is temporarily sounding some manner of retreat from the battlefield, we can salute the Congress for ensuring that consumer financial protection remains alive and well. It has done so in the Dodd-Frank Act by creating what we might call a framework of "competitive federalism." This competitive federalism empowers the states and their officials to expand and protect the rights of consumers in the financial marketplace, where "more" is understood to be "better." Thus, I say to the legal and financial officials from the fifty states: Press forward. Test the boundaries. Don't shy away from the uncertainties in the law. Do what you believe is right to protect consumers against fraud and abuses. And I urge the same to our federal colleagues, to whatever extent they are permitted to do so. Remember the words of President Kennedy, in his 1962 speech to Congress, calling for a Consumer Bill of Rights. He said: "Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard." The same is still true today. We must listen for their voices, and we must act to protect them, through sound laws that are vigorously enforced. Please know that, every day, not only I but millions of Americans are fervently rooting you on.

## QUESTIONS AND ANSWERS

### Question

So, here's my question, you were talking about consumer protection and student loans. I am still getting calls about my student loans even though they were paid off over 40 years ago. What can I do?

Hon. Mr. Cordray

That sounds like a lousy loan servicer, perhaps a rapacious debt collector. I would file a complaint with the CFPB consumer response center and there are things that they can do to make sure that those calls stop. It is a commonplace problem in student loans, and you have a right to tranquility under the law. There are about 70 million Americans at any point that have debts in collections allegedly. Go to [consumerfinance.gov](http://consumerfinance.gov) and file a complaint. They're still acting pretty effectively in that area.

Question

Could you talk about non-mandatory principles in a regulatory sandbox?

Hon. Mr. Cordray

First of all, it's a very fact-specific situation. When you talk about fintech providers, there's a variety of different providers that you may be referring to. It could be marketplace lending or it could be aggregators or any number of other businesses. There isn't any general answer for that. The efficacy and the prospects for the success of having certain principles adopted in the marketplace will depend in part on the leverage that the regulator may be able to exert over that category of businesses.

Take, for example, the work being done on faster payments, which overlaps both fintechs and the traditional banking system. The Federal Reserve decided it would try to encourage the financial industry to develop a faster payment system. Under the current system, payments often take several days to process. Faster payments will affect both inflows and outflows and thus are arguably neutral to the consumer, as it is ultimately kind of a wash. But there is a clear benefit for consumers if we can achieve faster payments, because there is a great deal of confusion right now as consumers do not really know when payments are happening. They do have a sense that it is not immediate, but they do not know exactly when any given payment may land. Where there is confusion, there is risk to consumers.

In making the effort to push the financial industry to improve the payment system, the Federal Reserve had some leverage over the providers and we got together with them and determined that the push being made would include some broad principles to help ensure that any changes made would be more consumer-friendly. So far, those efforts have been very successful. Extensive work is being done to upgrade the system, and all parties have accepted and are working to abide by these

principles. That is a very particular example, but it does show that regulators can exert considerable influence over the direction of changes in the market if they are focused and clear in the efforts they are making.

So again, every situation is very particular, but it's not just an empty thing to set up some standards if there is enough will to make them stick. I am not saying that voluntary standards are a substitute for actual enforcement when it comes to protecting consumers. But if we can push the industry in directions that are more consumer friendly, we should do that as well even where those standards may be not specifically enforceable.

### Question

What advice would you give to law students about the potential careers in consumer protection?

### Hon. Mr. Cordray

One of the things I want everyone to do is respect consumer finance and consumer law and its importance in people's lives, no matter who they are. The arbitration rule, which the CFPB adopted and later was overturned by Congress, would have allowed for more private class-action lawsuits. That is an additional feature of consumer protection that I did not mention in my speech. Private enforcement of law through class actions is important and it is part of the way to deter companies from seeking a competitive advantage by breaking the law. Some of these students here can make a living by practicing in this area of consumer finance law and I think that by making a living in this way they also can be doing beneficial work. Some people think that all plaintiff's lawyers are harmful barnacles on the Ship of State. I don't agree with that. I would encourage attorneys and the public to look at consumer law as a productive area of practice. It is a reasonable system in a very American sense to have individuals be able to assert their rights and seek to have the courts hold companies accountable for obeying the law. In general, more consumer protection for the most part is better. We don't have enough of it right now.

### Question

We've had comments and received questions about sandboxes. There were no or very few applications for working a sandbox. What is the response or counterpoint to "should it be something that people want to use and try?"

Hon. Mr. Cordray

I think it is understandable that companies, especially startup companies, can be hesitant to try new approaches in a field that is heavily regulated.. They don't necessarily know much about the legal and regulatory landscape. That's one of the shocks and surprises that they might have as they enter the financial marketplace. As they try to build a better mousetrap, there likely are regulations they have to comply with. In that situation, many companies shy away from dealing with the government, which they view as a threat. It's not their immediate instinct to run to government for help or insight. They tend to keep their head down until they can get at least that first round of venture funding. They need to be more responsible about recognizing and embracing the regulatory landscape that tends to dominate the realm of consumer finance.

But government officials need to be responsible as well. Participation in a sandbox is not the be-all and end-all. If getting people to participate in the sandbox means that we have to give away all these consumer protections, that is a poor approach, at least in my mind.

Question

What are your thoughts on litigation between state officials and the OCC over the proposed fintech charter? What would you say to the argument that state licensing doesn't make as much sense for non-brick-and-mortar lenders?

Hon. Mr. Cordray

I would say that when we talk to fintech companies and other financial innovators, they hate federalism. They want one answer from one person (though it is not so great if the answer is not the one you want). They are just depressed by the inefficiency of the system. They hate that they have to go to many different places to get approval to operate the way they want to.

But I think those problems are overblown. It is an inefficiency in a sense, but not necessarily a trade-off. It has a countervailing benefit and companies have managed to live with it. A lot of things differ from state to state. Lots of companies have managed to automate their compliance even though they started off having to comply on many fronts with the laws of multiple states. I don't think there is anything unique to the fintech companies that means that they can't live with that same system of federalism, as they have to do for contract law,

property law, tort law, and the like. States do recognize that this is a problem, but they have their own unique needs and their own unique regulations, and many of them are finding ways to coordinate their work to reduce some of these burdens.

As to the litigation over the OCC fintech charter, I'm not current with the latest developments. But it is going to be symptomatic of the next few years where the federal government is pulling back in regulating consumer finance and the states are pushing in, so there will be preemption fights.

Federalism is alive and well in this country. It is not going anywhere. Just because a few people find it inefficient, does not mean that it is unsatisfactory. It builds in a lot of protections for people's rights, and where Congress decides, as it did in the Dodd-Frank Act, that States can go above and beyond federal law to protect consumers, that is the definitive word on the subject.

As with any kind of structural issue, it is in itself sort of neutral in its effect on policy. Federalism can be good or bad, depending on your point of view. Federalism was originally an obstacle that held back civil rights in this country. Now it can be a source of expanded rights under state law that go beyond federal rights in various areas.

### Question

During your tenure at the CFPB, what sector had the most problems giving consumers transparency and how did you go about improving that transparency?

### Hon. Mr. Cordray

In answering that question, I would tend to look across the different markets that we dealt with. In the mortgage market, which is the one that created that crisis, inevitably a terrible crisis, hopefully the worst of our time, Congress mandated a lot of reform and we had many choices to make, but I think most people would agree that we made those choices in ways that have provided important safeguards for that important market.

One market that was not transparent at all is the credit reporting industry. Clearly, there needed to be reform to react to the last crisis. These companies keep reports on each of us, our information is collected, analyzed, and then sold to size up the kind of credit risk that we pose. People tend to assume that they get the same off-the-shelf loan offer as anyone else, but that's not true. And the price quoted to you might be wrong because the information in the credit report might be wrong. You might live

your whole life paying more than you should because of flaws in that process that you are unaware of.

Credit reporting originated in local markets, then it grew up into a nationwide industry almost the way weeds grow in a garden, very haphazardly. When the CFPB first began to scrutinize their operations, they were utterly disorganized and had no strong compliance management. They had no idea what to tell us about whether they were complying with the law or what they were doing. They were just gathering information and selling it to people. There were lots of different ways people were doing things, and it posed extensive risks for consumers on a broad scale. They are still massive entities with many problems. We worked to improve their accuracy and their responsiveness, and we sought to put pressure on them by making consumers more aware of their credit files and the importance of their credit scores. All of that helps bring these companies more to heel because the consumer is more thrust into the middle of their business and can assert their rights more effectively.

I could talk in the same kind of detail about each of the consumer finance markets individually, but we don't have time.

### Question

There is a payday lending regulation that you worked on for many years and the current CFPB is attempting to invalidate a key provision of that. What are your thoughts on that? And if the Bureau finalizes the elimination of the payday rule, but Congress then passes a measure under the Congressional Review Act to invalidate that action, where would the law then stand?

### Hon. Mr. Cordray

We did impose a payday lending regulation, which I regard as a fairly modest requirement on the industry. We sought to address the problem of payday loan debt traps not by outlawing payday loans or by outlawing high-cost payday loans. Instead, lenders simply have to make a reasonable assessment that someone will be able to repay the loan effectively before the loan can be made. The industry has been fighting that regulation tooth and nail, even though the same ability-to-repay rule is now law that governs the mortgage market and the credit card market, where it has worked well. One interesting thing about the CRA. Congress barely moved a muscle to invalidate the payday lending regulation. That was never even brought to a vote in either chamber, and a resolution to do that got very few sponsors. So we passed a rule, and Congress had a chance to overrule it and did

not do so; it makes little sense to me for the CFPB now to go back and seek to rescind that rule. It is just a giveaway to the industry. As for your further, nuanced question, I don't know the answer. It seems to me the CRA was devised to nullify rules, not to nullify rules themselves nullify other rules.

#### Question

In terms of payday lending regulations, has there ever been any thought to providing bail bondsmen with similar regulations? What would the effect of including bail bondsmen as predatory payday lenders be? Would they be considered payday loans?

#### Hon. Mr. Cordray

Some of the jurisdictional limits of the CFPB are not quite clear. In general, the CFPB was conceived to deal with any kind of household credit. So there would at least be some question as to whether that is in the CFPB's jurisdiction. However, there would be no question whether it is under the jurisdiction of state authorities, who are not controlled by the limitations of federal statutes. We are starting to see significant movement toward reform of the bail process based on individualized risk assessments as the proper basis for deciding to detain people rather than having it be premised on economic incapacity. There is a growing move in that direction as a matter of policy at the state and local level. But I'm not sure what the intersection with the CFPB would be.

#### Question

Do you think the bottom line is money? A lobbyist will go to Congress and put in the money to get their ticket punched to achieve their goals, as was notoriously said by a donor during the Clinton administration.

#### Hon. Mr. Cordray

I don't think that is quite right. I think that's the way a lot of Washington works, but that certainly is not the way that the CFPB as I know it worked. What happens right now is the legislative branch of the government often is deeply divided, leaving a lot of gridlock with only occasional opportunities for meaningful legislation. As a consequence, entities like the CFPB and other executive agencies have become more important because that's where any forward action is likely to emanate from.