No. 22-448

In the

Supreme Court of the United States

CONSUMER FINANCIAL PROTECTION BUREAU, ET AL.,
Petitioners,

v.

COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA, LIMITED, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE* AARP AND AARP FOUNDATION IN SUPPORT OF PETITIONERS AND URGING REVERSAL

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May 15, 2023

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Statement of Interest[1]

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on financial stability, health security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity.

Among other things, AARP and AARP Foundation advocate to protect older adults from unlawful financial practices and frequently appear as friends of the court to advise on cases relevant to older adults' financial security. *See, e.g.,* Brief for AARP and AARP Foundation as Amici Curiae Supporting Petitioner, *Tyler v. Hennepin Cnty.*, No. 22-166 (U.S., Mar. 6, 2023) (violation of Fifth Amendment Takings Clause); Brief for AARP et al. as Amici Curiae Supporting Petitioner, *Hughes v. Northwestern Univ.*, 142 S. Ct. 737, (2022) (No. 19-1401) (employee benefits).

Amici file this brief because the Court's decision about the constitutionality of the Consumer Financial

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[1] In accordance with Supreme Court Rule 37.6, amici state that: (1) no counsel to a party authored this brief, in whole or in part; and (2) no person or entity, other than Amici, their members, and their counsel have made a monetary contribution to the preparation or submission of this brief.

Protection Bureau's ("CFPB") funding could dramatically impact older adults' ability to protect themselves from financial harm. Born out of the Great Recession, the CFPB not only enforces laws protecting older adults from illegal practices, but also helps educate them to avoid future harm. Our brief explains the many ways in which the CFPB benefits older adults and why a decision affirming the lower court would pose a severe threat to their financial security.

Summary of Argument

The creation of the CFPB was a landmark moment for American consumers. After surviving the Great Recession, consumers for the first time had a single federal agency dedicated to protecting them in the consumer financial services marketplace. Recognizing that scattered regulatory responsibilities and lax enforcement had contributed to the economic crisis, Congress charged the CFPB with implementing, enforcing, and overseeing federal consumer protection laws and prohibiting unfair, deceptive, or abusive acts or practices.

Older adults are among the consumers who depend heavily on the CFPB's protections. Many older adults experience financial challenges during their retirement years due to a decline in their income, high medical costs, lingering mortgage and student loans, and other factors. Given their shrinking cushion of savings and lack of time to recover from financial losses, their financial security can be easily eroded by illegal financial practices. In addition, many perpetrators of financial fraud target older adults, adding to their need for strong safeguards against deception and for financial education to make sound decisions.

The CFPB has taken strong steps to meet those goals. Among other things, it has issued rules addressing gaps in oversight and enforcement in areas of importance to older adults. It has obtained billions in redress to compensate injured consumers. And it established the Office of Financial Protection for Older Americans to focus on financial issues affecting older adults.

With its focus on protecting consumers, the CFPB has improved the financial services marketplace by making it more fair, transparent, and accessible. Now is not the time to roll back the clock and upend years of hard-fought gains. The Court should reverse the lower court's decision and find that Congress's means of appropriating CFPB funding is constitutional.

Argument

The creation of the CFPB changed the financial services landscape for American consumers. In the wake of the 2007 financial crisis and subsequent recession, Congress created the CFPB as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") to serve as the sole federal agency dedicated to protecting consumers in the financial services marketplace. Pub. L. No. 111-203, 124 Stat. 1376 (2010). Over the past ten years, the CFPB has achieved notable successes, including on issues of importance to older adults. Through its multi-prong approach to protecting consumers, the CFPB has implemented and enforced federal consumer protection laws, closing the regulatory gaps that helped lead to the recession. CFPB, *Final Rules*.[2] It has filed enforcement actions that have obtained $16 billion in consumer relief and $3.7 billion in penalties. CFPB, *Enforcement by the Numbers* (Feb. 2023).[3] It has also launched consumer education initiatives to help consumers make sound financial decisions.

These actions are critical to older adults. Congress implicitly recognized that older adults have unique financial protection needs when it mandated that the CFPB create the Office of Financial Protection for Older Americans as part of the Dodd-Frank Act. 12 U.S.C. § 5493(g). That office focuses on financial issues affecting older adults. *Id.* In sum, a decision weakening the CFPB's work would threaten older adults' financial security.

I. Older adults need the CFPB's protections given their unique financial challenges.

Older adults face a unique combination of financial challenges that require the CFPB's assistance. First, many older adults have a reduced income in retirement, magnifying the impact that predatory financial practices can have on their financial lives. They not only have fewer resources that they can afford to lose, but they also have less time to recover from their losses. Erika Beras, *Seniors are still struggling to recover after the financial crisis*,

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[2] https://www.consumerfinance.gov/rules-policy/final-rules/

[3] https://www.consumerfinance.gov/enforcement/enforcement-by-the-numbers/

MARKETPLACE (Dec. 19. 2018) (explaining that people who were close to retirement during the Great Recession are still having trouble recovering their financial losses a decade later.)[4]

For example, a secure retirement in the United States used to depend on reliable income from three sources: employer-provided defined benefit pension plans, personal savings, and Social Security. Today, the near-disappearance of traditional pensions in the private sector – coupled with longer life expectancies and high healthcare costs – means millions of older adults have vastly less discretionary income in their "golden years." David Zook, *How do retirement plans for private industry and state and local government workers compare?*, U.S. BUREAU OF LAB. STAT.: BEYOND THE NUMBERS (Jan. 2023) (finding that in 2022, only 15% of private employers offered defined benefit plans);[5] *see also* Juliette Cubanski et al., *How Many Seniors Live in Poverty?*, KAISER FAM. FOUND. 1 (Nov. 2018) (finding that in 2018, over 15 million adults age 65 and over were financially insecure, with incomes below 200% of the federal poverty level).[6] While some employers offer defined contribution plans, like 401(k) plans, those plans can carry an increased retirement savings risk due to economic

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[4] https://www.marketplace.org/2018/12/19/seniors-still-affected-financial-crash/

[5] https://www.bls.gov/opub/btn/volume-12/how-do-retirement-plans-for-private-industry-and-state-and-local-government-workers-compare.htm

[6] https://files.kff.org/attachment/Issue-Brief-How-Many-Seniors-Live-in-Poverty

volatility, high fees, or employees with little or no investment experience managing their retirement accounts.

As for personal savings, millions of people simply do not make enough money to contribute to a secure retirement. Indeed, 27 percent of people age 59 and older do not have any retirement savings, including a 401(k) or Individual Retirement Account. Aimee Picchi, *Millions of older Americans are nearing retirement without a penny in savings*, CBS News (Apr. 18, 2023) (citing 2023 Credit Karma survey).[7] Therefore, they need CFPB protections to prevent losses from illegal practices and to make sound decisions when buying financial products.

Second, many older adults are targeted for financial exploitation by unscrupulous operators. They need the CFPB's law enforcement actions to deter unlawful practices and its wealth of consumer education to guide them on how to protect their money and assets. *See, e.g.,* CFPB, *Money Smart for Older Adults: avoid financial exploitation* (June 2021) (providing resources to combat financial exploitation).[8]

After all, elder financial exploitation is an escalating problem that takes a huge financial toll. According to the National Council on Aging, older adults lose at least $36.5 billion a year to financial

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7 https://www.cbsnews.com/news/retirement-baby-boomers-with-no-retirement-savings/

8 https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/money-smart-for-older-adults/

exploitation. Lynnette Khalfani-Cox, *Spot the Red Flags of Elder Financial Abuse*, AARP (Feb. 28, 2022).[9] This number is likely lower than the actual figure because most people do not report these incidents to law enforcement. Jilenne Gunther, *Responding to the Pandemic-Era Uptick in Financial Exploitation*, AARP BankSafe Initiative 3 (Sept. 2022) (describing the difficulty in determining the prevalence of elder financial abuse because only 1 in 42 occurrences is reported to legal authorities).[10] In addition to the financial losses, financial exploitation can also take an emotional toll. This is because perpetrators of financial exploitation are not just strangers, but often someone whom the older adult knows, like a relative, friend, or caregiver. *Id*.

Finally, many older adults are carrying significant debt from mortgages and other sources into retirement and their later years. In fact, the percentage of households led by people age 65 and older with any type of debt increased from 38% in 1989 to 61% in 2016. Taylor Tepper, *America's Seniors In Debt: A Growing Problem*, Forbes Advisor (Mar. 29, 2021) (citing 2019 Congressional Research Service report).[11] As a result, they need the CFPB's protections to ensure that when they purchase consumer financial products and services, the

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9 https://www.aarp.org/money/scams-fraud/info-2022/warning-signs-elder-financial-abuse.html

10 https://www.aarp.org/content/dam/aarp/money/scams_fraud/2022/10/aarp-banksafe-pandemic-report-10-3-22.pdf

11 https://www.forbes.com/advisor/retirement/seniors-debt-statistics/

transactions are fair, transparent, and in their financial interest. After all, they may be paying for the product for years into their retirement. Moreover, while they are managing their debt, they need the CFPB's protections against unfair, deceptive, and abusive practices to avoid financial harm from bogus debt relief scams, corrupt debt collection practices, and other illegal conduct. *See, e.g.,* CFPB, *Consumer Financial Protection Bureau Settles Lawsuit Against Freedom Debt Relief* (July 9, 2019) (obtaining $20 million in consumer redress to resolve allegations that a debt relief company defrauded consumers).[12]

For example, mortgages are a significant part of older adults' debt and an area of substantial fraud. A house is the most important asset for many older adults. Yet since before the financial crisis, many older adults have been vulnerable to illegal mortgage lending and real estate settlement practices that increase the cost of homeownership. *See* U.S. Dep't of Treasury and U.S. Dep't of Hous. & Urb. Dev., *Joint Report on Recommendations to Curb Predatory Mortgage Lending*, 18-20 (2000) (providing examples of predatory lenders targeting older adults).[13] For those who still owe mortgage payments when they retire, it can be a challenge to keep their home. Jason J. Fichtnet, *Home Ownership and Housing Debt in Retirement: Financial Asset for Consumption Soothing or Albatross Around the Neck of Retirees*, Univ. of

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[12] https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-lawsuit-against-freedom-debt-relief/

[13] http://bit.ly/1tBfcSo

Madison-Wisconsin: Ctr. For Fin. Sec. 27 (2020) (describing challenges to paying off a mortgage in retirement).[14] A 2018 survey of older adults found that 44% of people ages 60 to 70 have a mortgage when they retire, with up to 17% saying they may never pay it off. AARP, *Many Retired People Don't Expect to Pay Off Mortgages* (Mar. 26, 2018).[15] The CFPB rules regarding mortgage and real estate disclosures protect older adults by making the cost and other terms more transparent and understandable so older adults can make sound financial decisions regarding their mortgages. *See* 12 C.F.R. pts. 1024, 1026 (Integrated Mortgage Disclosures).

Student loan debt relief scams are another example. Older adults are the fastest-growing segment of the population who owe student loans. CFPB, *Snapshot of older consumers and student loan debt* (Jan. 2017) (analyzing the increase in the number of older adults with student loans).[16] People age 50 and older owe at least $336.1 billion in student loans — a more than five-fold increase from the $47.3 billion this same age group owed in 2004. John Waggoner, *Student Loan Debt is an Unheralded Burden for Older Borrowers*, AARP (Nov. 22, 2022).[17] This amount

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[14] https://cfsrdrc.wisc.edu/files/working-papers/WI20-10_Fichtner_FinalPaper_508.pdf

[15] https://www.aarp.org/money/credit-loans-debt/info-2018/retired-paying-off-mortgage-fd.html

[16] https://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf

[17] https://www.aarp.org/money/credit-loans-debt/info-2021/student-debt-crisis-for-older-americans.html

consists of loans they took out on their own behalf or on behalf of relatives. *Id.* Corrupt actors seek to defraud student loan borrowers with promises of debt relief because they know that student loans can be a financial strain, especially when the borrowers are paying student loans in retirement. *See* Emma Whitford, *Student Loan Scams Stole an Estimated $5 Billion From Americans This Year*, Forbes (Nov. 3, 2022).[18] But those fraudulent schemes end up leaving borrowers in a worse financial condition. *Id.* The CFPB's enforcement actions against this type of illegal conduct are important to protecting borrowers' financial security and obtaining their money back. CFPB, *CFPB has allocated $11 million for consumers harmed by illegal student loan debt relief operation* (Mar. 23, 2023) (describing CFPB enforcement action obtaining consumer redress from the operator of a student loan debt relief scheme).[19]

All in all, older adults' financial challenges lead to their needing strong consumer financial protections when they engage with the financial services industry. As described below, the CFPB provides those protections through rulemaking, enforcement actions, and consumer education.

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[18] https://www.forbes.com/sites/emmawhitford/2022/11/03/student-loan-scams-stole-an-estimated-5-billion-from-americans-this-year/?sh=5f50c68466f5

[19] https://www.consumerfinance.gov/about-us/blog/cfpb-has-allocated-11-million-for-consumers-harmed-by-illegal-student-loan-debt-relief-operation/

II. The CFPB protects older adults from unfair, deceptive, and abusive practices in the financial services marketplace.

When Congress created the CFPB, it sought to create a single autonomous agency that would be accountable for enforcing federal consumer financial laws and protecting consumers in the financial services marketplace. 12 U.S.C. § 5491(a). Prior to the CFPB, this responsibility was scattered across several government agencies. 12 U.S.C. § 5581(b). Congress found that the scattered responsibilities and agencies' failure to enforce existing consumer protection statutes hampered the government's ability to protect consumers during the recession. Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 Rev. Banking & Fin. L. 321, 322-39 (2013).

Older adults were among the consumers experiencing financial hardship during the Great Recession. *See, e.g.*, Lori A. Trawinski, *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis*, AARP Pub. Pol'y Inst. 1 (Aug. 2012) ("No age group, race, or ethnicity has been spared from the effects of declining home values and the financial difficulties caused by the Great Recession and continuing economic weakness.").[20]

According to a 2010 survey by the AARP Policy Institute, nearly 25% of survey respondents age 50

[20] https://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2012/nightmare-on-main-street-AARP-ppi-cons-prot.pdf

and older revealed that they or someone in their family had depleted their savings between 2007 and 2010. Sara E. Rix, *Recovering from the Great Recession: Long Struggle Ahead for Older Americans*, AARP Pub. Pol'y Inst. 3 (2012).[21] Survey respondents also reported that they either lost their homes or saw their home values plummet. *Id.* at 2. They were paying skyrocketing healthcare costs and had crushing debt. *Id.* at 3. Nearly 30% of respondents said that they were either unemployed and looking for work or were employed but had been involuntarily unemployed in the previous three years. *Id.* at 1. Twenty percent said they were behind on their credit card payments or accumulated more credit card debt. *Id.* at 2. In short, they too suffered the consequences of the financial crisis and were pleading for change.

The CFPB and its mission fulfill Congress's promise to consumers to improve protections from the vulnerabilities that led to the Great Recession. As for older adults, the CFPB fulfills its obligation by: (1) initiating rulemaking on topics that address gaps in oversight and enforcement; (2) filing law enforcement actions to stop unlawful practices and, when possible, returning money to consumers; and (3) establishing an Office of Financial Protection for Older Adults and employing nationwide educational campaigns.

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[21] https://assets.aarp.org/rgcenter/ppi/econ-sec/insight50_recovering.pdf. AARP surveyed adults aged 50 and over who had been in the labor force during the previous 3 years.

1. The CFPB has promulgated important and long-overdue consumer protection regulations that benefit older adults.

Older adults have long dealt with predatory lending and other exploitative business practices that threaten their financial security. *See, e.g.*, Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 HARV. J. ON LEGIS. 167, 181 (2007) (explaining that unscrupulous brokers steered older adults to predatory loans). This is partially because companies like mortgage lenders, debt collectors, credit card companies, credit reporting firms, and payday lenders faced very few rules and minimal oversight before the creation of the CFPB. Joseph L. Barloon et al., *"Leveling the Playing Field": Implications of CFPB Authority over Non-Depository Financial Institutions*, 27-SPG ANTITRUST 71, 71-72 (Spring 2013) (explaining that preexisting rules offered little regulation of non-depository financial institutions).

The CFPB has responded by promulgating rules that address the gaps in enforcement and oversight that led to the recession. Under the Dodd-Frank Act, the CFPB is authorized to engage in rulemaking related to federal consumer financial law. 12 U.S.C. § 5581(b). This includes rulemaking related to 18 preexisting federal consumer financial laws transferred to the CFPB from seven other agencies. *Id.* It also includes rulemaking under the CFPB's authority under the Dodd-Frank Act. *Id.* These rules prevent risks to consumers in markets that did not previously have federal protections. *Id.* They also update protections in existing laws that failed to meet their purpose. *Id.*

These rules provide critical financial protections in a range of areas critical to older adults: (1) mortgage lending and servicing; (2) unfair, deceptive, and abusive practices; (3) anti-discrimination; and (4) financial exploitation. Each rule targets specific abusive practices that led to the recession and from which older adults still need protection.

a. Mortgage loans and servicing

In response to the foreclosure crisis, the Dodd-Frank Act required the CFPB to take several actions to protect consumers with respect to mortgage lending and servicing. For example, it required the CFPB to amend Regulation Z to require that lenders make a reasonable and good faith determination based on verified information that the consumer has a reasonable ability to repay the loan according to its terms for residential mortgages. *See* 15 U.S.C. § 1639(c); CFPB, *Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)*[22], 78 Fed. Reg. 6408 (Jan. 30, 2013) (to be codified at 12 C.F.R. pt. 1026). It also created a presumption of compliance for "qualified mortgages." *Id.*

Under this new Ability-to-Pay rule, lenders must obtain and verify a consumer's financial information, including income, assets, debts,

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[22] https://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf

employment status, and credit history before making the loan. *Id.* A borrower must have enough income and assets to repay the loan before they can qualify for the loan. *Id.* In addition, lenders cannot qualify consumers based on "teaser" interest rates that hide the true cost of the mortgage. *Id.*

This rule represents a change from the previous practice of many lenders that caused so many older adults to lose their homes during the recession. CFPB, *Summary of the Ability-to-repay and Qualified Mortgage rule and the concurrent proposal*, 1 (Jan. 2013).[23] Those lenders used loose underwriting policies and did not verify a consumer's income or debts. *Id.* They also qualified consumers based on "teaser" interest rates that would increase to unaffordable levels after a few years. *Id.*

The CFPB also issued rules specific to mortgage servicing. These rules improve the information that consumers receive from their servicers. For example, they mandate that servicers provide consumers with a detailed periodic billing statement for each billing cycle. Servicers must also provide a consumer whose mortgage has an adjustable rate with a notice between 210 and 240 days before the first payment due after the rate first adjusts. 12 C.F.R. § 1026.20(d).

The rules also enhance the protections available to consumers to address servicer errors and to consumers who are behind on their mortgage payments. Servicers are now generally required to

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[23] https://files.consumerfinance.gov/f/201301_cfpb_ability-to-repay-summary.pdf

correct the error asserted by the borrower and provide the borrower written notification of the correction or to investigate and provide the borrower written notification that no error occurred, within 30 to 45 days. 12 C.F.R. § 1024.35.

The CFPB also simplified mortgage disclosures and helped consumers better understand mortgage transactions by integrating mortgage loan disclosures under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). 12 U.S.C. § 2603(a). This resulted in the TRID or TILA-RESPA Integrated Mortgage Disclosures. CFPB, *Integrated Mortgage Disclosures*, 78 Fed. Reg. 80225 (Dec. 31, 2013) (to be codified at 12 C.F.R. pts. 1024, 1026). Gone are the days when consumers received 60 pages of documents to try to understand their mortgages. This change allows consumers to make sound financial decisions about their loans.

b. Illegal debt collection practices

Debt collection practices are another issue concerning older adults. Since its inception, the CFPB has collected more than 100,000 complaints from older adults about consumer financial products and services. CFPB, *Consumer Response Annual Report: January 1 – December 31, 2022*, 14 (Mar. 2023).[24] Debt collection practices are among the top most complained-about issues. *Id.*

The CFPB promulgates substantive rules under the federal Fair Debt Collection Practices Act

[24] https://files.consumerfinance.gov/f/documents/cfpb_2022-consumer-response-annual-report_2023-03.pdf

("FDCPA"). 15 U.S.C. § 1692d.[25] The FDCPA makes it illegal for debt collectors to harass or threaten a consumer when they are trying to collect a debt. *Id.* The CFPB's Debt Collecting Rule protects older adults by setting guardrails on how debt collectors can communicate with consumers. 12 C.F.R. § 1006.14. It also identifies the validation information debt collectors must provide consumers and when debt collectors can provide a consumer's information to a credit reporting agency. 12 C.F.R. §§ 1006.14(b), 1006.30, 1006.34. For example, under the rule, debt collectors violate the law if they call a consumer more than seven times in a seven-day period or within seven days of having a phone conversation with the consumer about a particular debt. 12 C.F.R. § 1006.14(b). Previously, there were no established limits on the number of calls permitted, which subjected older adults to harassment and put collectors at risk of being held to different standards depending on their judicial district.

c. Unfair, deceptive, or abusive acts or practices

Under the Dodd-Frank Act, the CFPB has the authority to regulate unfair, deceptive, or abusive acts and practices ("UDAAP") in the financial services industry. 12 U.S.C. § 5531(b). The CFPB uses its

[25] The FTC enforced the FDCPA before authority was transferred to the CFPB. The FTC did not have the authority to promulgate regulations enforcing the FDCPA. Significant changes in technology and the debt collection industry since Congress initially enacted the FDCPA left significant gaps that the CFPB has now addressed, putting all market participants on an even playing field.

UDAAP authority to bring law enforcement actions targeting unfair, deceptive, and abusive practices in the financial services industry.

The CFPB has also used this authority to promulgate the Payday Lending Rule. Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54473 (Nov. 17, 2017). This rule governs payday loans, auto title loans, and related consumer financial products. *Id.*

Payday loans are short-term, high-interest loans for a small amount – typically $500 or less – based on the borrower's personal check held for future deposit or on electronic access to the borrower's bank account. AARP, *Pandemic Could Drive More Social Security, SSI Beneficiaries to Payday Lenders* (Oct. 19, 2020).[26] Payday lenders welcome Social Security beneficiaries because their payments are stable and reliable. *Id.* For many people, including Social Security beneficiaries, the loans are fast and easy to get because they do not require a credit check. *Id.* But people who obtain payday loans can find themselves trapped in a cycle of ever-increasing debt because the convenience of payday loans comes at a high cost. A typical two-week payday loan with a fee of $15 per $100 borrowed equates to an annual percentage rate (APR) of almost 400 percent, according to the CFPB. *Id.* In contrast, the typical credit card has an APR of

[26] https://www.aarp.org/money/credit-loans-debt/info-2020/payday-lenders-may-target-more-social-security-beneficiaries.html

about 16 percent. *Id.* If people do not pay the loans, the cost of these rates adds up.

The Payday Lending Rule mandates that, for certain short and longer-term loans, it is an unfair and abusive practice to attempt to withdraw payment from a consumer's account after two consecutive payment attempts have failed, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. 12 C.F.R. § 1041.8. This rule protects consumers from compound financial harm when they take out these loans.

d. Discrimination and Fair Lending

The CFPB's financial protections extend to its regulation of the Equal Credit Opportunity Act ("ECOA"). The ECOA prohibits discrimination in any aspect of a credit transaction based on race, religion, national origin, sex, marital status, age, applicant's receipt of public assistance, or applicants' exercise of their rights under the Consumer Credit Protection Act.

The CFPB has issued Regulation B, which implements ECOA. 12 C.F.R. Part 1002. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. *Id.* It covers the actions of creditors before, during, and after a credit transaction and limits creditors' ability to obtain information about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. 12 C.F.R. § 1002.5(b). It mandates that lenders provide explanations to rejected applicants within 30 days of receiving their completed applications. *Id.* It also requires creditors to provide applicants with free copies of all appraisals and other written valuations developed in connection with all credit applications to be secured by a first lien on a dwelling. *Id.* It requires creditors to notify applicants in writing that copies of all appraisals will be provided to them promptly. *Id.*

Congress enacted the ECOA to ensure that financial institutions and firms dealing with credit make it equally available to all creditworthy customers. The CFPB's regulation expands on that promise.

e. Financial Exploitation and Electronic Fund Transfers

Finally, the CFPB also has made rules that help older adults combat financial exploitation. The CFPB conducts rulemaking for the Electronic Fund Transfer Act, which is implemented by Regulation E. Previously, Regulation E applied only to credit cards, not prepaid or debit cards. The CFPB amended Regulation E to provide more protections for consumers who use electronic fund transfers (EFTs), prepaid accounts, gift cards, and gift certificates. Regulation E establishes the basic rights, liabilities, and responsibilities of consumers who use EFTs and remittance transfer services, and of the financial institutions or others that offer these services. 12 C.F.R. §§ 1005.4, 1005.6, 1005.16, 1005.17. It focuses on the steps consumers must take to report errors in EFTs and how banks must remedy the situation. Situations that fall under this rule include unauthorized credit or debit activity, unauthorized wire transfers, and receipt of incorrect funds from an automated teller machine. 12 C.F.R. § 1005.11(a).

The CFPB's expanded coverage of Regulation E limits consumers' liability if their debit card is stolen or used without authorization. This is key for older adults because, as noted in Section I above, they are often targeted for fraud and financial exploitation. Under Regulation E, a consumer's maximum loss is $50 if they notify the bank within two business days after learning about an unauthorized withdrawal from a checking or savings account. 12 C.F.R. § 1005.6(b)(1). As a result of these protections, older adults do not all lose their money when they are robbed.

2. The CFPB has taken enforcement actions that benefit older adults by targeting unfair, deceptive, and abusive practices in the financial services marketplace.

The CFPB also has benefited older adults through its enforcement actions. The Dodd-Frank Act gives the CFPB the authority to take law enforcement action against entities that violate federal consumer financial laws. 12 U.S.C. § 5531(b). Since its inception, the CFPB has obtained $16 billion in consumer relief and $3.7 billion in civil monetary penalties. *Enforcement by the Numbers*, *supra*. These actions protect older adults by targeting a wide range of illegal conduct that impacts them, from abusive debt collection practices to costly surprise overdraft fees. These cases further protect older consumers by providing an array of remedies such as financial compensation for losses they suffered or barring the perpetrators from participating in the financial services industry.

For example, in March 2021, the CFPB filed a case against BrightSpeed Solutions, a privately-owned, third-party payment processor, and its founder Kevin Howard. CFPB, *CFPB Bans Payment Processor BrightSpeed Solutions and Its Former CEO for Supporting Telemarketing Scammers Targeting Older Americans* (Jan. 18, 2022).[27] The CFPB alleged that between 2016 and 2018, BrightSpeed and Howard knowingly assisted companies to profit from fraudulent services and products. *Id.* They processed payments for companies that claimed to offer technical-support services and products to consumers over the internet. In reality, the companies tricked consumers into purchasing expensive and unnecessary antivirus software or services. *Id.* Many consumers targeted for the scheme were older adults who did not know about clickbait scams, or that they were purchasing items and services that were available for free. *Id.* The case was resolved with an order that permanently barred BrightSpeed and Howard from multiple financial services industries and required them to pay a civil penalty of $500,000. *Id.*

In October 2021, the CFPB filed a consent order to resolve allegations that American Advisors Group

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[27] https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-payment-processor-brightspeed-solutions-and-its-former-ceo-for-supporting--telemarketing-scammers-targeting-older-americans/

("AAG") used inflated and deceptive home estimates to lure consumers into taking out reverse mortgages. CFPB, *CFPB Takes Action Against American Advisors Group for Deceptively Marketing Reverse Mortgages to Consumers*, (Oct. 2021).[28] A reverse mortgage is a type of home loan that allows homeowners who are 62 and over to convert part of their home equity into cash without having to sell their home or make monthly mortgage payments. The order required AAG to stop its illegal conduct, pay a $1 million civil penalty, and return money to consumers. *Id.*

At their core, CFPB enforcement actions are critical to maintaining fairness and transparency for consumers and to ensuring that someone in the government is looking out for their protection. Without the CFPB's enforcement, the country would risk returning to the days when lax enforcement and scattered government responsibilities led to the Great Recession.

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[28] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-american-advisors-group-for-deceptively-marketing-reverse-mortgages-to-consumers/

3. The CFPB has established an Office of Financial Protection for Older Americans that benefits older adults by focusing on issues that impact them, including elder financial exploitation.

Recognizing the devastating impact that the Great Recession had on the financial security of older adults and their unique financial challenges, Congress required the creation of the Office of Financial Protection for Older Americans as part of the Dodd-Frank Act. 12 U.S.C. § 5493(g). This office's statutory mandate is to help provide consumers age 62 and over with the tools they need to protect themselves from financial abuse and to make sound financial decisions. *Id.*

The office engages in various activities to protect the financial security of older adults. It identifies emerging consumer protection risks and coordinates with federal and state agencies, non-profits, community organizations, and industry groups to combat abuse and fraud. It publishes research reports on issues affecting older adults, such as *Suspicious Activity Reports on Elder Financial Exploitation* and *Nursing Home Debt Collection*. CFPB, *Suspicious Activity Reports on Elder Financial Exploitation* (Nov. 15, 2021); CFPB, *Issue Spotlight: Nursing Home Debt Collection* (Sept. 9, 2022).[29] It

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[29] https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-suspicious-activity-reports-on-elder-financial-exploitation/full-report/; https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/.

offers financial education guides to older adults, practitioners, and financial institutions. CFPB, *Working with Older Adults* (last visited May 5, 2023).[30] Among other topics, these guides include information on how older adults can prevent fraud, how financial institutions can work with older adults to combat fraud, and surviving spouses can navigate their finances.

The Office of Financial Protection for Older Americans also hosts webinars on financial issues impacting older adults. CFPB, *Office for Older Americans Webinar Archive*.[31] The webinars provide helpful information to older adults and a variety of professionals who engage with older adults, including people from aging services, financial institutions, legal services, law enforcement, and others. *Id.*

Finally, as mentioned earlier, this office tracks complaints from older consumers about their experiences using financial services and products. It then uses those complaints to obtain insight into what older consumers are experiencing in the marketplace and to identify areas for potential action. Stacy Canan, *A Snapshot of complaints made by older consumers,* CFPB (May 31, 2017).[32]

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[30] https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/.

[31] https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/webinar-archive/

[32] https://www.consumerfinance.gov/about-us/blog/snapshot-complaints-made-older-

The work of this office is particularly important to older adults because it focuses on their specific situations and vulnerabilities. As described in Section I, older adults face unique challenges in the financial services marketplace. This office is laser-focused on those challenges to protect the financial security of older adults.

In sum, the CFPB benefits older adults by providing critical protections they need to successfully navigate the financial services markets and protect their financial security. The CFPB's rulemaking provides guardrails to ensure financial transactions are fair and transparent. Its enforcement actions provide accountability and redress for illegal schemes that cause catastrophic losses. And its abundant consumer education efforts provide a front-line, equally-important protection – teaching older adults how to spot deceptive offerings in the first place. These consumer protections are a necessary bulwark to protect older Americans' financial stability. They must not be weakened in any way.

Conclusion

For the reasons set forth above, the Court should reverse the Fifth Circuit's decision.

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consumers/#:~:text=If%20you%20or%20someone%20you,a.m.%20to%208%20p.m.%20ET

Respectfully submitted,

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