LOOKING BEYOND THE PROFIT AND INTO THE LIGHT: CONSUMER FINANCIAL PROTECTION AND THE COMMON GOOD

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INTRODUCTION

Looking at secular laws through faith-based perspectives on justice can be worthwhile when assessing whether we are a just and fair society for all citizens. That is, do our laws and institutions reflect a concern for the common good as defined by the notions of justice that have a faith-based foundation? Catholic Social Teaching, with its concern for the welfare of individuals and their families, provides a rich body of doctrine addressing a wide spectrum of social and economic concerns that touch upon every aspect of the daily needs of individuals and families in our communities. This doctrine offers different and special perspectives of what we as a society, framed by secular laws and institutions, might consider when faced with a critical need to address unfair and abusive activities or practices that impact all citizens, with particular concern for the most vulnerable members of society.

One area of economic activity that touches upon the daily lives of virtually every member of our community is the provision and acquisition of consumer financial products and services. The range of products and services the individual consumer may require is quite broad, including home mortgages, automobile loans, credit and debit cards, payday and automobile title loans, student loans, credit reporting services, and more. Without question, these types of financial products and services are economic necessities for everyone, from the very well-off to the working poor.

Access to fair, equitable, and helpful consumer financial products and services has been a concern for many Catholic Church advocates and organizations that often serve as a last resort for help to financially vulnerable individuals and families struggling to make ends meet for their daily needs. Inspired by Church teaching on economic justice, Church advocates regularly offer comments and testimony about the impact of consumer financial products and services on the financially vulnerable to the Consumer Financial Protection

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Bureau ("CFPB"),[1] from the time of its inception under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act").[2]

Catholic Social Teaching on economic justice offers powerful concepts when assessing whether laws and regulations ensure fair consumer financial products and services essential to the welfare of individuals and their families, along with the advocacy for such laws and regulations.[3] These concepts address both the duty of a just society to implement and enforce laws concerned with the needs of all citizens, including the most vulnerable, and the social responsibility of the businesses that make these products and services available in commerce. While Church teaching on economic justice addresses the needs of the individual and the role of the state/government to ensure access to these services for everyone, it also recognizes the property rights, interests, and social responsibility of the providers of such services.

The intention of this Article is to review the various statements of Catholic Social Teaching that are fundamental in describing economic justice and that are most pertinent to any consideration of consumer financial protection as essential to the common good. This review will begin with Pope Leo XIII's

1. *See, e.g.*, when the CFPB addressed abuses in the payday loan industry, its proposed rules regarding payday loans were supported by the United States Conference of Catholic Bishops' Committee on Domestic Justice and Human Development in November of 2013, in which the *Catechism of the Catholic Church* was cited and quoted.

> The *Catechism of the Catholic Church* equates exploiting economic hardship with theft: 'Even if it does not contradict the provisions of civil law, any form of unjustly taking and keeping the property of others is against the seventh commandment: thus, deliberate retention of goods lent or of objects lost; business fraud; paying unjust wages; forcing up prices by taking advantage of the ignorance or hardship of another (no.2409).' Payday lending seems to meet these criteria, to the extent that it preys on the financial hardship of poor and vulnerable consumers, exploits their lack of understanding, and increases economic insecurity.

Letter from Bishop Stephen E. Blaire, Chairman of the Comm. on Domestic Justice and Human Dev., U.S. Conference of Catholic Bishops, to Richard Cordray, Dir. of Consumer Fin. Bureau (Nov. 13, 2013) (on file with the U.S. Conference of Catholic Bishops). A press release issued by The Jesuit Social Research Institute in support of its initial regulation to limit payday loans encouraged the rule to be strengthened to eliminate loopholes that would permit abuses. In the press release, it invoked statements by Pope Francis as well as Bishop Stephen E. Blaire. Press Release, Loy. Univ. New Orleans, Jesuit Soc. Res. Inst., JSRI Response to CFPB Initial Ruling (Apr. 14, 2015) (on file with the Jesuit Soc. Res. Inst.). In its white paper in support of the payday loan regulations, the Center for American Progress noted the position of faith groups, including the Catholic Church, regarding predatory lending practices. Joe Valenti & Claire Markham, *Responsible Credit Is an Economic and Moral Issue*, CTR. FOR AM. PROGRESS (June 9, 2015, 9:03 AM), https://www.americanprogress.org/issues/economy/reports/2015/06/09/114562/responsible-credit-is-an-economic-and-moral-issue.

2. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (codified in scattered sections of U.S.C.).

3. *See* sources cited *supra* note 1.

1891 encyclical *Rerum Novarum*[4] and other encyclicals that followed *Rerum Novarum* as a continuum of Church teaching regarding social and economic justice; the pastoral letter from the United States Conference of Catholic Bishops entitled *Economic Justice for All* (1986);[5] and the Pontifical Council of Justice and Peace's handbook on the *Vocation of the Business Leader* (March 2012).[6] The next Part of this Article will include a description of the original goals and mission of the Act and the CFPB, and an assessment of how the intended goals and objectives of the Act and the structure and activities of the CFPB reflect the values and goals of social and economic justice from the perspective of Catholic Social Teaching. That is, to what extent do these legislative and regulatory initiatives bring us closer to providing for and ensuring that consumer financial products and services are accessible, fair, and helpful in meeting the needs of all potential users and the interests and rights of providers in the spirit of economic justice informed by Catholic Social Teaching?

I. CATHOLIC SOCIAL TEACHING: ECONOMIC JUSTICE AND THE COMMON GOOD

Catholic Social Teaching is a set of principles and doctrines of the Church that reflect the essence of the Catholic faith. Inspired by the Old and New Testaments and the life of Jesus, it commands us to love our God, one another, and all of Creation through individual efforts and the communal efforts of our organizations and institutions.[7] Accordingly, Catholic Social Teaching is a "single teaching, consistent and at the same time ever new."[8] As described by the United States Conference of Catholic Bishops, "[t]he Church's social teaching is a rich treasure of wisdom about building a just society and living lives of holiness amidst the challenges of modern society."[9]

4. Pope Leo XIII, *Rerum Novarum: Encyclical of Pope Leo XIII on Capital and Labor* (1891), http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.

5. United States Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* (1986), http://www.usccb.org/upload/economic_justice_for_all.pdf.

6. Pontifical Council of Justice and Peace, *Vocation of the Business Leader: A Reflection* (2012), http://www.iustitiaetpax.va/content/dam/giustiziaepace/VBL/Vocation_ENGLISH_4th%20edition.pdf.

7. United States Conference of Catholic Bishops, *Catholic Social Teaching*, http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/ (last visited Aug. 16, 2019) (providing a primer of the Catholic faith and what the Church believes including a presentation on Catholic Social Teaching).

8. Pope Benedict XVI, *Caritas in Veritate: Encyclical of Pope Benedict in Charity and Truth*, para. 12 (2009), http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html.

9. United States Conference of Catholic Bishops, *Seven Themes of Catholic Social Teaching*, http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm (last visited Aug. 16, 2019). There are seven themes

Thus, it is a comprehensive set of teachings that demands our commitment to preserving the dignity of human life, from conception to death, and all that we experience in between. It anticipates that society is constructed toward justice through the combined efforts and responsibility of the individual, the state, and all societal organizations. Included in the concerns of Catholic Social Teaching is economic justice, so that all members of society are given an opportunity to participate in economic organizations and systems that operate with fairness, equity, and for the common good of all groups of society, the individual, the family, and civil and private entities.[10]

A. Rerum Novarum and Selected Encyclicals on Social and Economic Justice

"The Church's social doctrine illuminates with an unchanging light the new problems that are constantly changing."[11]

The papal encyclical is the principal form through which Catholic Social Teaching is pronounced. Pope Leo XIII is credited as having authored the foundational encyclical on contemporary Catholic Social Teaching.[12] This encyclical entitled *Rerum Novarum*,[13] meaning "Of New Things," was published in 1891. As indicated by its title, it addressed the societal concerns of its time, the era of the European Industrial Revolution.[14]

During this period, the industrial world witnessed unprecedented advances in technologies and scientific discoveries. These new advancements resulted in extraordinary efficiencies and production throughout industry and a new level of consumerism for goods and services.[15] And, as with most extraordinary

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of Catholic Social Teaching that are comprehensive in focus: (1) the dignity of the human person, from conception to death; (2) how our social and economic institutions support the dignity of the human person in law and public policy; (3) the community's responsibility in this effort, including public and private organizations; (4) the preferential option for the poor and vulnerable; (5) the dignity and rights of the worker; (6) solidarity – to love our neighbor; and (7) that we are to be stewards of all of creation. *Id.*

10. *Id.*

11. Pope Benedict XVI, *supra* note 8, at para. 12 (a quote from Pope Benedict XVI's *Caritas in Veritate*).

12. Pope St. John XXIII, *Mater Et Magistra: Encyclical on Christianity and Social Progress Church as Mother and Teacher of All Nations*, para. 15 (1961), http://www.papalencyclicals.net/john23/j23mater.htm (noting that Pope Leo XIII's *Rerum Novarum* is "regarded as a compendium of Catholic social and economic teaching").

13. Pope Leo XIII, *supra* note 4.

14. *See generally id.*

15. *See* Thomas A. Shannon, *Commentary on* Rerum Novarum (The Condition of Labor), *in* MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS 127, 128–33 (Kenneth R. Himes ed., 2005) (for a discussion of the social, economic, political, and ecclesial context in which *Rerum Novarum* was written); *see generally* Ben Fine & Ellen Leopold, *Consumerism and the Industrial Revolution*, 15 SOC. HIST. 151 (1990); *Industrial Revolution*, ENCYCLOPAEDIA BRITANNICA, https://www.britannica.com/event/Industrial-Revolution (last updated Sept. 4, 2019).

advances in society, albeit scientific, technological, or financial, there were negative outcomes resulting from the Industrial Revolution. In particular, negative outcomes affecting the labor force, whose value to industrial production lessened as manufacturing efficiencies and emerging technologies brought about "the threat of new forms of injustice and servitude."[16] That is, as the cost of labor was reduced by manufacturing efficiencies, wages for laborers decreased and were often insufficient to support the individual and family needs of the worker, creating a prevailing poverty among the laborer classes.[17]

Accordingly, *Rerum Novarum* focused on these "new things," resulting in discussions that would become the cornerstones of Catholic Social Teaching. In *Rerum Novarum*, Pope Leo identified the Church as having a dual responsibility in its apostolic duties of ministry to the individual and in its call for truth and justice for the public good.[18] And thus, in these two responsibilities the Church must respond to social crises of its time and the changing realities of public life. Pope Leo noted that the Church through its instruction can teach, train, and influence the men and women of the Church so that their hearts and

16. Pope St. John Paul II, *Centesimus Annus*: *Encyclical On the 100th Anniversary of* Rerum Novarum, sec. 2, para. 4 (1991), http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html.

17. From an economic perspective there were "new structures for the production of consumer goods . . . [a] new form of property had appeared—capital; and a new form of labour—labour for wages, characterized by high rates of production which lacked due regard for sex, age or family situation, and were determined solely by efficiency, with a view to increasing profits." *Id.* at sec. 1, paras. 4–5.

18. Pope Leo XIII, *supra* note 4, at paras. 16–31.

> The elements of the conflict now raging are unmistakable, in the vast expansion of industrial pursuits and the marvelous discoveries of science; in the changed relations between masters and workmen; in the enormous fortunes of some few individuals, and the utter poverty of the masses; the increased self-reliance and closer mutual combination of the working classes; as also, finally, in the prevailing moral degeneracy. The momentous gravity of the state of things now obtaining fills every mind with painful apprehension; wise men are discussing it; practical men are proposing schemes; popular meetings, legislatures, and rulers of nations are all busied with it—actually there is no question which has taken deeper hold on the public mind.
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> Therefore . . . as on former occasions when it seemed opportune to refute false teaching, We have addressed you in the interests of the Church and of the common weal, and have issued letters bearing on political power, human liberty, the Christian constitution of the State, and like matters, so have We thought it expedient now to speak on the condition of the working classes. It is a subject on which We have already touched more than once, incidentally. But in the present letter, the responsibility of the apostolic office urges Us to treat the question of set purpose and in detail, in order that no misapprehension may exist as to the principles which truth and justice dictate for its settlement.

Id. at paras. 1–2; *see also* Pope St. John Paul II, *supra* note 16, at sec. 1, paras. 4–5 (summarizing the characteristics of *Rerum Novarum*).

minds are motivated by virtue to love God and neighbor and to attend to spiritual and earthly needs of the poor and vulnerable.[19]

Pope Leo followed with a description of the role of the State in creating a just, fair, and responsible society through laws and institutions that produce "public well-being and private prosperity."[20]

> The foremost duty, therefore, of the rulers of the State should be to make sure that the laws and institutions, the general character and administration of the commonwealth, shall be such as of themselves to realize public well-being and private prosperity . . . .
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> . . . . As regards the State, the interests of all, whether high or low, are equal. The members of the working classes are citizens by nature and by the same right as the rich; they are real parts . . . and it need hardly be said that they are in every city very largely in the majority. It would be irrational to neglect one portion of the citizens and favor another, and therefore the public administration must duly and solicitously provide for the welfare and comfort of the working classes; otherwise, that law of justice will be violated which ordains that each man shall have his due.[21]

In this statement, Pope Leo called for balance in terms of the individual's contribution and the state's intervention and role in achieving economic justice.

Because of the influence of *Rerum Novarum*, subsequent popes would reference it and celebrate it as they addressed the "new things" of their times and called for social and economic justice as the times demanded such considerations. While much of Pope Leo's encyclical addressed the crisis of the laborer, it provided foundational principles of social and economic justice for all kinds of social problems and in delineating the responsibility of the individual, private groups, and the state in ensuring the common good.

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19. Pope Leo XIII, *supra* note 4, at para. 26.

> For the Church does her utmost to teach and to train men [and women], and to educate them and by the intermediary of her bishops and clergy diffuses her salutary teachings far and wide. She strives to influence the mind and the heart so that all may willingly yield themselves to be formed and guided by the commandments of God. It is precisely in this fundamental and momentous matter, on which everything depends that the Church possesses a power peculiarly her own. The instruments which she employs are given to her by Jesus Christ Himself for the very purpose of reaching the hearts of men, and drive their efficiency from God. They alone can reach the innermost heart and conscience, and bring men to act from a motive of duty, to control their passions and appetites, to love God and their fellow men with a love that is outstanding and of the highest degree and to break down courageously every barrier which blocks the way to virtue.

Id.

20. *Id.* at para. 33.

21. *Id.* at paras. 32–33.

In 1931, Pope Pius XI's encyclical *Quadragesimo Anno*[22] celebrated the fortieth anniversary of *Rerum Novarum*. This was written during a period of devastating economic turmoil and depression that was global in nature as well as a period of social and political upheaval for many nations.[23] In this anniversary celebration of *Rerum Novarum*, Pope Pius noted that *Rerum Novarum* had inspired many of the faithful to study and consider social and economic questions of the day and that it was worthy of being commemorated "every year." At the same time, he noted that *Rerum Novarum* was not without critics, as some "regarded it as a kind of imaginary ideal of perfection more desirable then attainable."[24]

In this encyclical tribute, Pope Pius reviewed the benefits of *Rerum Novarum* to the Church and all of society. Pope Pius specifically pointed out that *Rerum Novarum* called for solutions to economic conditions of the laborer through individual efforts of charity;[25] through the state in its creation and implementation of laws specifically designed to protect the poor and weak;[26] and solutions tantamount to a moral reform of economic structures so that society achieves what God has for us.[27] At the same time, he noted that Pope Leo defended the need for and the right to property, recognized the social character of property ownership and use, and the state's involvement as necessary to ensure that the use of property is just and not abused by those who manage and control wealth.

> [T]he State brings private ownership into harmony with the needs of the common good, it does not commit a hostile act against private owners but rather does them a friendly service; for it thereby effectively prevents private possession of goods . . . from causing intolerable evils[;] . . . it does not destroy private possessions, but safeguards them; and it does not weaken private property rights, but strengthens them.[28]

While recognizing the importance and right to private property, Pope Pius cited Pope Leo's admonition that private property rights cannot be enjoyed or

22. Pope Pius XI, *Quadragesimo Anno: Encyclical of Pope Pius XI On Reconstruction of the Social Order* (1931), http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html.

23. *See* Christine Firer Hinze, *Commentary on Quadragesimo anno (After Forty Years)*, *in* MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS 151, 151–74 (Kenneth R. Himes ed., 2005); *see generally* THOMAS E. HALL & J. DAVID FERGUSON, THE GREAT DEPRESSION: AN INTERNATIONAL DISASTER OF PERVERSE ECONOMIC POLICIES (2001); Christina D. Romer & Richard H. Pells, *Great Depression*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/event/Great-Depression (last updated Dec. 2, 2019).

24. Pope Pius XI, *supra* note 22, at paras. 12–15.

25. *Id.* at para. 24.

26. *Id.* at para. 25.

27. *Id.* at paras. 41–43.

28. *Id.* at para. 49.

safeguarded without concern for the common interests of all social and economic groups, the rich and poor alike, as required by social justice.[29]

In 1961, seventy years after *Rerum Novarum*, Pope St. John XXIII published *Mater Et Magistra* (On Christianity and Social Progress).[30] He begins his encyclical by recognizing that the Church concerns herself with "the exigencies of man's daily life, with his livelihood and education, and his general, temporal welfare and prosperity."[31] He draws not only on Pope Leo's *Rerum Novarum* but also on Pope Pius' *Quadragesimo Anno*, respectively: the need for the Church in its citizen status to be concerned for the economic welfare of man when society's economic system is "a purely naturalistic one [without] any correlation between economics and morality,"[32] and the role of the state to create an economy within a framework of moral order so that no one group interest can subordinate the common good.[33] This collaboration between private interest and public intervention is critical to economic justice, as well as the right to profit, and mandates balance in this responsibility:

> [T]here can be no such thing as a well-ordered and prosperous society unless individual citizens and the State co-operate in the economy. Both sides must work together in harmony, and their respective efforts must be proportioned to the needs of the common good in the prevailing circumstances and condition of human life.
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> Experience has shown that where personal initiative is lacking, political tyranny ensues and, in addition, economic stagnation in the production of a wide range of consumer goods and services of the material and spiritual order—those, namely, which are in great measure dependent upon the exercise and stimulus of individual creative talent.

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29. "However the earth may be apportioned among private owners, it does not cease to serve the common interests of all." *Id.* at para. 56 (quoting Pope Leo XIII, *Rerum Novarum: Encyclical Letter on the Condition of the Working Classes*, para. 14 (1891), http://www.newadvent.org/library/docs_le13rn.htm.).

> Therefore, the riches that economic-social developments constantly increase ought to be so distributed among individual persons and classes that the common advantage of all, which Leo XIII had praised, will be safeguarded; in other words, that the common good of all society will be kept inviolate. By this law of social justice, one class is forbidden to exclude the other from sharing in the benefits . . . .
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> To each, therefore, must be given his own share of goods, and the distribution of created goods, which, as every discerning person knows, is laboring today under the gravest evils due to the huge disparity between the few exceedingly rich and the unnumbered propertyless, must be effectively called back to and brought into conformity with the norms of the common good, that is, social justice.

Pope Pius XI, *supra* note 22, at paras. 57–58.

30. Pope St. John XXIII, *supra* note 12.

31. *Id.* at para. 3.

32. *Id.* at para. 11.

33. *Id.* at para. 37.

> Where, on the other hand, the good offices of the State are lacking or deficient, incurable disorder ensues: in particular, the unscrupulous exploitation of the weak by the strong.[34]

Accordingly, moral values and concern for the welfare of man must be a part of "the business of the world" so that scientific and technical progress and the creation of goods and services are to enhance the condition of mankind:

> May these warning words of the divine Master ever sound in men's ears: "For what doth it profit a man, if he gain the whole world and suffer the loss of his own soul?"
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> To search for spiritual perfection and eternal salvation in the conduct of human affairs and institutions is not to rob these of the power to achieve their immediate, specific ends, but to enhance this power. The words of our divine Master are true for all time: "Seek ye therefore first the kingdom of God and his justice; and all these things shall be added unto you."[35]

In *Centesimus Annus*,[36] marking the one-hundredth anniversary of *Rerum Novarum*, Pope St. John Paul II directly addressed the matter of a business' profit concern from the perspective of social justice. In the same vein as Pope Leo's recognition of property ownership and use as being "fundamental to the autonomy and development of the person," he cautioned that this right to property ownership and use is qualified by a social character and function:

> The Church acknowledges the legitimate *role of profit* as an indication that a business is functioning well . . . . But profitability is not the only indication of a firm's condition . . . . In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a *community of persons* who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; *other human and moral factors* must also be considered which, in the long term, are at least equally important for the life of a business.[37]

In this reflection, Pope St. John Paul II also addresses the greater issue of the choices a society or culture makes in "production and consumption" with a focus on consumer demands and options. He makes an important observation about the influence of a consumer products and services industry that is solely profit-centered. With such a "profit center" focus, the "interior and spiritual" needs of the person are subordinated to his "material and instinctive" interests and appeal to "*consumer attitudes* and *life-styles* . . . which are objectively improper and often damaging to his physical and spiritual health."[38] To prevent

34. *Id.* at paras. 56–58.
35. *Id.* at paras. 247 & 257.
36. Pope St. John Paul II, *supra* note 16, at para. 35.
37. *Id.* at sec. 4, para. 35.
38. *Id.* at sec. 4, para. 36.

this from occurring in the market/business economy there needs to be both public and private responsibility to prevent such harm to the consumer. That is, consumer products and services should address real needs of the consumer and be informative and transparent:

> Of itself, an economic system does not possess criteria for correctly distinguishing new and higher forms of satisfying human needs from artificial new needs which hinder the formation of a mature personality. *Thus a great deal of educational and cultural work* is urgently needed, including the education of consumers in the responsible use of their power of choice, the formation of a strong sense of responsibility among producers and among people in the mass media in particular, as well as the necessary intervention by public authorities.[39]

Pope Benedict XVI's encyclical *Caritas in Veritate*,[40] written in 2009, addressed the global financial crisis at that time. He cautioned us to beware that "[p]rofit is useful if it serves as a means toward an end," but if it is the exclusive goal and achieved improperly, the end result will be the risk of "destroying wealth and creating poverty."[41] In the chapter of the encyclical entitled "Fraternity, Economic Development and Civil Society," Pope Benedict noted that a market economy is premised on commutative justice, that is, concern for "equivalence in value" of exchanges for goods and services between the transacting parties.[42] And, unlike a concern premised on distributive justice where there is a focus on social justice and the common good—"solidarity and mutual trust"—a profit-only market economy will have a negative impact on society:[43]

> Economy and finance, as instruments, can be used badly when those at the helm are motivated by purely selfish ends. Instruments that are good in themselves can thereby be transformed into harmful ones. But it is man's darkened reason that produces these consequences, not the instrument *per se*. Therefore it is not the instrument that must be called to account, but individuals, their moral conscience and their personal and social responsibility.[44]

Accordingly, Catholic Social Teaching requires justice (including principles of distributive and social justice) to be applied in economic activity and markets with the appreciation that any decision related to the economy, its process, and its systems will impact individual needs. Thus, these economic business activities must not be motivated solely by profit but require appropriate contractual regulation of the exchanges between the providers and consumer of goods and services. Pope Benedict called for businesses to embrace social

39. *Id.*
40. Pope Benedict XVI, *supra* note 8.
41. *Id.* at para. 21.
42. *Id.* at para. 35.
43. *Id.*
44. *Id.* at para. 36.

responsibility and be concerned about all participants in the economy including the worker, customer, and community in general.[45] This, he notes, also requires the State to participate with just laws and to require redistribution if needed.[46]

Of the various documents by Pope Francis, it is in his apostolic exhortation,[47] *Evangelii Gaudium* (The Joy of the Gospel),[48] that one finds pastoral guidance and messaging specifically concerning "the inclusion of the poor in society."[49] In describing the challenges of the world, Pope Francis recognizes that we have much to "praise" in terms of advances in health care, education, and communications, but he notes "the majority of our contemporaries are barely living from day to day, with dire consequences" including economic inequality and exclusion.[50]

Pope Francis criticizes economic theories based on "trickle-down" economics, which assume the free market alone will "succeed in bringing about greater justice and inclusiveness."[51] He notes that when individuals and societies idolize money and profit, the result is the devaluation of human beings and completely ignoring the role the state plays in assuring the common good.[52]

> The current financial crisis can make us overlook the fact that it originated in a profound human crisis: the denial of the primacy of the human person! We have created new idols. The worship of the ancient golden calf has returned in a new and ruthless guise in the idolatry of money and the dictatorship of an impersonal economy lacking a truly human purpose . . . .
>
> While the earnings of a minority are growing exponentially, so too is the gap separating the majority from the prosperity enjoyed by those happy few. This imbalance is the result of ideologies which defend the absolute autonomy of the marketplace and financial speculation. Consequently, they reject the right of states, charged

45. *Id.* at para. 40.

46. *Id.* at paras. 37–40.

47. An apostolic exhortation is a magisterial document written by the pope. One could argue it ranks third in importance, after apostolic constitutions and encyclicals. It's essentially a pastoral message the pope sends out to Catholics to highlight key points about a particular issue. Usually the Pope writes apostolic exhortations after consulting with bishops who participate in relevant synods. But that's not always the case. An apostolic exhortation establishes a clear direction for Catholics to critically address issues that are being discussed within the Church and in modern society.

Vatican, *What is an Apostolic Exhortation?* (Apr. 2, 2018), https://www.romereports.com/en/2018/04/02/what-is-an-apostolic-exhortation/.

48. Pope Francis, *Apostolic Exhortation Evangelii Gaudium* (Nov. 24, 2013), http://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

49. *Id.* at para. 17.

50. *Id.* at para. 52.

51. *Id.* at para. 54.

52. *Id.* at paras. 55–56.

> with vigilance for the common good, to exercise any form of control.[53]

Thus, Pope Francis urges us to say "no" to financial systems that rule rather than serve, and for the political leadership to implement financial reforms that are ethically driven:

> A financial reform open to such ethical considerations would require a vigorous change of approach on the part of political leaders. I urge them to face this challenge with determination and an eye to the future, while not ignoring, of course, the specifics of each case. Money must serve, not rule! The Pope loves everyone, rich and poor alike, but he is obliged in the name of Christ to remind all that the rich must help, respect and promote the poor. I exhort you to generous solidarity and to the return of economics and finance to an ethical approach which favours human beings.[54]

B. United States Conference of Catholic Bishops' "Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy"[55]

In 1986 the United States Conference of Catholic Bishops issued a letter describing a Christian vision of economic justice in the United States, having a particular concern for the poor and vulnerable that does not exploit narrowly defined goals such as wealth and profit. Entitled *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*,[56] like all Catholic social teaching it is premised on biblical teachings that God created the earth and placed dominion over it to man and woman to be stewards of creation, to love their neighbor, not worship any idols, and to have a preferential option for the poor and suffering.[57]

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53. *Id.*

54. *Id.* at para. 58.

55. United States Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching the U.S. Economy* (1986), http://www.usccb.org/upload/economic_justice_for_all.pdf.

56. *Id.*

57. *Id.*

> We write to share our teaching, to raise questions, to challenge one another to live our faith in the world. We write as heirs of the biblical prophets who summon us "to do the right, and to love goodness, and to walk humbly with your God" (Mi 6:8). We write as followers of Jesus who told us in the Sermon on the Mount: "Blessed are the poor in spirit . . . . Blessed are the meek . . . . Blessed are they who hunger and thirst for righteousness . . . . You are the salt of the earth . . . . You are the light of the world" (Mt 5:1-6, 13-14). These words challenge us not only as believers but also as consumers, citizens, workers, and owners . . . . The challenge for us is to discover in our own place and time what it means to be "poor in spirit" and "the salt of the earth" and what it means to serve "the least among us" and to "hunger and thirst for righteousness."

Id. at para. 4.

As stewards of the gifts God gives us, we are to use them wisely, to share with our neighbors, not become obsessed with great profit and wealth, and to avoid inflicting harm on others and to relieve the suffering of the poor.[58] Accordingly, there are basic norms of economic justice that include: anticipated fairness in all agreements and exchanges between parties (commutative justice); the distribution of income and wealth to be in consideration of its impact on those who are vulnerable and at risk in terms of their basic needs being met (distributive justice); and enabling all persons to be active participants in life and society—society being obliged to ensure this participation (social/contributive justice).[59] While Catholic Social Teaching does not require "a flat, arithmetical equality of income and wealth," it does challenge us to make sure that our economic arrangements are not resulting in the impoverishment of others.[60]

Accordingly, Catholic Social Teaching is not merely calling for individual charity to respond to the needs of the poor, but for a "more systematic approach by businesses . . . and the many other groups that shape economic life—as well as government" in achieving economic justice.[61] Each of these groups needs to work as a collective and in a manner so that all members of society have the opportunity to have meaningful access to economic, political, and cultural life, so that individuals and families can live with dignity.[62] This requires that both private and public groups work toward social and economic justice as a national "moral" priority, which is required to further the common good.[63]

58. *Id.* at paras. 30, 44–52.

59. *Id.* at paras. 68–72.

60. *Id.* at para. 74.

61. *Id.* at para. 76.

62. *Id.* at paras. 77–78.

> *Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons*. The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were nonmembers of the human race. To treat people this way is effectively to say that they simply do not count as human beings. This can take many forms, all of which can be described as varieties of marginalization, or exclusion from social life. This exclusion can occur in the political sphere . . . . It can also take economic forms that are equally harmful. Within the United States, individuals, families, and local communities fall victim to a downward cycle of poverty generated by economic forces they are powerless to influence . . . .
>
> Recent Catholic social thought regards the task of overcoming these patterns of exclusion and powerlessness as a most basic demand of justice. Stated positively, justice demands that social institutions be ordered in a way that guarantees all persons the ability to participate actively in the economic, political, and cultural life of society. The level of participation may legitimately be greater for some persons than for others, but there is a basic level of access that must be made available for all. Such participation is an essential expression of the social nature of human beings and of their communitarian vocation.

Id. (footnotes omitted).

63. *Id.* at paras. 85–95.

> The investment of wealth, talent and human energy should be specially directed to benefit those who are poor or economically insecure. Achieving a more just economy in the United States and the world depends in part on increasing economic resources and productivity. In addition, the ways these resources are invested and managed must be scrutinized in light of their effects on non-monetary values. Investment and management decisions have crucial moral dimensions: they create jobs or eliminate them; they can push vulnerable families over the edge into poverty . . . .
>
> The economic challenge of today has many parallels with the political challenge that confronted the founders of our nation. In order to create a new form of political democracy they were compelled to develop ways of thinking and political institutions that had never existed before . . . . We believe the time has come for a similar experiment in securing economic rights: the creation of an order that guarantees the minimum conditions of human dignity in the economic sphere for every person.[64]

This letter speaks directly to business owners and managers as having a "vocation" to serve the community and to be economic leaders.

> Business and finance have the duty to be faithful trustees of the resources at their disposal. No one can ever own capital resources absolutely or control their use without regard for others and society as a whole . . . .
>
> Resources created by human industry are also held in trust. Owners and managers have not created this capital on their own. They have benefited from the work of many others and from the local communities that support their endeavors. They are accountable to these workers and communities when making decisions . . . . The use of financial resources solely in pursuit of short-term profits can stunt the production of needed goods and services; a broader vision of managerial responsibilities is needed.[65]

The letter notes that in order for there to be a just economy and economic policy, the right to "private ownership of productive property" that fosters "creativity and initiative" must be preserved and made accessible to "a broad sector of our population."[66] While recognizing the importance of preserving the right to ownership, it is noted that it is not a "right to unlimited accumulation of wealth," but a right that must be tempered by a responsibility toward the common good, thus a right encumbered with social responsibility.[67]

In accordance with Catholic Social Teaching, the letter comments on the role of the State in creating and sustaining a just economic system. Government

64. *Id.* at paras. 92c, 95 (emphases omitted).

65. *Id.* at paras. 112–13 (citations omitted).

66. *Id.* at para. 114.

67. *Id.* at para. 115.

action is needed when individuals or groups cannot or fail in facilitating a just society. This does not suggest the government should replace private initiatives, but government involvement may be needed to help and ensure that individuals and other groups contribute to the well-being of all members of society; and the government may be needed to "supplement their activity when the demands of justice exceed their capacities."[68] The letter cautions us against arguments in support of the adage that "the government that governs least governs best," with a qualification that Catholic Social Teaching on economic justice anticipates government intervention to help "other social groups contribute to the common good by directing, urging, restraining, and regulating economic activity as 'the occasion requires and necessity demands.'"[69]

Accordingly, economic policies of a just society need to be evaluated from "moral and ethical principles."[70] That is, we must look to see whether our economic system and policies are more supportive of interests concerned with "maximizing profits [versus] meeting human needs and fostering human dignity;" the preservation of power and resources for the benefit of few versus access for all to participate in the economic resources; and an excessive promotion of materialism and individualism versus an expectation of social responsibility from all societal groups.[71] This includes an examination of business leadership. While business leaders have a responsibility "to exercise prudent business judgment in the interest of a profitable return to investors[,] . . . morally this legal responsibility may be exercised only within the bounds of justice to employees, customers, suppliers, and the local community."[72]

Again, on the matter of the government's role in addressing national economic problems, its intervention should help economic actors serve the common good, direct their contribution, and yet not replace their participation in shaping national policies.[73] The participation and coordination of all economic stakeholders, private *and* public, can provide their expertise and competencies to help "analyze the relationships among different parts of the

68. *Id.* at paras. 119–24 (quoting Pope Pius XI, *supra* note 22, para. 79).

> All groups that compose society have responsibilities to respond to the demands of justice . . . .
>
> For this reason, it is all the more significant that the teachings of the Church insist that *government has a moral function: protecting human rights and securing basic justice for all members of the commonwealth*. Society as a whole in all its diversity is responsible for building up the common good. But it is government's role to guarantee the minimum conditions that make this rich social activity possible, namely, human rights and justice. This obligation also falls on individual citizens as they choose their representatives and participate in shaping public opinion.

Id. at paras. 121–22 (footnotes omitted).

69. *Id.* at para. 124.

70. *Id.* at para. 130.

71. *Id.* at para. 132.

72. *Id.* at para. 305.

73. *Id.* at paras. 312–21.

economy" and thus "sharpen their concern for the common good and moderate their efforts to protect their own short-term interest."[74]

> [S]mall or intermediate groups in society are unable or unwilling to take the steps needed to promote basic justice . . . . The challenge of today is to move beyond abstract disputes about whether more or less government intervention is needed, to consideration of creative ways of enabling government and private groups to work together effectively.[75]

C. Pontifical Council for Justice and Peace's "Vocation of the Business Leader: A Reflection"[76]

In March of 2012, the Pontifical Council for Justice and Peace[77] published a handbook instructing business men and women and future business leaders on how to practice their profession as a vocation, one of the many initiatives that reflected on Pope Benedict's *Caritas in Veritate*, entitled *Vocation of the Business Leader: A Reflection*.[78] In this handbook, Christian business leaders are called to practice charity in their vocation. That is, "[b]usiness leaders are called to engage with the contemporary economic and financial world in light of the principles of *human dignity* and the *common good*."[79] It is posited that if the business world and economic markets are concerned with and committed to the common good, it will be positive to the "material and even spiritual well-being of humankind."[80]

74. *Id.* at para. 318.

75. *Id.* at para. 314.

76. Pontifical Council for Justice and Peace, *supra* note 6.

77. The Pontifical Council of Justice and Peace, a dicastery of the Roman Curia, was established after Vatican II in 1967 by the Roman Curia, the administrative arm of the Church, to promote and facilitate discussions and studies of Catholic Social Teachings throughout the world on a range of topics central to Church teaching promoting social justice, human rights, and development. The handbook *Vocation of the Business Leader* was the end product of a seminar the Council held in conjunction with the John A. Ryan Institute for Catholic Social Thought at the University of St. Thomas in Minnesota in February of 2011, specifically focusing on Pope Benedict's 2009 encyclical *Caritas in Veritate*. *Id.*

78. *Id.*

79. Cardinal Peter K.A. Turkson & Bishop Mario Toso, *Foreword* to The Pontifical Council of Justice and Peace, *Vocation of the Business Leader*, *supra* note 6. The Introduction of *Vocation of the Business Leader* provides that while this document in particular addresses *Christian* business leaders "who have at the heart of their work the deep sense of God's calling to be collaborators in creation," it also was designed to "speak to all business leaders of good will who have an influence on the behaviours, values and attitudes of the people comprising their enterprises." *Id.* at para. 5.

80. *Id.* at para. 2.

> Business leaders are called to conceive of and develop goods and services for customers and communities through a form of market economy. For such economies to achieve their goal, that is, the promotion of the common good, they should be structured on ideas based on truth, fidelity to commitments, freedom and creativity.

Id. at para. 6.

The handbook begins by identifying obstacles toward this vocation in business and the economic markets to include an "absence of the rule of law or international regulations, corruption, destructive competition, crony capitalism, excessive state intervention or a culture hostile to entrepreneurship in one or more of its forms," and business leaders leading a "divided life" or compartmentalized life with respect to their faith-based values and their daily business activities.[81] The vocation for the business leader is explored in three stages: "*see, judge, act*."[82] That is, the business leader needs to (1) see how business challenges and opportunities of the time can be complicated by "good and evil"; (2) exercise business judgment with respect for human dignity, service to the common good, and a vision of the business as a community of persons; and (3) act in a manner that integrates business practices with spirituality and ethical principles, so that business activities are not motivated solely by financial gain.[83] The vocation of the business leader includes practicing "ethical social principles while conducting the normal rhythms of the business world."[84] The business opportunities and challenges must be seen clearly and in a manner so that business judgements are made that promote the common good and are "consistent with the teaching of the Faith."[85]

There are several factors identified that influence business and have fundamentally changed business in the past twenty-five years and present the greatest dangers to Christian business leaders, including globalization, communication technology, "financialisation of the economy," and cultural changes that lend toward individualism and utilitarianism.[86] The "financialisation of the economy" may need explanation, and that is, it "describes the shift in the capitalist economy *from production to finance*."[87] While it is considered a positive influence in that it means there is increased access to credit for more people, it can have a negative impact when the only purpose for the business is to profit and increase shareholder wealth, thus being

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81. *Id.* at paras. 9–10.

82. *Id.* at para. 14.

83. *Id.* at para. 10.

> Dividing the demands of one's faith from one's work in business is a fundamental error that contributes to much of the damage done by businesses in our world today, including . . . an unhealthy attachment to power to the detriment of one's own good, and the abuse of economic power in order to make even greater economic gains. In this regard, the Church remains mindful of the words of Jesus himself: "No one can be the slave of two masters. He will either hate the first and love the second or be attached to the first and despise the second. You cannot love both God and money" (Mt. 6:24) . . . . The divided life is not unified or integrated: it is fundamentally disordered, and thus fails to live up to God's call."

Id.

84. *Id.* at para. 14.

85. *Id.*

86. *Id.* at para. 17.

87. *Id.* at para. 22 (emphasis added).

"the sole metric by which business leaders determine their performance and their worth."[88]

Accordingly, the business judgment of business men and women about market trends needs to be "guided by ethical social principles . . . rooted in reality and in truth . . . [and] nurtured in the moral and spiritual" traditions from which these men and women were formed.[89] For Christian business leaders, this means judgment that embraces the Gospel of Jesus Christ, the inspiration of the religious social traditions and actions inspired by the Gospel with concern for human dignity and the common good.[90] As the creators and providers of goods and services, business leaders must be contributors to the common good, and "[t]hey contribute best when their activities are allowed to be oriented toward, and to be fully respectful of, the dignity of people as ends in themselves . . . who are intelligent, free and social."[91] The good business supports the common good by not taking actions to undermine the common good but by seeking ways to serve "genuine human needs" and in some cases "actively promote more effective regulation on a regional, national or international level."[92] "[D]estructive business strategies," legal as well as illegal designed to reduce short-term costs, are devastating in the long term.[93] They become "a 'race to the bottom'" that is not corrected by "individual moral engagement alone" but rather requiring a "*better institutional framework* for all participants in the market."[94]

The "better institutional framework" is premised on activities that the business leader must engage in the journey of social responsibility and in furtherance of the common good. The first of which is that goods and services that contribute to "human development and fulfilment" serve the common good, not a "goal to maximise profit."[95] Secondly, businesses should organize good

88. *Id.* at para. 23 ("Without doubt, one of the greatest risks for businesses is that they are almost exclusively answerable to their investors, thereby limiting their social value . . . .") (quoting Pope Benedict XVI, *supra* note 8, at para. 40).

89. *Id.* at paras. 26–27.

90. *Id.* at paras. 28–31.

91. *Id.* at para. 35.

92. *Id.* at para. 37.

93. *Id.*

94. *Id.*

95. *Id.* at para. 41.

> The Christian business leader is alert for opportunities to serve these neglected populations and sees this not only as a proper social responsibility but also as a great business opportunity. Developments in the field of the "bottom of the pyramid" products and services—such as microenterprises, microcredit, social enterprises, and social investment funds—have played an important role in addressing the needs of the poor. These innovations will not only help lift people from extreme poverty but could also spark their creativity and entrepreneurship and contribute to launching a dynamic of development.

Id. at para. 43.

and productive work for labor.[96] And third, the business, while profitable in creating wealth, should also distribute this wealth in a just manner so that it helps the other stakeholders of the business, including customers, employees, and the greater community in which it practices.[97] In this part focusing on the ethical practices of businesses, Pope Benedict's *Caritas in Veritate* is referenced for its direction regarding the role of the state toward this goal: "Many regulations for protecting customers, employees or the environment are grounded in the business sector itself, even if they may need to be *reinforced by government regulation*."[98]

II. CATHOLIC SOCIAL TEACHING AND CONSUMER FINANCIAL PROTECTION

In concluding the review of Catholic Social Teaching, several concepts of economic justice come into view and lead to the call for consumer financial protection in law and commerce as essential in a quest to achieve the common good for all individuals and families in need of access to consumer financial products and services.

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96. *See generally id.* at paras. 38, 44–50 (discussing "organizing good and productive work").

97. *Id.* at para. 51.

> The Church acknowledges the legitimate role of profit as an indicator that a business is functioning well . . . . A profitable business, by creating wealth and promoting prosperity, helps individuals excel and realise the common good of a society. Yet creating wealth is not restricted to financial profit alone. The very etymology of the word "wealth" reveals the broader notion of "well-being": the physical, mental, psychological, moral and spiritual well-being of others. *The economic value of wealth is inextricably linked to this wider notion of well-being.*

Id. (emphasis added).

> *Distribute justly*: As creators of wealth and prosperity, businesses and their leaders must find ways to make a just distribution of this wealth to employees (following the principle of the right to a just wage), customers (just prices), owners (just returns), suppliers (just prices), and the community (just tax payments).

Id. at para. 55. "[A] growing conviction that business management cannot concern itself only with the interests of the proprietors, but must also assume responsibility for all the other stakeholders who contribute to the life of the business," which includes client and community. *Id.* at para. 78 (emphasis omitted) (citing Pope Benedict XVI, *supra* note 8, at para. 40).

> If one accepts that God's creation is intended for everyone . . . then . . . all resources are conferred on humankind with a "social mortgage." . . . [T]he right to private property should be "subordinated to the right to common use, to the fact that goods are meant for everyone." This principle urges business leaders to consider the distributive effect of the way they set prices, allocate wages, share ownership, distribute dividends, manage payables and so on . . . . Denying people legitimate access to the fruits of the earth . . . amounts to a negation of God's command to humanity to discover, cultivate and use its gifts.

Id. at para. 56 (quoting Pope St. John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 42) (quoting Pope St. John Paul II, *supra* note 16, at 35).

98. *Id.* at para. 78 (emphasis added).

A. Access to Consumer Financial Products and Services for all Members of Society, Including the Most Vulnerable Individuals and Families.

A cornerstone of Catholic Social Teaching on social and economic justice is that those who are responsible for and providers of economic opportunities must create and ensure consumer financial products and services that anticipate fair access to such services and products for all members of the community.[99] This responsibility is a shared one by both the private and public sectors and is owed to the financially vulnerable members of the community as well as its wealthy members.[100] This is first introduced with the more general pronouncement from *Rerum Novarum* on the role of the Church in its instruction of and message to the faithful to be attentive to the temporal needs as well as the spiritual needs of the vulnerable.[101]

This directive is more specifically targeted to our nation's economy in the United States Conference of Catholic Bishops' pastoral letter *Economic Justice for All* as it addressed a general societal responsibility to ensure economic justice, as well as political and social justice, for vulnerable individuals and families in order to achieve "human dignity in the economic sphere for every person."[102] The basic norms of justice outlined in the pastoral letter include the requirement that there be fairness in economic agreements and exchanges; consideration of the impact of such agreements on the most vulnerable and at-risk members of society; and that economic agreements should not inflict harm or poverty.[103]

B. Create Financial Products and Services that Are Responsive to Actual Consumer Needs and that Do Not Cause Harm to Consumer Users.

While Catholic Social Teaching recognizes the core purpose of profit in a market economy, it consistently recognizes that profit cannot be a sole focus or purpose by those who manage and create wealth.[104] This recognition of harms caused by profit-only business concerns evolves progressively in Catholic Social Teaching as reflected in *Quadragesimo Anno*, *Centesimus Annus*, and *Caritas in Veritate*. Catholic Social Teaching provides that if profit is the only goal that a business concern serves, then it subordinates the position of the most vulnerable consumer participant by failing to offer products and services that meet consumer needs and that are not predatory or exploitative in nature.[105] In addition, it is noted that the profit-only-focused business not only prevents access to economic opportunity and prosperity for all consumer groups,

99. *See supra* notes 7–10 and accompanying text.

100. *Seven Themes of Catholic Social Teaching*, *supra* notes 9–10 and accompanying text.

101. *See supra* notes 18–20 and accompanying text.

102. United States Conference of Catholic Bishops, *supra* note 55, at para. 95 (emphasis omitted); *see supra* notes 58–66 and accompanying text.

103. *See supra* notes 59–60 and accompanying text.

104. *See supra* note 28 and accompanying text.

105. *See supra* notes 28–29, 36–38, 41–45 and accompanying text.

including the most financially vulnerable, but also such a limited business focus and goal will invariably lead to a ruinous outcome for the life of a business.[106] Accordingly, we see Catholic Social Teaching prescribing businesses with a social, moral, and ethical responsibility to the entire community from which they derive benefits. Thus, businesses must not only be concerned with profit for the business and its investors but also must provide products and services to the consumer users that are not abusive and destructive but serve actual consumer needs.[107]

Similarly, the United States Conference of Catholic Bishops states that businesses have an obligation to achieve the common good for all who contribute to the wealth and success of the business. Therefore, businesses must avoid profit-only goals; they have a social responsibility to the broader communities that support their wealth and success, which includes the consumer users of their products and services.[108] The Pontifical Council on Justice and Peace's *Vocation of the Business Leader: A Reflection* also calls for business leaders to be grounded in social, moral, and ethical responsibility to support human dignity and the common good as a general proposition.[109] It speaks directly about the *financialization* of our economy and the resulting economic reality of credit access, noting while such access is a good and important part of our economy, it must be measured against for-profit-only goals that have a harmful and devastating impact on users.[110] Accordingly, these business leaders must not only be concerned with profit and wealth accumulation for the business but also embrace an ethical and a social responsibility to provide products and services that are mindful of actual human needs and contribute to the well-being of all stakeholders contributing to the life of the business, including consumers.[111]

C. Provide Education and Greater Literacy About the Responsible Use of Consumer Financial Products and Services.

Catholic Social Teaching on economic and social justice draws on the Church's concern for the most essential daily needs of the working class.[112] This includes the ability to sustain a meaningful income, having access to resources to help manage the financial demands and obligations of daily living,

106. *See supra* note 35 and accompanying text.

107. *See supra* notes 36–45 and accompanying text.

108. *See supra* notes 65–67 and accompanying text.

109. *See supra* notes 76–85 and accompanying text.

110. *See supra* notes 86–88 and accompanying text.

111. *See supra* notes 89–98 and accompanying text.

112. *See, e.g.*, the Church's concern for the daily needs of the working class and their families is noted in *Rerum Novarum* by Pope Leo XIII in his condemnation of the deficiencies in labor wages during the Industrial Revolution. *See supra* notes 15–19 and accompanying text. This concern is reflected again in Pope St. John XXIII's *Mater Et Magistra*, calling for the Church to be concerned for the temporal needs of individuals and their families as well as spiritual needs. *See supra* note 30–31 and accompanying text.

and to enhance the individual and her family's personal welfare and prosperity.[113]

In *Centesimus Annus*, Pope St. John Paul II specifically focused on the marketplace, pointing out that it must not operate solely for profit but also serve the needs of the community of which it is a part.[114] Both the private and public sectors have a responsibility to see that harmful products and services are not placed in the marketplace and that the products and services address the real needs of the consumer.[115] An important requirement for the various consumer financial products and services essential in meeting the daily needs of individual and family users is the need for transparency in the information and explanation about the products and services that contribute to the financial literacy of consumers, as they make decisions about the products and services made available for their use.[116]

D. Joint Responsibility Between the State and Industry in Ensuring the Provision of Fair Consumer Financial Products and Services.

Beginning with Pope Leo's *Rerum Novarum,* Catholic Social Teaching has consistently recognized the role of government in ensuring that the most vulnerable citizens are given a fair opportunity to participate in all entitlements of society.[117] This responsibility is one that Catholic Social Teaching views as a dual collaboration between private and public interests. Whereby, the regulatory resources of government combined with the creative energies of the financial products and services industry can ensure the provision of consumer products and services in the marketplace that respond to real needs and that are not exploitive of the more vulnerable consumer citizen.[118]

In *Economic Justice for All*, the United States Conference of Catholic Bishops also emphasizes the important the role of the government in achieving economic and social justice where private interest activity alone, that of individuals and private organizations, fails to achieve a just society.[119] In fact, it diffuses head-on arguments against government intervention in the

113. *See supra* notes 61–64 and accompanying text.

114. *See supra* note 37 and accompanying discussion.

115. *See supra* notes 38–39 and accompanying text.

116. *Id.*

117. *See supra* notes 19–21 and accompanying text.

118. *See supra* notes 25–29 (discussing Pope Pius's consideration of *Rerum Novarum* in *Quadragesimo Anno* on the important role of the state to ensure economic justice in the marketplace as it relates to the activities of the managers of wealth and how this affects the financially vulnerable members of society); *see supra* notes 31–33 (Pope St. John XXIII considers *Rerum Novarum* in *Mater Et Magistra* in its application of the role of the State in creating a just economy); *see supra* note 39 (Pope St. John Paul II looks to *Rerum Novarum* in *Centesimus Annus* and discusses the need for government intervention in protecting consumers from economic harms in the marketplace); *see supra* note 46 (Pope Benedict XVI in *Caritas in Veritate* reminds us that the State has a responsibility to create laws to ensure fairness in the marketplace).

119. *See supra* notes 61–64 and accompanying text.

marketplace, noting that it is in instances where private groups fail to act in the interest of the common good that government intervention is required and necessary.[120] The letter specifically notes that government intervention is not intended to replace private interests' contributions in shaping economic or industry policies, but is there to help all stakeholders in a common good interest toward economic justice for all and to regulate against harmful and predatory materialism and profit-centered activity.[121]

III. "NEW THINGS" LEADING TO CONSUMER FINANCIAL PROTECTION REFORM

The effects of the Great Recession of 2007–2009, experienced throughout the United States and other global economies, commanded the attention of Pope Benedict as the kind of "new thing" that Pope Leo called the Church to decry.[122] As massive financial suffering abounded globally due to failures in social, economic, and political systems, Pope Benedict called for "cooperation" between the financial sector, the consumers of financial products and services, and the regulatory sector to create a system whereby new financial structures and methods are designed to improve "wealth creation and development" for all consuming sectors to "be used in an ethical way so as to create suitable conditions for human development and the development of peoples."[123] In his 2009 encyclical *Caritas in Veritate*, written in the wake of the Great Recession, he stated:

> Financiers must rediscover the genuinely ethical foundation of their activity, so as not to abuse the sophisticated instruments which can serve to betray the interests of savers. Right intention, transparency, and the search for positive results are mutually compatible and must never be detached from one another. If love is wise, it can find ways of working in accordance with provident and just expediency, as is illustrated in a significant way by much of the experience of credit unions.
>
> Both the regulation of the financial sector, so as to safeguard weaker parties and discourage scandalous speculation, and experimentation with new forms of finance, designed to support development projects, are positive experiences that should be further explored and encouraged, highlighting *the responsibility of the investor*.[124]

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act was Congress's response to address the devastating effects of the

120. *See supra* notes 68–69 and accompanying text.

121. *See supra* notes 73–75 and accompanying text; *see also supra* note 98 (explaining the role of government intervention in the Pontifical Council on Peace and Justice's *Vocation of the Business Leader: A Reflection*).

122. *See supra* notes 40–46.

123. Pope Benedict XVI, *supra* note 8, at para. 65 (emphasis omitted).

124. *Id.*

Great Recession in the United States.[125] The impact of this recession in the United States was described by one commentator as:

> [T]he worst experienced by the United States since the Great Depression in the 1930's . . . . [T]he 2007–2009 recession was both deeper and of a longer duration than any of the five previous recessions. According to Treasury Department estimates, 8.8 million jobs were lost as of 2012. The unemployment rate reached 10 percent in 2009, and the civilian labor force participation rate fell from 64.4 percent in 2000 to 58.4 percent in 2011. People gave up looking for jobs . . . . Over the 2007–2011 period household net worth in housing assets fell 33 percent, and stock market valuations fell 40 percent between October 2007 and June 2009. According to U.S. Department of Treasury estimates, total household wealth fell to $19.2 trillion over the period.[126]

A significant factor in the market failure was heavy securities investment activity in consumer loan asset-backed securities—often referred to as securitized asset investment. A vast majority of the consumer loan products that were most popular for securitization were subprime home mortgages. While many of the subprime mortgages were seen as a way to expand home ownership opportunities for individuals who did not qualify for the more traditional prime home mortgages, these products proved to be very risky investments for the borrower, lender, and ultimate investors in the securitized assets. A combination of factors are attributed to the risks that resulted in the financial crisis, including overinvestment in these home mortgage based assets (i.e., "unsustainable price appreciation of real estate . . . ."; "absence of regulation . . . ."; "increase [of the banks] investments in mortgages . . . .";

125. *See infra* notes 130–55 and accompanying text.

126. Robert E. Krainer, *The Consumer Financial Protection Bureau: A Five-Year Retrospective*, 10 U. ST. THOMAS J. L. & PUB. POL'Y 17, 18 (2015) (footnotes omitted); *see* FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES (Feb. 25, 2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf (consisting of a panel of experts in a range of market areas impacted by crisis including housing, banking, consumer finance, housing and securities markets). The Commission was appointed by Congress in 2009, pursuant to the Fraud Enforcement Recovery Act, Pub. L. No. 111-21 (2009), to study the causes of the recession. The report is an exhaustive examination of how the crisis evolved and its impact on the nation. In the process of conducting this examination, the Commission "reviewed" millions of pages of documents, interviewed more than 700 witnesses, and held nineteen days of public hearings in New York, Washington, D.C., and communities across the country that were hard-hit by the crisis. *See id. See also* Ctr. for Responsible Lending, *Report Reveals 2.2. Million Borrowers Face Foreclosure* (Dec. 19, 2006), https://www.responsiblelending.org/media/report-reveals-2-2-million-borrowers-face-foreclosure; Dep't of Treasury, *The Financial Crisis Response in Charts* (April 2012), https://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf.

"[s]ecuritization enable[ing] banks to make loans to home buyers and then off-load them to a securitizing trust . . . ."; and government "fiscal policy").[127]

The recession revealed weaknesses and even abuses in the consumer financial products and services industry as well as the regulatory structure under which many of the weaknesses and abuses thrived. It was observed that although consumer financial products as a whole may not have been the "major cause of the recession, they served as a flashpoint for the human suffering that accompanied the recession."[128] Concerns about the consumer financial products and services market included not only the subprime or "exotic" home mortgage products but also payday loans, credit card contracts, and other short-term loan products, products that the most vulnerable consumers look to in conducting daily financial matters.[129]

In many ways, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") included goals and structures that embodied the concerns and directives called for in Catholic Social Teaching on economic justice that are relevant to and address the need for consumer financial products and services that serve the common good. A great deal of the statements and testimony made during Congressional hearings on the causes of the recession and impact of consumer financial products and services on the recession echoed the kind of concern and suggestions for economic justice that are articulated in the encyclicals and other church documents discussed above.

A. Echoes of Catholic Social Teaching on Economic Justice

Between 2007 and 2009, several Senate and House Committees conducted hearings focusing on various consumer financial products and services.[130]

127. Krainer, *supra* note 126, at 20–21, 31; *see* FIN. CRISIS INQUIRY COMM'N, *supra* note 126, at 67–80 (describing the subprime mortgage market at the center of the recession); *see id.* at 83–230 (describing the securitization of this market and its progression up to the market crash); *see also* CONGRESSIONAL OVERSIGHT PANEL, DECEMBER OVERSIGHT REPORT: TAKING STOCK: WHAT HAS THE TROUBLED ASSET RELIEF PROGRAM ACHIEVED? (Dec. 9, 2009), https://www.nclc.org/images/pdf/foreclosure_mortgage/loan_mod/lmp_cop_december2009_rpt.pdf (providing a summary of the origins of the financial crisis and its connection to the housing market and subprime mortgage investment market and background of the financial crisis).

128. Krainer, *supra* note 126, at 23.

129. *See* CONGRESSIONAL OVERSIGHT PANEL, MAY OVERSIGHT REPORT: REVIVING LENDING TO SMALL BUSINESSES AND FAMILIES AND THE IMPACT OF THE TALF 1 (May 7, 2009), https://fraser.stlouisfed.org/title/5012 (describing the significance of small business loans and consumer finance loans, other than home mortgage loans (i.e., credit cards, auto loans and student loans), in the financial recovery program of the Treasury Department (i.e., Term Asset-Backed Securities Loan Facility Program ("TALF"))). While describing the importance of stimulating both small business and consumer lending through asset-back securities, it was noted that the financial stimulus would not be sufficient alone and that "keeping the credit markets open in a fair—and economically healthy—manner to small business and family borrowers demands a mix of policies that reflect the realities that borrowers face." *Id*. at 53.

130. Some of the hearings concerning the impact of a range of consumer financial products and services included: *Protecting Consumers from Abusive Overdraft Fees: The Fairness and*

These hearings looked at the practices within the industry and their impact on consumer users, including but not limited to subprime and exotic mortgages, credit cards, payday loans, credit rating services, and automobile industry loans.[131] The participants at these hearings represented the full range of stakeholders in the consumer financial products and services market, including: consumers, consumer advocacy organizations, representatives from the consumer financial services industry, agencies with regulatory oversight over the industry, and various Senate and House Committees members.[132] Many of the comments and suggestions offered at these hearings would ultimately inform the resulting legislation, the Dodd-Frank Wall Street Reform and Consumer Protection Act. A sampling of some of the testimony and statements from the hearings best illustrates how they echo concerns expressed in Catholic Social Teaching on economic justice as it pertains to consumer financial products and services.

One of the earliest of these hearings took place before the Senate Committee on Banking, Housing, and Urban Affairs on "Preserving the American Dream: Predatory Lending Practices and Home Foreclosures," focusing on abuses in the subprime home mortgage industry.[133] This hearing occurred in February of 2007, just as the economic recession was about to explode. Senator Chris Dodd, chairman of the Committee, spoke about the need for regulators and the industry to end the predatory lending practices in the home mortgage industry, a central factor of the economic recession and the cause of the financial devastation to the market's most vulnerable of borrowers.[134] He noted that while the initial introduction of the subprime mortgages market was intended for good by providing access to homeownership loans to low-income borrowers, these subprime mortgages became lending products yielding gross profits for predatory brokers and lenders at the expense of borrowers seeking long denied opportunities for wealth building for their families through homeownership.

Accountability in Receiving Overdraft Coverage Act: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs., 111th Cong. (2009); *Reforming Credit Rating Agencies: Hearing Before the Subcomm. on Cap. Mkts., Ins., and Gov't Sponsored Enter. of the H. Comm. on Fin. Serv.*, 111th Cong. (2009); *Credit Rating Agencies and the Next Financial Crisis: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 111th Cong. (2009); *Examining Proposals to Enhance the Regulation of Credit Rating Agencies: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 111th Cong. (2009).

131. *See Protecting Consumers from Abusive Overdraft Fees*, *supra* note 130; *Reforming Credit Rating Agencies*, *supra* note 130; *Credit Rating Agencies and the Next Financial Crisis*, *supra* note 130; *Examining Proposals to Enhance the Regulation of Credit Rating Agencies*, *supra* note 130.

132. *Id*.

133. *Preserving the American Dream: Predatory Lending Practices and Home Foreclosures: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 110th Cong. (2007).

134. *Id*. (statement of Sen. Chris Dodd, Chairman, S. Comm. on Banking, Hous., and Urb. Affs.).

In Senator Dodd's opening statement, excerpted below, one can hear echoes of Catholic Social Teaching as it pertains to the need for greater consumer financial protection: (1) *access to financial products and services for all members of society, including the most financially vulnerable individuals and families*; (2) *creation of financial products and services that are responsive to actual consumer needs, and do not cause harm to consumer users*; (3) *provision of education and greater literacy about the responsible use of consumer financial products and services*; *and (4) joint responsibility between state and industry in the provision of fair consumer financial products and services*.[135]

> Today, the Committee will focus its attention . . . on predatory lending practices that are found primarily in the subprime market and how these practices may be eroding the foundations of homeownership for millions of American families . . . .
>
> . . . .
>
> To the extent that the creation of the subprime market has added to this flow of credit in a positive and constructive way, in a way to build wealth, I welcome that development, and I encourage it. However, it is not enough to simply create homeownership. We must sustain, preserve, and protect it as well . . . . The borrowers who are too frequently targeted for these loans are minorities, immigrants, the elderly, and the totally unsophisticated. For these families, failure means the loss of a home, the loss of wealth, the loss of middle-class status, and the loss of the opportunity for financial security.
>
> . . . .
>
> . . . According to a survey of over 2,000 mortgage brokers, 43 percent of the brokers who make these loans do so because they know that their borrowers do not have the income to qualify for the loans in the first place . . . .
>
> . . . .
>
> . . . The problem is most of these loans are perfectly legal, even as they do real harm to borrowers and neighborhoods. In short, the system is out of balance. There is a chain of responsibility that makes these abusive loans possible. I look forward to working with each link in that chain—the broker, the bankers, Wall Street, the regulators, my colleagues on this Committee, and the Congress and the administration—to help restore this balance for the sake of the safety and soundness of the banking system, for the sake of homeowners who are being victimized, and to make sure that subprime credit can once again play a very constructive role in the

135. *See supra* notes 99–121 and accompanying text.

> marketplace and make homeownership the dream that it ought to be.[136]

Individuals testifying at this hearing included consumer advocates as well as consumer products and services users. In the wide-ranging testimony, the speakers described the harms experienced from the use of these products. They offered a range of suggestions for reform including greater regulatory oversight of subprime mortgages; requiring the ability to pay requirements in loan transactions; greater transparency concerning loan costs and payment obligations; and consumer financial education and literacy programs.[137] In

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136. *Preserving the American Dream*, *supra* note 133, at 2–4 (statement of Sen. Chris Dodd, Chairman, S. Comm. on Banking, Hous., and Urb. Affs.); *see also id.* at 5–9 (statements of other Committee members, namely, Senators Shelby, Reed, Tester, Carper, Casey and Brown).

137. *See id.* One of our nation's most distinguished advocates for justice, Reverend Jesse Jackson, President of the Rainbow/Push Coalition, appeared before the Committee and spoke about how the financial services industry had failed citizens by creating incentives that encouraged brokers to direct vulnerable borrowers into high interest and high-risk mortgage instruments, with little or no regard for the ability of the borrowers to repay the indebtedness. *See id.* at 10 (statement of Reverend Jesse Jackson, President, Rainbow/Push Coalition). He also called for consumer protections in the form of greater transparency regarding loan obligations and the need for consumer financial literacy:

> What is the American creed? The American creed promises equal opportunity, equal access, equal protection under the law, and fair share for all. Forty years after the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965 we must level the playing field for all citizens, identify incentives to financial institutions to invest, not exploit and oppress, hard-working Americans. Far beyond our idea of freedom is the reality of equity and parity. We must break the syndrome where the poor pay more; from automobile financing to insurance.
>
> . . . .
>
> Federal law requires banking regulators to protect citizens, regardless of race. What we fight for is one set of rules evenly applied to all Americans . . . we are all precious in God's sight.

Id. at 48–51 (written testimony of Reverend Jesse Jackson, President, Rainbow PUSH Coalition). Testimony from consumer users negatively impacted by the subprime loans described the nature of these loan transactions. One borrower, a financially stressed retired office administrator, who had been a victim of identity theft and a check scam, sought a refinancing mortgage loan to pay off this debt. Another borrower was a widowed mother of two teenaged sons refinancing a mortgage to pay a business debt after her husband's death. Each affected borrower described the high pressured and deceptive practices of their lenders who promised reductions in monthly payments and additional funds through refinancing and debt consolidation through adjustable-rate balloon mortgages. Neither borrower was able to pay the final amounts they would be liable for under the new mortgages processed by the brokers based on the arm rate increases. *See id.* at 14–17 (statements of Delores King and Amy Womble). Also appearing before the Committee regarding the impact of subprime loans on senior citizens was Jean Constantine-Davis, Senior Attorney, American Association of Retired Persons (AARP), noting that many of their members with accumulated equity in their homes had been victimized by exotic mortgages causing many seniors to go into foreclosure on their homes. She described the minimal underwriting standards for such loans (i.e., No Income, No Assets loans and adjustable rate mortgages/ARMS) were offered to fixed income borrowers who were not qualified as able-to-pay borrowers, created a "perfect storm" for abuse by addition, representatives from the home mortgage industry also testified before the Committee. Some of the testimony reflected the view that subprime mortgage products and other novel mortgage devices were not bad per se; that they created home ownership opportunities; nor were they the driving force for the increased foreclosures; and other factors such as "unexpected shocks to a family's finances: job loss, divorce and illness" which have traditionally been behind the reasons for foreclosures continued to be the "main reasons for defaults and foreclosures."[138] Whereas, other industry representatives recognized that while these mortgages did have a positive impact in making homeownership more accessible for low income individuals and their families for decades, in the years leading up to the recession the profit-centered practices of lenders and the securitization of these mortgages resulted in more defaults on these mortgages, as they were being made to individuals who had no financial ability to repay the obligations. [139]

The House Subcommittee on Domestic Policy for the Committee on Oversight and Government Reform held its first hearing on the financial and economic condition of urban cities in March of 2007.[140] During this hearing it also looked into the impending national crisis with subprime mortgages, as well as the payday loan services industry, and the impact of these consumer financial products on the low-to-moderate income consumer users, their communities,

brokers resulting in foreclosures. *Id.* at 18–20 (statement of Jean Constantine-Davis, Senior Attorney, AARP).

138. *See id*. at 23–25 (statement of Douglas G. Duncan, Senior Vice President of Research and Business Development, Chief Economist, Mortgage Bankers Association). Mr. Duncan suggested:

> Instead of limiting choices, . . . efforts should be directed toward new and increased efforts to provide national financial literacy training, make the process more transparent, and establish a uniform national standard to protect consumers and provide certainty to financial institutions. It is too easy to blame lenders or loan products. The harder work is to solve these complex issues.

Id. at 24–25.

See also id. at 17–18 (statement of Harry H. Dinham, President, National Association of Mortgage Brokers). Harry H. Dinham recognized the abuse that had occurred. He noted that the industry, government and consumers had a role to play in preventing such abuses; recommended background checks for mortgage originators; expressed the need to provide consumers with good faith estimates of mortgage payments; and suggested amending the Associations' Code of ethics and best practices. *Id*.

139. *See id*. at 25–28. (statement of Martin Eakes, Chief Executive Officer of Self-Help Credit Union and Ctr. for Responsible Lending).

> Brokers and subprime lenders are not bad people, but their financial incentives are different than what we saw just 20 years ago. Now their financial incentives are to close as many loans as possible, regardless of risk. Whether the borrower can repay the loan, so long as it lasts for at least 3 months, is really not of their financial concern.

Id. at 25.

140. *Foreclosure, Predatory Mortgage and Payday Lending in America's Cities: Hearing Before the Subcomm. on Domestic Policy of the Comm. on Oversight and Gov't Reform H.R.*, 110th Cong. (2007).

and enforcement under the Community Reinvestment Act.[141] Similar to the testimony before the Senate Committee on Banking, Housing and Urban Affairs, described above, participants at the hearing included representatives from the consumer financial services industry, consumer protection advocates and affected consumers.

The descriptions of injury and suffering resulting from these specific consumer financial products and the suggested regulatory and industry reforms were even more expansive than the testimony provided before the Senate on Banking, Housing and Urban Affairs only a month earlier. The economic recession was at the door of Congress and had struck markets and consumers hard as recalled by Representative Dennis Kucinich, Committee Chair, in his opening remarks, vividly describing a nation-wide anxiety in the stock market and the growing foreclosure crisis in the subprime mortgage market.[142]

> On March 13th the Dow Jones Industrials dropped more than 240 points, its second biggest drop in nearly four years, primarily due to the subprime mortgage industry. All three major stock indexes dropped by about 2 percent. The stock market erased $406 billion in wealth. By the end of the week nervous creditors forced New Century Financial Corp., the Nation's second largest subprime mortgage lender, to stop making new loans.
>
> As the stock market recovers from a bruising week and the anxiety about what is to come, major American cities are bracing themselves. The Center for Responsible Lending projects that one out of five subprime mortgages originated during the past 2 years will end in foreclosure. These foreclosures will cost homeowners as much as $164 billion. The exact cost it will have on urban America is unknown.
>
> I wonder if any of us in Government has a proper understanding of the dimensions of the forthcoming foreclosure crisis and the impact it will have on American cities. It will be severe, it will be prolonged, and it will be very serious.
>
> Today's hearing is meant to examine what has brought us here. What are the motivations and practices of the lending industry that brought them to the verge of a financial crisis and brought American cities to the edge of downfall?[143]

Chairman Kucinich brought the discussion "home" by referencing his district including Cleveland and how the subprime market had become the primary option for home mortgages for minority communities, often the only kind of loan option available where depositary banks offered few traditional prime loans and foreclosure rates had risen; borrowers were rapidly losing or

141. *See id.*

142. *Id.* at 1–4 (statement of Rep. Dennis Kucinich, Committee Chair, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform).

143. *Id*. at 2 (statement of Rep. Dennis Kucinich, Committee Chair, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform).

abandoning homes, and entire communities were devastated through growing foreclosures.[144] The various hearing participants appearing before the House

144. *Id*. at 3 (statement of Rep. Dennis Kucinich, Committee Chair, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform) Rep. Kucinich cited a study published by the Ctr. for Community Progress entitled "Paying More for the American Dream." This study focused on the then seven largest lenders of subprime loans in neighborhoods in eight different cities; tracked disparities in the number of subprime loans to African Americans and Latinos compared to white borrowers; and highlighted discriminatory lending practices and the increasing problem with foreclosures occurring throughout these communities in American cities. The study included a discussion of alternative lending options that were being developed to reverse this trend including consumer advocacy groups. *See* Cal. Reinvestment Coal., Cmty. Reinvestment Ass'n of North Carolina, Empire Justice Ctr., Massachusetts Affordable Hous. All., Neighborhood Econ. Dev. Advocacy Project, Ohio Fair Lending Coal. & Woodstock Inst., *Paying More for the American Dream: The Subprime Shakeout and its Impact on Lower-Income and Minority Communities*, COMMUNITY PROGRESS (Mar. 2008) https://www.communityprogress.net/filebin/pdf/nvpc_trnsfr/Woodstock_PayingMoreAmericanDream.pdf. Representatives Elijah Cummings and Donny Davis echoed similar stories about the impact of foreclosed subprime loans in low-to-moderate and minority communities in Baltimore and Chicago neighborhoods, respectively. *See Foreclosure, Predatory Mortgage and Payday Lending in America's Cities*, *supra* note 140, at 5–6, 7–11. In his statement about the Baltimore community, Rep. Cummings said:

> News reports surrounding the recent subprime mortgage industry's crisis have shone a national spotlight on a problem that was already known to those of us familiar with our cities. Low and moderate-income communities are being targeted by lenders whose singular concern is making money at the expense of others. For example, subprime loans trapped individuals with poor credit by offering a low introductory interest rate that is followed by dramatic rate increase. This year, mortgage payments on 41 percent of subprime loans will increase. Additionally, these loans frequently have an interest-only, no principal balloon structure and prepayment penalties. These practices discourage borrowers from paying down their debt and create a series of scenarios that could easily spiral out of control.
>
> To be sure, roughly one in five subprime loans go into foreclosure at least once. This is bad news for individual borrowers, and it is bad news for entire communities, as well. Foreclosures have a domino effect in the community. They depress nearby property values, leading to additional foreclosures. This cycle has devastated for too many low and moderate-income communities in America's cities.

Foreclosure, Predatory Mortgage and Payday Lending in America's Cities: Hearing Before the Subcomm. on Domestic Policy of the Comm. on Oversight and Gov't Reform H.R., 110th Cong. 7 (2007) (statement of Rep. Elijah Cummings, Member, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform).

Rep. Donny Davis of Chicago expressed a similar set of dire circumstances in his district:

> The issue of predatory lending is a serious problem throughout the country and, indeed, in Chicago. In 2003–2004 the number of foreclosures in Chicago failed, for the first time in over a decade, particularly on high-cost loans that had been regulated by the city and State after, I might add, a tremendous amount of community pressure.
>
> Many of the communities in my District are communities where, if economically other neighborhoods sneeze, they get pneumonia. Unfortunately, due to the predatory lending practices of various institutions, the rate of foreclosure on subprime loans is 19.2 percent. This is up 37 percent from approximately 5 years ago . . . .

Committee also spoke to the impact of foreclosures in their cities. They called for increased and more effective regulation and oversight by federal authorities and reforms requiring various levels of collaboration between the stakeholders, including home mortgage industry providers, consumer protection advocates, and state officials. To varying degrees there was agreement that this kind of collaboration and inclusive engagement was necessary to (1) create a home mortgage lending system that would prevent future abuses; (2) realize a common goal in providing fairer and safer financial products that create homeownership opportunities for low and moderate income families; and (3) build family wealth opportunities and create stable communities and neighborhoods for the good of all stakeholders in the home mortgage finance marketplace.[145]

The second part of this House hearing focused on payday loans. Unlike the home mortgage loan, the payday loan is a much smaller loan (i.e., $1,000 or less) with a short duration (i.e., 30 to 90 days), and high interest rates. Targeted consumers are typically low-to-moderate income earners needing emergency funds to cover essential living needs or unexpected emergencies, often living paycheck to paycheck.[146] Proof of a borrower's ability to repay the debt

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> These foreclosures have dramatic effects on the surrounding communities. Foreclosures are associated with increases in abandoned properties and decreased property values. Indeed, for every abandoned home, I understand that the property value of a surrounding home is devalued by $30,000. These effects are particularly harmful to those with the fewest assets. They see the equity that they have worked so hard to put into their homes shrivel up, and they often lack the resources to offset this negative spiral.
>
> Although the number of foreclosures in Chicago increased in both white and non-white neighborhoods, the vast majority of foreclosures on non-Federal Housing Administration loans were neighborhoods in which 80 percent or more of the citizens were minority. In fact, data from the NCRC shows that African American borrowers in the Chicago area were 2.5 times more likely than whites to receive a subprime loan in 2005, with Latino borrowers being 1.82 times more likely to receive a subprime loan.

Id. at 5 (statement of Rep. Donny Davis, Member, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform).

145. Many of the reforms suggested had already been implemented in several communities by collaborative efforts between lenders, consumer advocacy agencies, and state officials to prevent and reduce the growing number of foreclosures occurring and on the horizon. *See generally id*. at 17–21 (statement of James Rokakis, Treasurer, Cuyahoga County, Ohio); *id.* at 24–31 (statement of Inez Killingsworth, President, East Side Organization Project, Cleveland, Ohio); *id*. at 32–39 (statement of William Rinehart, Vice President, Chief Risk Officer, Ocwen Financial Corporation); *id*. at 40–66 (statement of Josh Nassar, Center for Responsible Lending); *id*. at 67–79 (statement of Dan Immergluck, Georgia Institute of Technology); *id*. at 85–100 (statement of Harry Dinham, President, National Association of Mortgage Brokers); *id*. at 177–99 (statement of Jim McCarthy, President, Chief Executive Officer, Miami Valley Fair Housing Center); *id*. at 210–15 (statement of Thomas Fitzgibbon, Jr., Executive Vice President, MB Financial Bank, Rosemount, Illinois).

146. *See id.* at 155–76 (statement of Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America) (Ms. Fox provided an excellent description of the payday loan features and the impact it has on communities where this type of consumer financial product is prevalent.); *see also id*. at 206 (statement of Edward H. Jacob, Manager, Chief Executive Officer,

obligation is generally not required; and he often only needs a checking account, proof of regular income, and some form of identification to qualify for the loan.[147] These loans often become due upon the borrower's next paycheck; in most cases the borrower would not be able to repay the loan and have to renew it, placing the borrower in a debt cycle and resulting loan interest rate exceeding as much as "400 percent annual interest."[148]

Testimony before the Committee indicated that over "$28.2 billion in loans" had been made by payday lenders in 2005, a 100 percent increase within a five year period, with consumers paying approximately $5 billion in fees each year.[149] Moreover, it was noted that the so called "advantages" of payday loans were also problematic, including the limited and loose qualifying loan eligibility and approval requirements and the overwhelming presence of payday lenders in the most vulnerable communities.[150] Recommendations made to the Committee by various participants to address abuses and problems with payday loans and the payday loan industry included a range of solutions that encouraged greater federal and state regulation, better enforcement, and creation of new laws to address abuses, as well as collaborative and innovative solutions from the industry and government for less risky short term loans.[151]

North Side Community Federal Credit Union of Chicago). He describes the payday borrower as one who is not just dealing with a financial emergency but someone who lives "week before paycheck to week before paycheck." *Id.* at 208 (statement of Edward H. Jacob, Manager, Chief Executive Officer, North Side Community Federal Credit Union of Chicago) (emphasis omitted).

> That is the reality of many Americans. And that is why the traditional payday loan is so destructive. They are being offered to customers who continually roll them over because they are unable to pay the loan back when it is due. The repeat customer is the payday lenders most profitable customer.

Id.

147. *Id*.

148. *Id*. at 161 (statement of Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America) ("Interest rates are exorbitant, starting at around 400 percent annual interest."). *See also id*. at 206 (statement of Edward H. Jacob, Manager, Chief Executive Officer, North Side Community Federal Credit Union of Chicago) ("We have seen notes with APR's ranging from 300% to over 900%.").

149. *Id*. at 158, 160 (statement of Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America) (citing Uriah King, Leslie Parrish, and Oxlem Tanik, *Financial Quicksand: Payday Lending Sinks Borrowers in Debt with $4.2 Billion in Predatory Fees Every Year*, CTR. FOR RESPONSIBLE LENDING 9–11 (Nov. 30, 2006)).

150. *Id*. at 256 (statement of Rita Haynes, Chief Executive Officer, Faith Community United Credit Union); *contra id.* at 287–300 (statement of Michael Maloney, Professor of Economics, Clemson University) (asserting that payday loans were not harmful, but important in providing a competitive market for short-term loans and a convenient source for consumers in need of quick cash).

151. *See id*. at 266–86 (statement of Calvin Bradford, National Training and Information Center of Chicago) (offering an assessment of federal agency enforcement of consumer financial protection laws and the need to expand disclosures under several laws including the Community Reinvestment Act, the Home Mortgage Disclosure Act, Fair Housing Act, and Equal Credit Opportunity Act.); *see id*. at 216–44 (statement of David Rothstein, Res. Pol'y Matters Ohio)

From the very start of this hearing Chairman Kucinich noted that the solutions to the failures of the consumer financial products and services marketplace would require cooperation, collaboration, and innovation from industry and consumer advocates, but he cautioned much of the heavy lifting to address the crisis would depend on government intervention:

> Foreclosure and discrimination in lending practices, these are serious problems for American's cities, but in almost every major city there are significant numbers of hard-working Americans who are working to reverse these problems. Among our distinguished witnesses today are some of those Americans. These are individuals and organizations who have created viable alternatives to payday lenders and the foreclosure and subprime mortgage. These alternatives are the link between where we are now, at the brink of a massive wave of foreclosures, to where we want to be, on the road to the Nations' recovery where American families can live in: security physically, emotionally, and financially.
>
> But even with these alternatives, even if these hard-working Americans worked every second of the day, the tide will not be turned, because the magnitude of the problem outstrips even the best of their abilities and efforts. To turn the tide of foreclosures in America's cities, leadership at the Federal Government level is necessary.[152]

In a hearing before the House Committee on Financial Services held specifically to address the creation of an independent federal agency devoted to consumer financial protection, Elizabeth Warren, considered the "intellectual author" behind a federal consumer financial protection agency, noted several reasons such an agency would be the best way to fix the "broken credit market" at the heart of the financial crisis in 2009.[153] By serving as the primary regulator

(describing the weakness and ineffectiveness of state law regulation of payday loans, which are largely supported by the payday loan industry.); *id*. at 245–55 (statement of Fran Grossman, Exec. VP ShoreBank Corp.); *see id.* at 216–44 (statement of David Rothstein, Researcher, Policy Matters Ohio) (recommending that the federal interest rate protection for military borrowers under the Talent-Nelson Amendment be extended to cover all payday loan borrowers.); *see id*. at 204–09 (statement of Edward H. Jacob, Manager, Chief Executive Officer, North Side Community Federal Credit Union of Chicago) (offering testimony about the payday loan alternative (PAL) that his credit union put into place for its consumers, an initiative that was supported by the National Credit Union Administration's Office of Small Credit Union Initiatives).

152. *Id*. at 4 (statement of Rep. Dennis Kucinich, Committee Chair, Subcomm. on Domestic Pol'y of the Comm. on Oversight and Gov't Reform).

153. *Regulatory Restructuring: Enhancing Consumer Financial Products Regulation: Hearing Before the Comm. on Fin. Servs. H.R.*, 111th Cong. (2009) (statement of Elizabeth Warren, Professor of Law, Harvard University). Articles reflecting on Professor Warren's position and concepts for the creation of a separate federal agency with primary regulatory oversight over federal consumer financial protection laws are presented in Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY J. (2007), http://democracyjournal.org/magazine/5/unsafe-at-any-rate/. These can also be found at Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1

of consumer financial protection laws, this agency could more effectively (1) regulate against the issuance of "high risk/high profit" products, like the kind that had been securitized and introduced in the securities investment marketplace and a critical factor leading up to the recession; (2) eliminate burdensome and useless regulations so that safe and transparent products could be created by providers; and (3) encourage innovation and competition between large and small consumer financial products providers to ensure a more competitive and fair marketplace.[154] As Elizabeth Warren stated:

> We need someone in Washington who cares primarily about families, who cares about consumers, who looks at the products not from the point of view exclusively of bank profitability but who looks at these products in a much larger sense about what they mean to the family, what they mean to communities, what they mean to the economy as a whole.[155]

B. The Consumer Financial Protection Bureau: Purpose, Authority and Structure

As noted above, the essential principles of Catholic Social Teaching on social and economic justice as they relate to consumer financial protection, anticipate a system that ensures consumer financial products and services are: (1) accessible to all consumer users, including the most financially vulnerable; (2) responsive to actual consumer needs and do not cause harm; (3) informationally transparent and understandable to every consumer user; and (4) subject to effective and appropriate government regulation and collaborative engagement with all stakeholders, including the consumer finance industry.[156] The Dodd-Frank Wall Street Reform and Consumer Protection Act represents a good example of comprehensive federal legislation that reflects these

(2008)). *See also* Heidi Mandanis Schooner's 2005 article discussing predatory lending. Heidi Mandanis Schooner, *Consuming Debt: Structuring the Federal Response to Abuses in Consumer Credit*, 18 LOY. CONSUMER L. REV. 43, 83 (2005). Professor Schooner addressed the inadequacies of the regulatory oversight of federal consumer financial protection laws that were in place prior to the establishment of the CFPB. Under this system, the various prudential financial institution regulatory agencies (i.e., Federal Deposit Insurance Corporation, Office of the Controller of the Currency, and the Office of Thrift and Supervision) had a dual regulatory oversight for the fiscal safety and soundness of financial institutions, as well as for their compliance with consumer financial protection laws. Professor Schooner pointed out that the failure of effective regulation of consumer financial protection laws under this regulatory structure was largely due to an inherent conflict with the regulators' main oversight of fiscal safety and solvency of the regulated financial institutions. One suggestion she made to rectify the problem included a reassignment of the regulatory oversight of consumer financial protection laws in the hands of one agency. *Id.* at 77–83.

154. *Regulatory Restructuring: Enhancing Consumer Financial Products Regulation: Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. 199–207 (2009) (statement of Elizabeth Warren, Professor of Law, Harvard University).

155. *Id.* at 12 (statement of Elizabeth Warren, Professor of Law, Harvard University).

156. *See supra* notes 99–121 and accompanying text.

requirements and seeks to achieve a more just and fair marketplace for consumer financial products and services.

At the heart of the Act's reform initiatives was the establishment of a new federal agency that would be solely devoted to federal regulation of providers of the consumer financial products and services. Accordingly, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the Consumer Financial Protection Act of 2010, called for the creation of the Consumer Financial Protection Bureau ("CFPB").[157] Up until the creation of the CFPB, federal regulatory, supervision, and enforcement responsibility over federal laws governing consumer financial services and products had been dispersed among seven different federal agencies.[158] It would be this scattered oversight of compliance with and enforcement of federal consumer financial protection laws that would be identified as a significant factor leading to the failures in effective regulation of providers and the resulting Great Recession of 2007–2009.

Among the federal agencies having regulatory, supervisory, and rulemaking authority over the various depository institutions offering many of the consumer financial products and services that were the focus of the Act were the Office of the Comptroller of Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of Thrift Supervision.[159] As prudential regulators of depository institutions such as depository banks, credit unions, and savings and loan banks, these agencies are primarily responsible for oversight of the overall fiscal and

157. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1001 (2010) (codified as 15 U.S.C. § 78o).

158. Dodd-Frank Act § 1011(a) (granting the CFPB the authority to regulate a vast range of consumer financial services and products under "Federal Consumer Financial Law" as defined pursuant to § 1002(14) of the Dodd-Frank Act). The various federal laws that would come within the regulatory duties of the CFPB, known as "enumerated consumer laws" included the Alternative Mortgage Transaction Parity Act of 1982, 12 U.S.C. § 3801 ; Consumer Leasing Act of 1976, 15 U.S.C. § 1667 et seq. ; Electronic Fund Transfer Act of 1977, 15 U.S.C. § 1693 et seq. ; Equal Credit Opportunity Act of 1974, 15 U.S.C § 1691 et seq. ; Fair Credit Billing Act of 1974, 15 U.S.C. § 1601 et seq. ; Fair Credit Reporting Act of 1970, 15 U.S.C § 1681 et seq. ; Homeowners Protection Act of 1998, 12 U.S.C. § 4901 et seq. ; Fair Debt Collection Practices Act of 1977, 15 U.S.C. § 1692 et seq. ; Federal Deposit Insurance Act of 1950, 12 U.S.C. § 1831c–f ; Gramm-Leach Bliley Act of 1999, 15 U.S.C. §§ 6801–6809 ; Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 et seq. ; Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1601 et seq. ; Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601–2617 ; S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. § 5101 et seq. ; Truth in Lending Act of 1968, 15 U.S.C. § 1601 et seq. (2018); Truth in Saving Act of 1991, 12 U.S.C. § 4301 et seq. ; Omnibus Appropriation Act of 2009, Pub. L. 111-8, § 626 ; Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. § 1701 et seq. . This also included regulatory responsibilities transferred to the CFPB from "transferor agencies" including the Board of Governors of the Federal Reserve System, the Federal Depository Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development pursuant to § 1061 of the Dodd-Frank Act.

159. Dodd-Frank Act § 1061.

operational safety and soundness of the nation's regulated depositary institutions. These institutional regulators, however, also had oversight responsibility for their regulated institutions' compliance with federal consumer financial and fair lending laws. In addition to these prudential regulators of depositary institutions, the Federal Trade Commission and the Department of Housing and Urban Development had limited regulatory responsibility over non-depositary institutional lenders offering consumer financial services and products including payday loan lenders, mortgage brokers, and other providers of home mortgage products and services.[160]

It was this dual regulatory responsibility that many viewed as the cause of the failure of the consumer financial regulatory system. It was noted that there was a natural tension in the responsibility the prudential regulators had in the supervision and regulation of the overall financial safety and soundness of depository institutions and their compliance with federal consumer financial protection laws designed to prevent abuse and predatory practices. Many viewed the regulation of consumer financial protection laws as taking a "back seat" to the regulatory responsibility for the fiscal and operation soundness of the regulated institutions.[161] Similarly, the limited and ineffective regulation of non-banks and the home mortgage lending industry was also in need of reform. In his opening remarks before the Senate Committee on Banking, Housing, and Urban Affairs calling for the creation of a separate federal agency devoted solely to consumer financial protection, committee chair, Senator Dodd stated:

> Since the very first hearing before this Committee on modernizing our financial regulatory structure, I have said that consumer protection should be our top priority in our deliberations. Stronger consumer protection could have stopped the crisis before it started mind you. And where were the regulators in all of this?
>
> We know now that for fourteen years, despite a clear directive from the U.S. Congress, the Federal Reserve Board took no action to ban abusive home mortgages. Gaping holes in the regulatory fabric allowed mortgage brokers and bankers to make and sell predatory

160. *Id*.

161. *See Creating a Consumer Financial Protection Agency: A Cornerstone of America's New Economic Foundation*: *Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 111th Cong. (2009); *Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals*: *Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. (2009); *Community and Consumer Advocates' Perspectives on The Obama Administration's Financial Regulatory Reform Proposals*: *Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. (2009); *Regulatory Restructuring: Enhancing Consumer Financial Products Regulation*: *Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. (2009); *The Administration's Proposal to Modernize the Financial Regulatory System*: *Hearing Before the H. Comm. on Banking, Hous., and Urb. Affs.*, 111th Cong. (2009); *The Financial Crisis and the Role of Fed. Regulators*: *Hearing Before the H. Comm. on Oversight and Gov't Reform*, 110th Cong. (2008); *Improving Federal Consumer Protection in Financial Services*: *Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007); *see also supra* note 153 and accompanying text.

> loans to Wall Street that turned into toxic securities and brought our economy to its knees.
>
> That is why many of us call for the creation of an independent consumer protection agency whose sole focus is the financial well-being of consumers, an agency whose goal it is to put an end to lending practices that have ripped off far too many American families . . . .[162]

The CFPB was the resulting agency to facilitate this goal, created within the Federal Reserve Board ("FRB") and funded through the FRB's budget, while at the same time functioning independently of the FRB.[163] The purpose

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162. *Creating a Consumer Financial Protection Agency: A Cornerstone of America's New Economic Foundation*: *Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 111th Cong. 2–3 (2009) (statement of Chris Dodd, Committee Chair, Comm. on Banking, Hous., and Urb. Affs.). See also Timothy Geithner's statement on priorities of the reforms proposed by the Obama Administration:

> Specifically, we propose removing from the Federal Reserve and other regulators oversight responsibility for consumers. Historically in those agencies, consumer interests were often perceived to be in conflict with the broader mandate of the institutions to protect safety and soundness.
>
> . . . .
>
> We propose the establishment of a Consumer Financial Protection Agency to serve as the primary Federal agency looking out for the interests of consumers of credit, savings, payments, and other financial products. This agency will be able to write rules that promote transparency, simplicity, and fairness, including standards for standardized, simple, plain vanilla products that have straightforward pricing.

Examining the Admin.'s Proposal to Modernize the Finan. Regul. Sys.: *Hearing Before the Subcomm. on Banking, Hous., and Urb. Affs.*, 111th Cong. 7–8 (2009) (statement of Timothy Geithner, Secretary, Department of Treasury). See also the statement of Michael Barr, Assistant Secretary of Financial Institutions, Department of Treasury:

> We all aspire to the same objectives for consumer protection regulation: independence, accountability, effectiveness, and balance. The question is how to achieve them. A successful regulatory structure for consumer protection requires a focused mission, marketwide coverage, and consolidated authority.
>
> Today's system has none of these qualities. It fragments jurisdiction and authority for consumer protection over many regulators, most of which have higher priorities than protecting consumers. Non-banks avoid Federal supervision; no Federal consumer compliance examiner lands at their doorsteps. Banks can choose the least restrictive supervisor among several different banking agencies. Fragmentation of rule writing, supervision, and enforcement leads to finger-pointing in place of action and makes the action that is taken less effective.

Creating a Consumer Financial Protection Agency: A Cornerstone of America's New Economic Foundation: Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs., 111th Cong. 6–7 (2009) (statement of Michael Barr, Assistant Secretary of Financial Institutions, Department of Treasury).

163. Dodd-Frank Act § 1101(a). The structure of the resulting agency was the focus of significant debate in Congress, largely along partisan lines. As initially proposed under H.R. 4173, the agency was to be a separate, stand-alone federal agency. The opposing view was that a new agency was not required and that the effort to address the ineffective regulatory structure was to

of the CFPB as stated under the Act is to, "implement and, where applicable, enforce Federal consumer financial law consistently for *the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that the markets for consumer financial products and services are fair, transparent, and competitive.*"[164] The general objectives of the CFPB are: (1) to ensure that consumers receive "timely and understandable information" regarding consumer financial services and products so they are able to make responsible decisions when selecting services and products to meet their financial needs; (2) to protect consumers from "unfair, deceptive, or abusive acts and practices" and discrimination; (3) to regularly identify and address

keep the regulatory oversight for consumer financial protection within an existing federal agency such as the FRB. For a sense of the different views on whether the reform measure would be best achieved through a newly created independent agency or by keeping the bifurcated regulatory structure within existing banking regulatory agencies, see *Regulatory Restructuring: Enhancing Consumer Financial Products Regulation: Hearing Before the Comm. on Financial Services H.R.*, 111th Cong. 199–207 (2009). The CFPB was a compromise solution, created as a bureau within the FRB, which was adopted in the Senate Bill. S. § 3217. The CFPB is led by a "director" that serves a five-year term, nominated by the President and confirmed by the Senate. Dodd-Frank Act § 1011(b), (c). From its inception, the constitutionality of the structure and, in particular, the independence of the agency has been raised and the subject of litigation. Much of this has been due to the autonomy of the bureau, the director, and its officers under the Act. This includes restricting the FRB from intervening in matters before the CFPB; its enforcement and examination authority; any appointment, removal, or giving direction to officers or employees of the CFPB; any merger or consolidation of the powers of the CFPB; or exercising any right to approve or review orders or rules of the CFPB. Dodd-Frank Act § 1012(c). Moreover, the agency's many activities before Congress are protected from pre-approval or review by "any officer or agency" of the United States unless it is made clear that the activities reflect the views of the CFPB director or its officers. Dodd-Frank Act § 1012(c)(4). Another aspect of the autonomy of the CFPB is in its funding from the Federal Reserve System and not through Congress; its budget is based on a certain percentage of the annual operating expenses of the FRB. Dodd-Frank Act § 1017. The constitutionality of the removability of the CFPB director only by the President for cause was argued before the Supreme Court on March 3, 2020, in Seila Law LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183 (2020) (A Court majority held that the removal restriction of the director in the Act was unconstitutional, in violation of Article II of the Constitution. However, the Court did not find the structure of the CFPB to be unconstitutional. Thus, allowing it to continue its operations.). *See generally* Roberta Romano, *Does Agency Structure Affect Agency Decisionmaking? Implications of the CFB's Design for Administrative Governance*, 36 YALE J. REG. 273 (2019); Eric Pearson, *A Brief Essay on the Constitutionality of the Consumer Financial Protection Bureau*, 47 CREIGHTON L. REV. 99 (2013); *cf.* Hosea H. Harvey, *Constitutionalizing Consumer Financial Protection: The Case for the Consumer Financial Protection Bureau*, 103 MINN. L. REV. 2429 (2019). *See also* John Villa & Ryan Scarborough, *The Law of Unintended Consequences: How the CFPB's Unprecedented Legislative Authority and Enforcement Approach Has Invented Increasing Challenges*, BANKING & FIN. SERVS. POL'Y REP. (July 2016), https://www.wc.com/portalresource/lookup/poid/Z1tOl9NPluKPtDNIqLMRVPMQiLsSwC3Dm83!/document.name=/Banking%20&%20Fin%20Ser_%20July%202016_LawofUnintendedConsequences_HowtheCFPB%E2%80%99sUnprecedentedLegislativeAuthority_J.Villa,%20R.Scarborough_Reprint.pdf.

164. Dodd-Frank Act § 1021(a) (emphasis added); *see* discussion *supra* note 158 (listing the various federal consumer financial protection laws that the CFPB has authority to regulate and enforce).

unnecessary and burdensome consumer financial protection regulations; (4) to see that the enforcement of federal consumer financial laws are consistently and fairly implemented, and promote fair competition among providers; and (5) to ensure that the marketplace for these products and services are transparent, accessible and innovative.[165] The general functions of the CFPB to support these objectives include: (1) supervisory, regulatory, and enforcement powers over regulated providers;[166] (2) issuance of rules, orders, and guidelines to implement federal consumer financial laws;[167] (3) establishment of consumer financial literacy programs;[168] (4) oversight over consumer complaints, including investigation and responding to complaints; and (5) monitoring and researching consumer financial products and services to provide consumers information about risks or harms, as well as proper functioning, of products and services within the market place.[169] This regulatory authority would not only cover insured depositary institutions but also non-depository bank organizations providing consumer financial products and services that were previously unregulated at the federal level, including consumer mortgage loan originators, brokers, servicers, loan, and foreclosure service providers, private education loan providers, and payday lenders.[170]

To facilitate the purposes, objectives, and functions of the CFPB, several offices and units were included as a part of the bureau structure. There are three special "functional" units within the CFPB: (1) a Research Unit, focusing on developments and trends in the consumer financial markets, accessibility to underserved communities, disclosures and information addressing consumer awareness and understanding of the costs, use, risks, and benefits of the individual consumer financial products and services;[171] (2) a Community Affairs Unit, created to serve underserved communities in terms of providing "information, guidance, and technical assistance regarding the offering and

165. Dodd-Frank Act § 1021(b)(1)–(4).

166. Dodd-Frank Act § 1021(c)(4).

167. Dodd-Frank Act § 1021(c)(5).

168. Dodd-Frank Act § 1021(c)(1).

169. Dodd-Frank Act § 1021(c)(3).

170. Dodd-Frank Act §§ 1023(a), 1024(a), 1025(a). Several business activities exempted from the Bureau's authority include those of providers of consumer credit and financing that are insignificant to the businesses' activities, or where the business is too small to require regulation. The listed businesses include merchants and retailers of non-financial goods and services, real estate agents and brokerages, manufacturers or modular home retailers, accountants and tax return preparers, attorneys and state regulated insurance companies, except to the extent their credit services fall within federal consumer financial laws that are subject to the regulatory authority of the Bureau. Dodd-Frank Act § 1027(a)–(m). Motor vehicle dealers that are "predominately engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both" are also generally exempted from the Bureau's authority. This exemption does not extend to consumer financial products and services of dealers subject to federal consumer financial laws as they relate to real estate financing for the purchase of manufactured or modular homes or providing direct financing toward the purchase or leasing of motor vehicles. Dodd-Frank Act § 1029(a)–(b).

171. Dodd-Frank Act § 1013(b)(1).

provision of consumer financial products or services;"[172] and (3) a Consumer Complaints Unit, to establish a consumer complaints processing system through a toll-free number and website, maintain a data base to track complaints, and prepare annual reports for Congress regarding complaint activity and resolution.[173] The CFPB Director was mandated to establish various administrative offices: (1) the Office of Fair Lending and Equal Opportunity, tasked to oversee compliance with consumer protection laws governing fair, equitable and nondiscrimination in credit access for individuals and communities;[174] (2) the Office of Financial Education, to create consumer financial literacy programs;[175] (3) the Office of Service Member Affairs, focused on predatory lending practices concerning military service members and their families;[176] and (4) the Office of Financial Protection for Older Americans, similarly, focusing financial literacy for individuals aged sixty-two or older and predatory and abusive consumer financial practices targeting the elderly.[177]

Under the Act, the CFPB is required to submit semi-annual reports to the Senate Committee on Banking, Housing and Urban Affairs, the House Committee on Financial Services, and the House Committee on Energy and Commerce; and the Director is required to appear before these committees to address any issues concerning the reports.[178] The reports are to address a range of topics including problems consumers face in obtaining financial products and services; complaints received about consumer financial products and services; rules, orders and initiatives adopted and issued by the bureau for depository institutions and other covered persons; public supervisory and enforcement actions the bureau was party to during the year preceding the report; and its efforts to ensure fair lending practices.[179]

C. The Consumer Financial Protection Bureau: Economic Justice in Action

The most effective way to understand the scope of activities the CFPB engages in to carry out its legislative mission and authority is through the various annual reports its offices submit to Congress and the semi-annual reports the Director submits to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committees on Financial Services and Energy and

172. Dodd-Frank Act § 1013(b)(2).

173. Dodd-Frank Act § 1013(b)(3).

174. Dodd-Frank Act § 1013(c).

175. Dodd-Frank Act § 1013(d).

176. Dodd-Frank Act § 1013(e).

177. Dodd-Frank Act § 1013(g).

178. Dodd-Frank Act § 1016(a)–(b). In addition to the reports required by the CFPB, several of the special offices are required to submit annual reports to Congress and the Senate Committee on Banking, Housing and Urban Affairs and the House Committee of Financial Services of their activities, including the Bureau's Office of Fair Lending and the Office of Financial Education. Dodd-Frank Act § 1013(c)–(d).

179. Dodd-Frank Act § 1016(c).

Commerce.[180] The semi-annual reports from the Director provide an overview of the work of the CFPB in any given year. From this overview of CFPB activities, one can see how the activities of its offices and units in carrying out the objectives and functions of the CFPB, as well as the overall structure of the CFPB, make it an agency that can be identified as possessing many of the same concerns for social and economic justice that are prescribed by Catholic Social Teachings.

As stated in the statutory purpose of the CFPB, it is the primary federal agency dedicated to protect consumer users from predatory practices, products and services in the consumer financial services marketplace, and to enhance and improve the marketplace in terms of access, transparency, and fairness in products and services.[181] To achieve this mission it has regulatory oversight of a range of providers of consumer financial products and services that are essential to individuals and families. Accordingly, the CFPB is described as standing "on the side of consumers and [to] ensure they are treated fairly in the financial marketplace" and thus, "focused on making consumer financial markets work better for the American people."[182] Through its various statutory responsibilities under the Act, it has advanced a broad range of consumer engagement and outreach initiatives, regulatory reforms to improve consumer financial products and service markets, consistency in the supervision and enforcement of all regulated entities to promote fair market competition, and promoted greater consumer access, transparency, and market innovation.[183]

The concepts of Catholic Social Teaching on economic justice previously identified as essential to a fair and just consumer financial products and services marketplace include:

> 1. Access to consumer financial products and services for all members of society, including the most vulnerable individuals and families;
>
> 2. Creation of financial products and services that are responsive to actual consumer needs, and that do not cause harm to consumer users;
>
> 3. Education and greater literacy about the responsible use of consumer financial products and services; and
>
> 4. Joint responsibility between the state and industry in ensuring the provision of fair consumer financial products and services.[184]

The following description of the activities and work of the CFPB and its organizational structure reflect the kind of system that can accomplish the goals

180. *See supra* notes 178–79 and accompanying text.

181. Dodd-Frank Act § 1021(a).

182. CONSUMER FIN. PROT. BUREAU, SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU, (Spring 2016), https://files.consumerfinance.gov/f/documents/Report.Spring_2016_SAR.06.28.16.Final.pdf.

183. Dodd-Frank Act § 1021(b).

184. See *supra* notes 99–121 and accompanying text.

of Catholic Social Teaching on economic justice in a consumer financial products and services marketplace.

1. Consumer Financial Protection in Action: Resolving Complaints and Identifying Marketplace Problems and Real Consumer Needs.

Through its Consumer Education and Engagement Division,[185] the CFPB has implemented a range of initiatives, programs, and services devoted to processing and understanding the nature of consumer complaints about the consumer finance marketplace.[186] One of the services the CFPB offers to assist consumers in resolving complaints and the identification of problematic products and services (i.e., mortgages, payday loans, student loans, automobile loans, deposit account services, debt collection, etc.) is its *Consumer Response* service.[187] Complaints, or descriptions of consumer experiences, are typically submitted directly to the CFPB website, although consumers may submit complaints via a toll-free telephone line.[188] The CFPB transfers the complaints to the provider for a response, which must be responded to in fifteen days and resolved within sixty days.[189] The complaints are tracked by the CFPB; and the consumer complainant is permitted to submit a response to the CFPB about the adequacy or inadequacy of the provider response.[190] The CFPB does not verify all the facts alleged in complaints;[191] providers are given the opportunity to confirm a commercial relationship with the complainant before it is published in the database.[192]

185. *Consumer Educ. and Engagement Division*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/consumer-education-engagement/ (last visited Jan. 31, 2020).

186. Dodd-Frank Act § 1013(b)(3)(A). This requires the establishment of an administrative unit within the CFPB that provides "a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services." *Id.* Additionally, through its Office of Service Member Affairs and Office of Financial Protection for Older Americans, the CFPB is able to monitor complaints specific to these consumer groups. Dodd-Frank Act § 1013(e)(1)(B) & (g)(3)(E); *see also,* Dodd-Frank Act § 1021(c)(2)–(3) (describing the "primary functions" of the CFPB which include "collecting, investigating, and responding to consumer complaints" and "collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets").

187. *Consumer Complaint Database*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/ (last visited Jan. 31, 2020).

188. *Learn How the Complaint Process Works*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/complaint/process/ (last visited Apr. 21, 2020).

189. *Id.*

190. *Id.*

191. *Consumer Complaint Database*, *supra* note 187 (see subheading "Things to know before you use the database").

192. *Id.* (see subheading "Things to know before you use the database").

Complaint data is made available to the public on a monthly basis through its *Consumer Complaint Database*.[193] The data collected enables the CFPB to track patterns of problems with various consumer products and services, specific providers, and to prioritize areas where rules and guidelines are needed, as well as targeting its supervision and enforcement activities:[194]

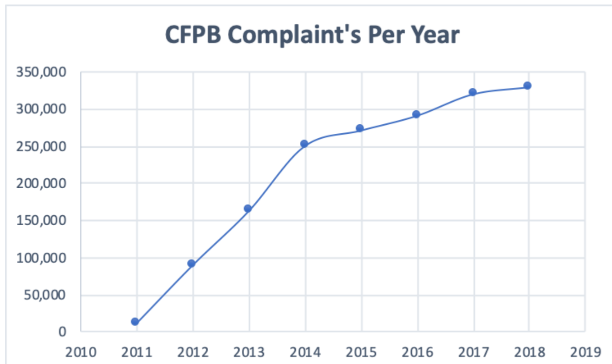
> Consumer Response analyzes consumer complaints, company responses, and consumer feedback to accomplish two primary goals. First, these analyses enable Consumer Response to assess the accuracy, completeness, and timeliness of company responses. Second, these analyses ensure that the Bureau, other regulators, consumers, and the marketplace have reliable and useful information about consumer financial products and services. Consumer Response uses a variety of approaches to analyze consumer complaints, including cohort and text analytics, to identify trends and possible consumer harm.
>
> The Bureau uses insights gathered from complaint data and analyses to help understand problems consumers are experiencing in the marketplace and the impact of those experiences on their lives, to develop tools to educate and empower people to know their rights and protect themselves, to scope and prioritize examinations and ask targeted questions when examining companies' records and practices, and to inform enforcement investigations to help stop unfair practices as the Bureau identifies them. The Bureau also shares consumer complaint information with prudential regulators, the FTC, other federal agencies, and state agencies and publishes complaint data and reports to ensure other regulators, consumers, and the marketplace have the complaint information needed to

193. *Id.* (see subheading "About the database"). Information provided in the data base is reported based on the type of product or service that is the subject of the complaint; the issue or type of conduct that is the basis of the complaint; a consumer narrative, with consent of the consumer; the identification of the provider, and the provider's response and consumer response. For example, one of the common types of services that is the subject of complaint involves debt collection services and the type of conduct that is reported may include problems with how debt collectors are communicating with consumers, problems with disclosure verifications of debt, threating illegal actions against the consumer, making false statement or representations, or improper sharing of information. *Id.*

194. *How We Use Complaint Data*, CONSUMER FIN. PROT. BUREAU, (see subheading "Ways we use complaint data") https://www.consumerfinance.gov/complaint/data-use/ (last visited Apr. 21, 2020). "To facilitate . . . supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State Agencies." Dodd-Frank Act § 1013(b)(3)(D); *see also,* Dodd-Frank Act § 1022(c) (noting the importance of monitoring activities in the marketplace to support the Bureau in its rulemaking authority).

improve the functioning of the consumer financial markets for such products and services.[195]

In fact, the trajectory of complaints the CFPB has received since July of 2011, when it started the consumer complaint response database, has risen each year. The numbers of complaints received by the CFPB between July 2011 through 2018 are as follows: 13,210 (2011); 91,000 (2012); 163,700 (2013); 250,700 (2014); 271,600 (2015); 291,400 (2016); 320,200 (2017); 329,800 (2018).[196] This approximates over 1.7 million complaints received through Fiscal Year ("FY") 2019. The following graph illustrates the annual increase in complaints:



Other initiatives the CFPB uses to identify issues, problems and trends in the marketplace include public outreach through its Office of Community Affairs, Office of Servicemember Affairs, and Office for Older Americans.[197] Additional outreach to identify marketplace trends, concerns and practices is achieved through the work of the Consumer Advisory Board as required under the Act:

195. CONSUMER FIN. PROT. BUREAU, SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU 27–28 (2019), https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_spring-2019.pdf.

196. Pursuant to the CFPA the Director is required to submit an annual report to Congress about the consumer complaints received annually. The report includes information detailing "information and analysis" about compliant numbers, types, and resolution. Dodd-Frank Act § 1013(b)(3)(C). See the Consumer Response Annual Reports for March 2012–March 2019. *Research and Reports*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/research-reports/ (last visited Apr. 21, 2020) (search "Consumer Response Annual Report" to find Annual Reports for March 2012–March 2019).

197. The Office of Community Affairs has the responsibility of "providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities." Dodd-Frank Act § 1013(b)(2). Through the Offices of Servicemember Affairs and the Office for Older Americans, the CFPB is able to monitor the complaints specific to these consumer communities. Dodd-Frank Act § 1013(e)(1)(b) & (g)(3)(E).

> The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.[198]

Its membership includes "experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans . . . ."[199]

2. Consumer Financial Protection in Action: Financial Literacy

As noted above, one of the objectives of the Act is to ensure that "consumers are provided timely and understandable information to make responsible decisions about financial transactions."[200] Accordingly, the CFPB is specifically required to develop and "[conduct] financial education programs."[201] Its Office of Financial Education was established to develop and implement programs and initiatives to "educate and empower consumers to make better informed financial decisions."[202]

Several online interactive tools to assist consumer financial literacy are available and include: *Ask CFPB*, which allows consumers to submit questions directly to the CFPB online about a wide-range consumer financial products and services;[203] *Paying for College* assists students and families with options for student financial aid, assessing costs of student loans and ways to optimize payment of student loans;[204] *Owning a Home* assists individuals on how to find an affordable home and loan options and information about closing on a home mortgage;[205] *Planning for Retirement* assists individuals who are planning or have retired with questions concerning Social Security benefits, protecting

198. Dodd-Frank Act § 1014(a).

199. Dodd-Frank Act § 1014(b).

200. Dodd-Frank Act § 1021(b)(1).

201. Dodd-Frank Act § 1021(c)(1).

202. Dodd-Frank Act § 1013(d)(1).

203. The list of products and services consumers may submit questions about includes auto loans, bank accounts, credit cards, credit reports and services, debt collection, fraud and scams, money transfer services, mortgages, payday loans, prepaid cards, reverse mortgages, and student loans. *See Ask CFPB*, CONSUMER FIN. PROTECTION BUREAU, https://www.consumerfinance.gov/ask-cfpb/ (last visited Feb. 3, 2020).

204. *Paying for College*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/paying-for-college/ (last visited Feb. 3, 2020).

205. *Buying a House: Tools and Resources for Homebuyers*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/owning-a-home/ (last visited Feb. 3, 2020).

retirement pension, and using home equity in retirement years;[206] *Managing Someone Else's Money,* a resource to help inform older adults and their caregivers about scams targeted at seniors;[207] and *Navigating the Military Financial Lifecycle,* a resource for servicemen and women and their families to manage their finances while on active duty and federal protections for military service members and their families.[208]

Many of these resources are available for use and adaptation by state and community organizations, and practitioners, who are often on the front line in assisting financially distressed consumers. There are also resources to introduce financial literacy to youth to help them achieve financial security and wealth as adults. The material is targeted to students from school grades K-12 and can be used by parents, educators, libraries, and other community organizations covering a range of topics including how to earn money, managing money, saving money and the various consumer financial products and services that assist individuals in the choices they will make in managing and spending their money.[209]

3. Consumer Financial Protection in Action: Rulemaking, Supervision, and Enforcement

Another core function of the CFPB is to consolidate and provide effective regulatory oversight of federal consumer financial protection laws and regulations.[210] Accordingly, the rulemaking, supervisory, and enforcement activities of the Bureau are critical evidence of how effective it is in achieving its legislative mandate under the Act to protect consumers against unfair and predatory practices in the marketplace that violate a vast array of federal consumer financial protection laws. Pursuant to the Act, the Bureau must report to Congress about the various rules, orders, and other initiatives it proposes and finalizes within a year.[211]

The regulations the CFPB has issued to implement the broad array of federal consumer financial protection laws that fall within its regulatory responsibility are available on its website and include the regulatory and public

206. *Planning for Retirement*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/consumer-tools/retirement/ (last visited Feb. 3, 2020).

207. *Managing Someone Else's Money*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/ (last visited Feb. 3, 2020)

208. *Navigating the Military Financial Lifecycle*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/consumer-tools/military-financial-lifecycle/ (last visited Feb. 3, 2020).

209. *Youth Financial Education*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/practitioner-resources/youth-financial-education/ (last visited Feb. 3, 2020).

210. Dodd-Frank Act §§ 1021(a), 1021(c)(4), 1022.

211. Dodd-Frank Act § 1016(b) & (c)(3).

commentary history of each rule it has implemented.[212] Also included on the website are guidance orders the CFPB has issued to assist regulated providers in their compliance with the various consumer financial protection laws and regulations.[213]

As noted above, the scope of the CFPB's supervisory/examination authority over consumer financial providers is vast and includes large depository institutions (i.e., banks, thrifts, and credit unions) with assets of more than $10 billion;[214] as well as nonbanks offering critical consumer financial services such as mortgage originators and servicers, payday lenders, private student loan providers, and nonbanks that provide consumer financial products and services as the CFPB designates.[215] Each year the CFPB issues reports entitled *Supervisory Highlights* that include an overview of its findings from its supervision and examinations activities as required under the Act,[216] which provides information to the industry about compliance issues found in its supervision and examination of providers.[217]

The Act provides the CFPB with a range of enforcement powers that include conducting administrative hearings and adjudication hearings for cease-and-desist orders and other charges in violation of consumer financial protection laws and regulations.[218] The CFPB is authorized to bring civil actions in federal district courts for violations of consumer financial protection laws and regulations and to enforce its orders when necessary.[219] There are a range of legal and equitable remedies available under the Act for violations, either before the CFPB or in the courts, which include: rescission or modification of contracts; refund or return of money or real estate; restitution; remedies based on unjust enrichment; compensatory damages; publication of violations;

212. *Code of Federal Regulations*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/code-federal-regulations/ (last visited Feb. 4, 2020). The various consumer financial protection laws that fall within the rulemaking authority of the CFPB include provisions of the Consumer Financial Protection Act; Equal Credit Opportunity Act; Home Mortgage Disclosure Act; Alternative Mortgage Parity Act; Electronic Fund Transfers Act; Fair Debt Collection Practices Act; S.A.F.E. Mortgage Licensing Act; Interstate Land Sales Full Disclosure Act; Truth in Lending Act; Credit Card Accountability Responsibility and Disclosure Act of 2009; Fair Credit Reporting Act; Real Estate Settlement Disclosure Act; and Truth in Savings Act.

213. *Supervisory Guidance*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/ (last visited Feb. 4, 2020).

214. Dodd-Frank Act § 1024.

215. Dodd-Frank Act §§ 1025, 1026.

216. Dodd-Frank Act § 1016(c)(5)–(6).

217. *Supervisory Highlights*, CONSUMER FIN. PROTECTION. BUREAU, https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights/ (last visited Feb. 4, 2020). *Supervisory Highlights* findings only identify parties from public enforcement actions.

218. Dodd-Frank Act § 1053(a).

219. Dodd-Frank Act §§ 1053(d), 1054.

restriction of future activities; and civil money penalties.[220] The CFPB can act on its own or with other agencies in its enforcement activities.[221]

The Act required the CFPB to create a Civil Penalty Fund that will benefit consumers who have been victims of consumer financial products, services, and practices in violation of the consumer financial protection laws and regulations. The civil penalties and fines collected by the CFPB are the source of this special victim's fund.[222] From this fund, the CFPB is required to distribute proceeds to victims of the kinds of activities for which violations were imposed. If victims cannot be located, the proceeds are to be used for the CFPB's consumer education and financial literacy initiatives and programs.[223] According to CFPB annual financial reports for FY 2013–FY 2019, the total of civil penalties and fines it collected in this fund was approximately $1.2 billion and the total amount distributed from this fund was approximately $950 million.[224] The CFPB has regularly reported on total amount of money recovered from judgment awards through public litigation before the courts and its administrative imposition of civil penalty funds under the Act. By the end of 2019, the CFPB reported that approximately $13.2 billion in relief had been awarded through its public litigation and administrative enforcement activities, and that over 35 million consumers have benefitted from this relief since its inception.[225]

It is important to point out that the vast amount of the public enforcement activity brought by the CFPB against providers in violation of consumer financial protection laws and the amount of awards received were mostly achieved between 2011 and 2016 under the Obama Administration's CFPB Director Richard Cordray. Based on a study conducted by the Consumer Federation of America in 2019, it pointed out that the decline in the enforcement activities of the CFPB occurred during the Trump Administration under Acting

220. Dodd-Frank Act §1055(a). Punitive or exemplary damages are prohibited forms of relief under the Act. Dodd-Frank Act §1055(b).

221. Dodd-Frank Act §1052.

222. Dodd-Frank Act §1017(d)(1).

223. Dodd-Frank Act §1017(d)(2).

224. Based on data from the CFPB Financial Reports from FY 2013-FY 2019, the amounts collected in and distributed to victims from this fund are as follows: FY 2013: $49.5m collected, (no distributions reported); FY 2014: $77.5m collected, $950k distributed; FY 2015: $183.1m collected, $23.3m distributed; FY 2016: $182.1m collected, $73.4m distributed; FY 2017: $42.5m collected, $40.9m distributed; FY 2018: $522.8m collected, $50.089m distributed; FY2019: $131.2m collected, $127.3m distributed. See Financial Reports of the Bureau of Consumer Financial. *Research and Reports*, CONSUMER FIN. PROTECTION. BUREAU, https://www.consumerfinance.gov/data-research/research-reports/ (last visited Apr. 21, 2020).

225. *We're the CFPB*, CONSUMER FIN. PROT. BUREAU, https://web.archive.org/web/20191209215506/https://www.consumerfinance.gov/ (last visited April 21, 2020).

Director Mick Mulvaney and Director Kathy Kraninger.[226] The study compared enforcement activities occurring between the Obama and Trump Administrations in areas of consumer financial products and services that are most complained about by consumers including: credit reporting, debt collections, home mortgages and student loans, which were significant in the CFPB's enforcement activities. Based on CFPB data, the study found that CFPB's overall enforcement activity had sharply declined by 80% from its activity in 2015 and that the average monetary relief to victims of the abuses of consumer protection laws and regulations were down by 96% per case.[227] This decline was quite telling about the agency's enforcement priorities under the Trump Administration in light of the fact that the consumer complaint volume continued to increase.[228] The study concludes:

> Under the Trump Administration, the number of publicly announced enforcement actions brought by the Consumer Financial Protection Bureau is in steep decline. These reductions in law enforcement activity are occurring in markets with the most consumer complaints and the largest aggregate volume of credit. Moreover, cases announced and resolved have provided far less consumer restitution to victims of illegal activity. Overall, the number of enforcement actions in 2018 declined by 80% from their peak in 2015, and average per-case monetary relief for victims was down by 96%. The Bureau's law enforcement track record also shows wide gaps, including providing no restitution to victims of

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226. Christopher L. Peterson, *Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline*, CONSUMER FED. AM. 1 (March 11, 2019), https://consumerfed.org/wp-content/uploads/2019/03/CFPB-Enforcement-in-Decline.pdf.

227. *Id*. at 15–16.

> From 2012 through 2015 the number of public CFPB enforcement cases grew steadily as the agency established its procedures and hired staff. . . . [T]he Bureau reached its peak productivity, as measured by the number of cases announced per year, with 55 cases in 2015. In 2016 and 2017 the Bureau continued to announce between 3 and 3.5 cases per month. However, following President Trump's appointment of Acting Director Mulvaney, the number of CFPB enforcement cases declined dramatically to less than one case per month, with only 11 cases announced in 2018. Overall, the number of public enforcement cases announced in 2018 declined by 80% from the Bureau's peak productivity in 2015.

Id. at 15

228. *See supra* notes 193-196 and accompanying text. For commentary about the work of the CFPB under the Trump Administration see Nicholas Confessore, *Mick Mulvaney's Master Class in Destroying a Bureaucracy from Within*, N.Y. TIMES (April 16, 2019), https://www.nytimes.com/2019/04/16/magazine/consumer-financial-protection-bureau-trump.html; Emily Stewart, *The Government's Top Consumer Watchdog Hasn't Taken a Single Enforcement Action Since Trump's Pick Took Over*, VOX (April 10, 2018), https://www.vox.com/policy-and-politics/2018/4/10/17218774/mick-mulvaney-cfpb-consumer-wells-fargo-equifax; Jim Puzzanghera, *Is the Consumer Financial Protection Bureau the Most Powerful Federal Agency Ever? That's Debatable*, L.A. TIMES (Apr. 26, 2018). https://www.latimes.com/business/la-la-fi-cfpb-authority-20180426-story.html.

> illegal credit reporting practices and unlawful debt collection tactics. Under the Trump Administration's leadership, the nation's primary consumer financial protection agency has not announced or resolved a single student loan or fair lending case. Even more worrisome, the Bureau has developed a pattern of agreeing to settle enforcement investigations without providing restitution to consumers harmed by deceptive practices and other illegal activity.[229]

4. Consumer Financial Protection in Action: Engaging Stakeholders

The organizational structure of the CFPB includes a Division of External Affairs that has several offices, units, advisory boards, and councils that support the CFPB in its responsibility to work with all stakeholders in the consumer finance marketplace. This structure enables the CFPB to identify practices and trends in the marketplace, good and bad alike, and to facilitate collaborative and collective resolution of any problem areas. The Consumer Advisory Board, mentioned above, is one of these entities; it is specifically created under the Act for the purpose of advising the Board in carrying out the legislative function and to "provide information on emerging practices in the consumer financial products or services industry."[230] The membership of the Consumer Advisory Board is comprised of a range of stakeholders representing both the industry providers of consumer financial services and products and the consumer users most significantly impacted by these services and products.[231]

There are also three Advisory Councils to assist in this inclusive outreach to the industry.[232] One of which is the Credit Union Advisory Council and the other is the Community Bank Advisory Council. These advisory councils enable the Bureau to include input, feedback, and perspectives from the credit union and community bank industry on policy, rulemaking, and industry trends as it implements policies and rules concerning the consumer financial products and services. The councils are particularly important because they allow the Bureau to acquire important input about market/industry trends and customer experiences from institutions that do not fall within its supervision/examination activities, that is, institutions typically falling under the $10 billion in assets threshold for supervision/examination review. The third council is the Academic Research Council, established to assist the Bureau on matters concerning its strategic research agenda, research methodologies, and cost benefit analysis methodology used in its research on a range of matters

229. Peterson, *supra* note 226, at 27–28.

230. Dodd-Frank Act § 1014(a).

231. *See supra* notes 198–99 and accompanying text.

232. Dodd-Frank Act § 1012(a)(3) (authorizing the Bureau to establish divisions or other offices to assist it in meeting its responsibilities); *see* Consumer Fin. Protection. Bureau, *Charter of the Bureau's Credit Union Advisory Council*, (2019), https://files.consumerfinance.gov/f/documents/cfpb_cuac_charter-amendment_2019.pdf; Consumer Fin. Prot. Bureau, *Charter of the Bureau's Community Bank Advisory Council* (2019), https://files.consumerfinance.gov/f/documents/cfpb_cbac_charter-amendment_2019.pdf.

concerning consumer financial products and services related to its responsibilities.[233] Membership includes economists and academic experts. Additional offices within the Division of External Affairs include the Office of Financial Institutions and Business Liaison, working with consumer financial products and services businesses and trade associations to "ensure that they are informed about and have an opportunity to impact the Bureau's work;" the Office of Intergovernmental Affairs, which engages with other domestic and international governmental agency stakeholders for the Bureau; and the Office of Public Engagement and Community Liaison, which does outreach to nonprofit consumer finance concerned organizations.[234]

Finally, the Bureau has an Office of Innovation, which is purposed to "work with companies, consumer groups, regulators, and other stakeholders to promote competition, innovation, and consumer access in the financial marketplace."[235] This office was created to satisfy the statutory mandate of the Bureau to eliminate "outdated, unnecessary, or unduly burdensome regulations" and to ensure that the marketplace operates with transparency and efficiency and that it helps "facilitate access and innovation" within the industry as it relates to fair, accessible, and competitive consumer financial products and services offered in marketplace.[236]

CONCLUSION

A core value of the Catholic Church is its concern for the preservation of human dignity and the common good. With this fundamental value in mind, Catholic Social Teaching on economic justice demands our concern for the economic welfare and needs of all members of society, particularly the most vulnerable individuals and families in our communities. This includes the financial needs of the individuals and families. Central to this is that they have access to fair and safe consumer financial products and services essential to meeting the daily and most basic needs of individuals and their families. That is, financial products and services, such as home mortgage products, credit/debit cards, payday loans, automobile loans, credit reporting services, and student loans, to name a few.

According to Catholic Social Teaching, these consumer financial products and services must not be profit-only in design and result in financial injury to or ruin of consumer users. This requires ensuring that abusive and predatory products and services be eliminated from the market, and that safe products and

233. Consumer Fin. Prot. Bureau, *Charter of the Bureau's Academic Research Council* (2019), https://files.consumerfinance.gov/f/documents/cfpb_Academic-Research-Council-charter_2019.pdf.

234. *External Affairs*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/external-affairs/ (last visited Feb. 4, 2020).

235. *Innovation*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/about-us/innovation/ (last visited Feb. 4, 2020).

236. Dodd-Frank Act § 1021(b)(3)–(5).

services that meet genuine needs of the consumer are made available in the marketplace. While Catholic Social Teaching recognizes the right of the business and industry—that being the consumer finance industry in this case—to private ownership of and profit in its property, that right is tempered by business and industry having a social, ethical, and moral responsibility to the various stakeholder participants, including the consumer user, that make their success possible. Industry products and services must not only be fair and meet needs, they must also be transparent and provide clear and understandable information so that consumer users can make informed decisions about the products and services that best meet their financial needs. This ultimately creates a culture of financial literacy and education that is also identified as an important goal toward economic justice pursuant to Catholic Social Teaching.

For economic justice to be achieved and sustained, Catholic Social Teaching anticipates a joint responsibility on the part of both industry and the state. That is, they both must embrace an ethical and moral duty to further the common good in the economy; otherwise, it will fail and lead to negative and dire results for everyone. Catholic Social Teaching acknowledges the important role and duty that business and industry have as the creators and innovators in the placement of accessible, fair and essential consumer financial products and services in the marketplace. Catholic Social Teaching sees the importance and necessity of the government's oversight of the industry through the implementation and enforcement of appropriate laws and reforms when the industry has failed in serving the marketplace in a fair and just manner.

The activities, work, and organizational structure of the Consumer Financial Protection Bureau prescribed under the Dodd-Frank Wall Street Reform and Consumer Protection Act reflect several concepts of economic justice called for in Catholic Social Teaching. Moreover, its record of a broad range of outreach to consumers; compliance collaboration with the industry; and regulatory, supervision, and enforcement activities since its inception provides evidence that it can effectively serve both the interests of the consumers of financial products and services and the industry providers. However, the recent enforcement activities of the agency demonstrate that without political leadership or will committed to the work of the CFPB to ensure fairness in the marketplace, its effectiveness will wane. This could lead to a return to the for-profit-only view of consumer financial products and services we experienced in the marketplace just before the Great Recession, and the light the CFPB has brought to so many consumers will have dimmed.