Questions & Answers
The Bipartisan Policy Center Assessment of the Consumer Financial Protection Bureau

The Bipartisan Policy Center's (BPC)[i] Financial Regulatory Reform Initiative released on September 24, 2013 the white paper, *The Consumer Financial Protection Bureau: Measuring the Progress of a New Agency,* which assesses the Consumer Financial Protection Bureau's (CFPB) progress since its 2010 inception. The National Council of La Raza (NCLR) is pleased to have partnered with Rick Fischer of Morrison & Foerster, LLP and BPC staff to author this report listing more than 30 specific findings and recommendations for consideration by the Bureau, Congress, and others. The following acknowledges and answers common questions on salient aspects of the BPC findings.

Background: Latino Families Voted for Consumer Protections
The CFPB emerged as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was passed in response to the most recent collapse of our financial markets. The Bureau has already accomplished a great deal to fulfill its mandate to establish better consumer protections, work to maintain healthy access to credit, and oversee nonbanks—entities that have previously gone unregulated. While these improvements are beneficial for the nation as a whole, they have added importance for communities of color. According to a study by the Pew Research Center, from 2005 to 2009—the period of the collapse in the housing market—there was a dramatic loss of wealth within the Hispanic and African American communities, with inflation-adjusted median wealth falling by 66% among Hispanic households and 53% among African American households. By comparison, the drop in white households' wealth was approximately 16%.[ii]

> **BPC perspective:** "Given that predatory lending is disproportionately concentrated in minority communities, it will be imperative for U.S. economic stability for the CFPB to provide targeted and comprehensive financial information and protection to these minority groups over the coming decades."

Where is the CFPB making positive advances?
Congressional members from both sides of the aisle, industry players, and consumer advocates commended the CFPB for its significant accomplishments, including issuing new servicing standards, establishing the parameters of qualified mortgages (QM), improving components of the Credit CARD Act, and setting new rules for remittances—a critical financial product for Latino families—in such a brief operational period.

> **BPC perspective: "**The CFPB has received generally high marks for an approach seen as open, driven by data and research, and focused on practical application in the mortgage market...The QM and remittance transfer rule-makings demonstrated a thoughtful approach to fostering strong consumer protections while still addressing concerns expressed by stakeholders. In addition, when the CFPB inherited primary rule-making authority for Regulation Z ability-to-pay requirements, it reversed a decision of the Federal Reserve Board to impose an independent ability-to-repay requirement for consumers of all ages. The original decision was having an adverse impact on stay-at-

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> home and military spouses. The CFPB was able to address this issue as well as stakeholder concerns throughout the process."

Does the CFPB have too much authority?
Congressional members equipped the CFPB with the power to create and regulate true and lasting consumer protections.

> **BPC perspective:** "In its interviews, the Task Force found that most people agreed that the agency had about the "right amount" of authority. Nevertheless, the CFPB may need additional authority in certain areas, such as auto financing.
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> The decision to create the Bureau and consequently transfer many of the consumer protection responsibilities from existing financial regulators was controversial. However, the financial crisis demonstrated a need for heightened attention to consumer financial products, as fundamental flaws in the regulation of consumer financial protection, especially the regulation of mortgage products, contributed to the depth of that crisis."

What is the CFPB's approach to gathering data about consumer markets?
The CFPB must be research-driven to keep up with the market players of the 21st century. Private industries gather data on consumers with high frequency and at a very granular, personal level. In a time rife with questions about "big data," it is important that the Bureau approach the complexities of such research with strength and transparency. The CFPB is currently gathering information through three channels: consumer responses provided through a complaint portal, supervisory requests of regulated entities, and market research.

> **BPC perspective:** "The Task Force supports the CFPB's goal of being a data-driven agency...The CFPB should take all necessary steps to assure the confidentiality and security of data being requested and housed within the Bureau…The Task Force recommends the Bureau require coordination among its various divisions when requesting data from any institution. The Task Force also recommends that the Bureau require that a statement of intended use be given with a data request."

Is the CFPB performing its duties in a timely manner?
Many have commended the CFPB's transparency and willingness to work extensively with advocates and industry players as they engage in the rulemaking process.

> **BPC perspective:** "Despite all the transitions, the CFPB leadership has made strides in standing up a new federal consumer regulatory agency and has done well in meeting an ambitious timetable for the regulatory work set in the Dodd-Frank Act. (For comparison, the Securities and Exchange Commission has missed about half of its Dodd-Frank Act rule-writing deadlines.)
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> The CFPB gained responsibility for considering and responding to comments in July 2011 as part of the Dodd-Frank Act's broad regulatory transfer to the CFPB.[iii] Despite having limited time to address the many stated concerns, the Bureau nonetheless

> developed a workable standard for one of the country's most important and complex consumer financial services markets.[iv]
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> While attempting to distinguish between perceived shortcomings that should fairly be attributed to the newness of the agency and systematic decisions affirmatively made and implemented by the CFPB, the Task Force has identified several concerns expressed about the CFPB's supervisory and examination processes. The Task Force's concerns fall into three main areas: (1) predictability and timeliness with respect to the examination process, (2) focus of exams and ability to coordinate with other regulatory examination efforts, and (3) consistency in the quality of staff conducting examinations."

Has the CFPB engaged consumers and stakeholders when making decisions?
The CFPB has been applauded for its extensive, eager engagement with advocates and industry players to improve the rulemaking process. However, in some instances, the Bureau could give consumers and regulated entities more lead time for input.

> **BPC perspective:** "A range of stakeholders, including both consumer groups and industry representatives, have suggested the CFPB should increase transparency by improving its process for conducting public hearings and meetings, including providing adequate notice for such hearings and meetings."

Are community lenders or small businesses overburdened by new CFPB provisions?
It was said in a recent hearing before the House Financial Services Committee that "smaller banks run on people and larger banks run on processes." The CFPB works intimately with small businesses and banks and has amended rules several times to ensure these valued entities are not overburdened.

> **BPC perspective:** "In addressing concerns of small banks and credit unions, which do not regularly offer remittance transfers, the CFPB created an exemption from the rule's requirements for smaller institutions that do not initiate more than 100 remittance transfers in a calendar year."[v]

What is the CFPB's funding stream and how does it account for its expenses?
As with other financial regulatory agencies like OCC and FDIC, the Dodd-Frank Act specifies an alternative funding stream for the CFPB which is not subject to the annual appropriations process.

> **BPC perspective:** "The Bureau is funded by the Federal Reserve System out of its seigniorage income,[vi] with a hard cap at effectively $598 million per year, adjusted for inflation. The CFPB does have authorization to request from Congress (through appropriations) up to an additional $200 million for each fiscal year through 2014. The Bureau has never requested additional authorized funds, and in the current budget and political environment would be unlikely to receive them."

Are the CFPB staff equipped with the tools they need to carry out their examinations and related tasks?

As the CFPB has evolved, its initial staff of roughly 1,000 members has grown. However, there have been mixed reports on the consistency of new staff knowledge and retention rates. In the CFPB's semi-annual hearing before the House Financial Services Committee, CFPB Director Cordray mentioned that the Bureau's retention rate is higher than that of other agencies. However, beyond retention, the CFPB could better serve its mission by ensuring consistency in staff knowledge.

> **BPC perspective:** "While creating consistent interpretations of [its] laws and regulations is a difficult undertaking, it is an expressed priority of the Bureau, which the Task Force applauds. The Bureau's goal to create regulatory consistency by ensuring that CFPB staff across the country set consistent ratings, interpretations, and classifications is worthy of praise. The Task Force recommends that the CFPB ensure it achieves that goal by the end of 2014...Inconsistent expertise and high turnover are reasonable challenges in any newly established organization that is required to build capacity quickly. The CFPB has shown some willingness to make organizational adjustments to better manage its responsibilities, but it would be beneficial for all stakeholders to consider further organizational adjustments."

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[i] Founded in 2007 by former Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole and George Mitchell, the Bipartisan Policy Center is a nonprofit organization that drives principled solutions through rigorous analysis, reasoned negotiation, and respectful dialogue. With projects in multiple issue areas, BPC works to combine politically balanced policymaking with strong, proactive advocacy and outreach. Considered the only Washington, DC-based think tank that actively promotes bipartisanship, BPC works to address the key challenges facing the nation. Its policy solutions are products of informed deliberations by former elected and appointed officials, business and labor leaders, scholars, and advocates who represent both ends of the political spectrum. The BPC is currently focused on health, energy, national and homeland security, transportation, the economy, housing, immigration, and governance.

[ii] See Kochar, Rakesh, Richard Fry, and Paul Taylor, *Pew Research & Social Demographic Trends*, July 26, 2011. Available at: http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/.

[iii] See Dodd-Frank Act § 1061, which requires the secretary of the treasury to designate a date between six and twelve months after enactment of the Dodd-Frank Act for primary rule-making and other authorities to transfer from the primary banking regulators, the U.S. Department of Housing and Urban Development, and the Federal Trade Commission to the CFPB. Then–Secretary of the Treasury Timothy Geithner ultimately selected July 21, 2011. See 75 Fed. Reg. 57,252 (September 20, 2010).

[iv] As pointed out by one of the persons interviewed for this paper, the CFPB also had the unenviable task of leading the way on homeownership issues before Congress acts on reforms for the secondary mortgage market.

[v] See 77 Fed. Reg. 50,243 (August 20, 2012).

[vi] The Federal Reserve earns seigniorage income by selling circulating paper currency, actual dollar bills, which we call cash. The income and interest earned from it are kept directly by the Federal Reserve System and used to fund its expenses, that of the Board of Governors, the Federal Reserve Regional Banks, and now the CFPB. All additional income in excess of Fed expenses is remitted to the Treasury.