



2016

NCBJ

National Conference  
of Bankruptcy Judges

San Francisco

# Consumer Financial Protection Bureau: What Is It and Why You Should Care

Thomas P. Brown, Paul Hastings LLP

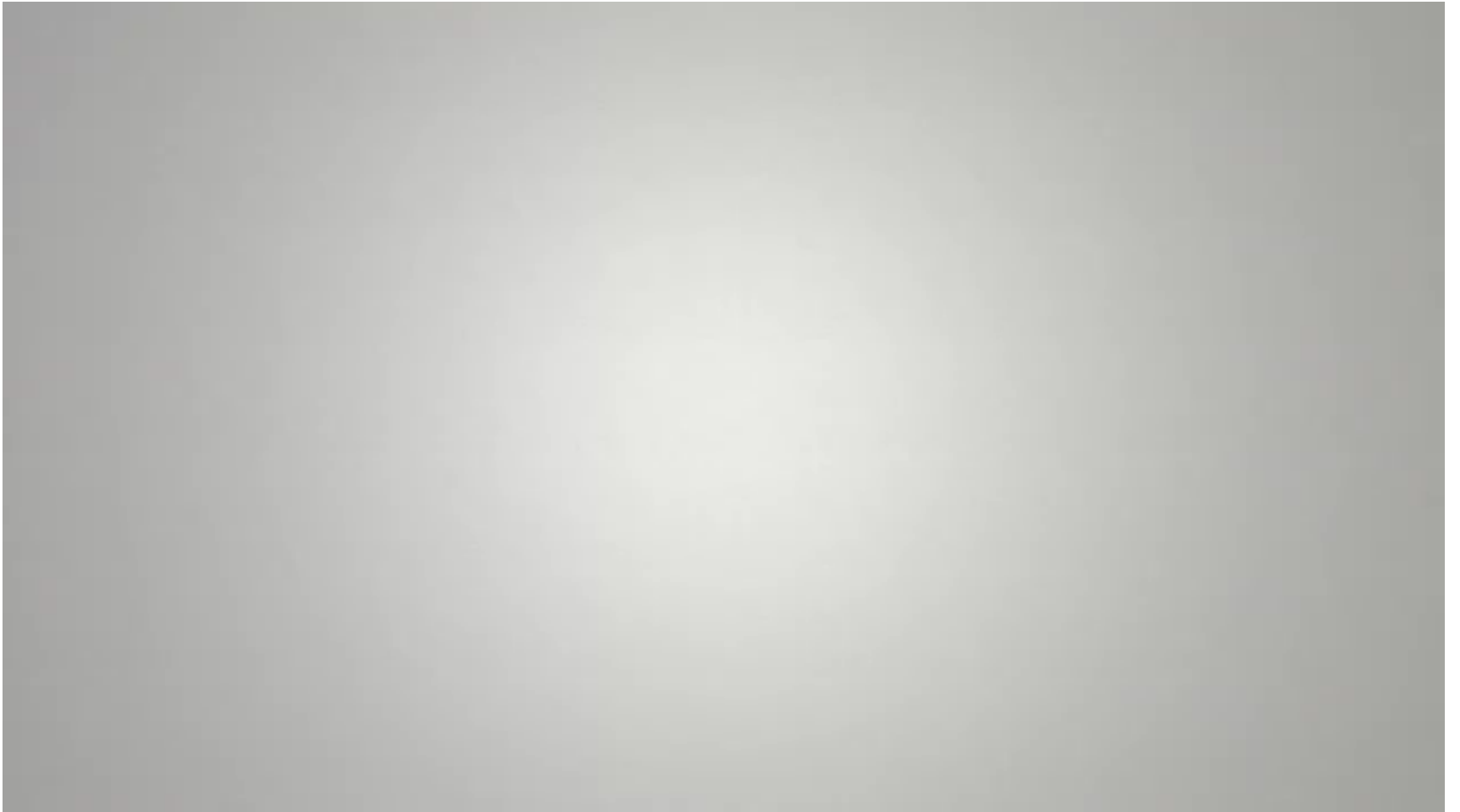
Ellen Harnick, Center for Responsible Lending

Katherine Porter, UC Irvine School of Law

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90<sup>th</sup> Annual Meeting

October 28, 2016





## Consumers: Protection From What?

Many face challenges in making financial decisions

**20%** of individuals reported that over the past year, their household spent more than their income.

**60%** of individuals lack a rainy day fund to cover expenses even for three months in cases of emergencies.

**62%** of individuals said that, when obtaining their most recent credit card, they did not collect and compare information about cards from more than one company.



# Purpose of CFPB

“The Bureau shall seek 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 markets for consumer financial products and services are fair, transparent, and competitive.”

# CFPB Goals

## **Empower**



We create tools, answer common questions, and provide tips that help consumers navigate their financial choices and shop for the deal that works best for them.

## **Enforce**



We take action against predatory companies and practices that violate the law and have already returned billions of dollars to harmed consumers.

## **Educate**



We encourage financial education and capability from childhood through retirement, publish research, and educate financial companies about their responsibilities.

# Organizational Chart of CFPB

Director  
Richard Cordray

Deputy  
Director

Chief of  
Staff

Equal  
Opportunity &  
Fairness

Administrative  
Law Judge

Consumer  
Education &  
Engagement

Supervision,  
Enforcement &  
Fair Lending

Research,  
Markets &  
Regulations

Legal

Operations

External Affairs



# Federal Consumer Law

AMPTA

FDCPA

CLA

G-L-B

EFTA

HMDA

ECOA

HOEPA

FCBA

RESPA

FCRA

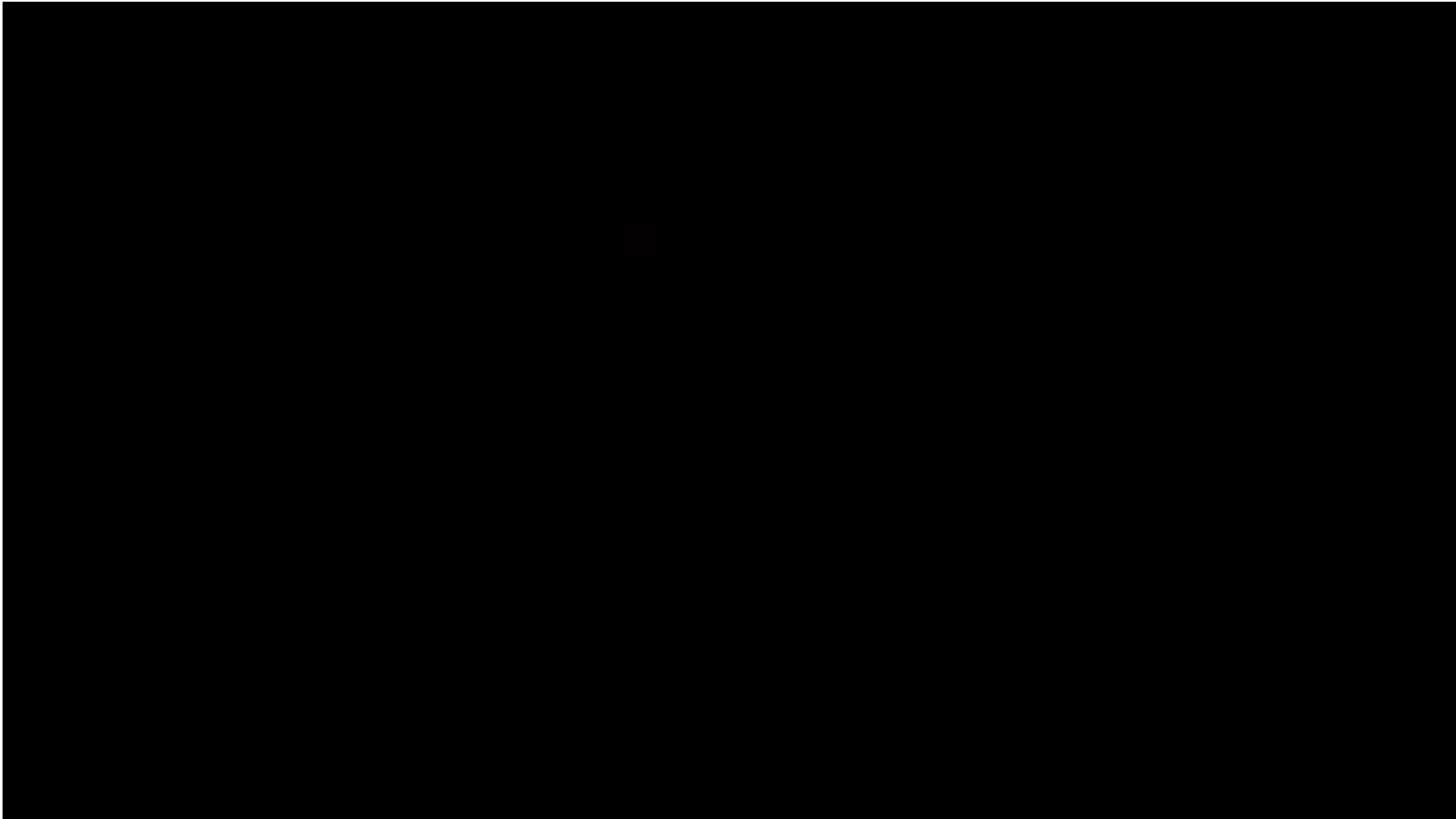
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# Federal Consumer Law

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act
- Electronic Fund Transfer Act
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act
- Homeowner's Protection Act
- Fair Debt Collection Practices Act
- Federal Deposit Insurance Act
- Gramm-Leach-Bliley Act
- Home Mortgage Disclosure Act
- Home Ownership and Equity Protection Act
- Real Estate Settlement Procedures Act
- S.A.F.E. Mortgage Licensing
- Truth in Lending Act
- Truth in Savings Act
- Interstate Land Sales Full Disclosure Act







## Powers of CFPB

- Supervision
- Rulemaking
- Enforcement



# Supervisory Authority

- Banks and non-banks
- Larger participant rule
- Some exceptions to oversight
  - Lawyers engaged in the practice of law
  - Real estate brokers and agents
  - Manufactured and modular home retailers
  - Entities covered by state insurance or federal/state securities regulators
  - Automobile dealers

# Rulemaking

- Specific charge to develop combined Truth-in-Lending and RESPA disclosure for mortgages
- Completed Rules
  - Mortgage Origination: Qualified Mortgage
  - Mortgage Servicing
  - Remittances
- Ongoing Rulemaking
  - Payday loan regulation creating “ability to repay” test
  - Ban on mandatory arbitration
  - First-ever regulations issued under Fair Debt Collections Practices Act



# UDAAP

Take any action . . . to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service.

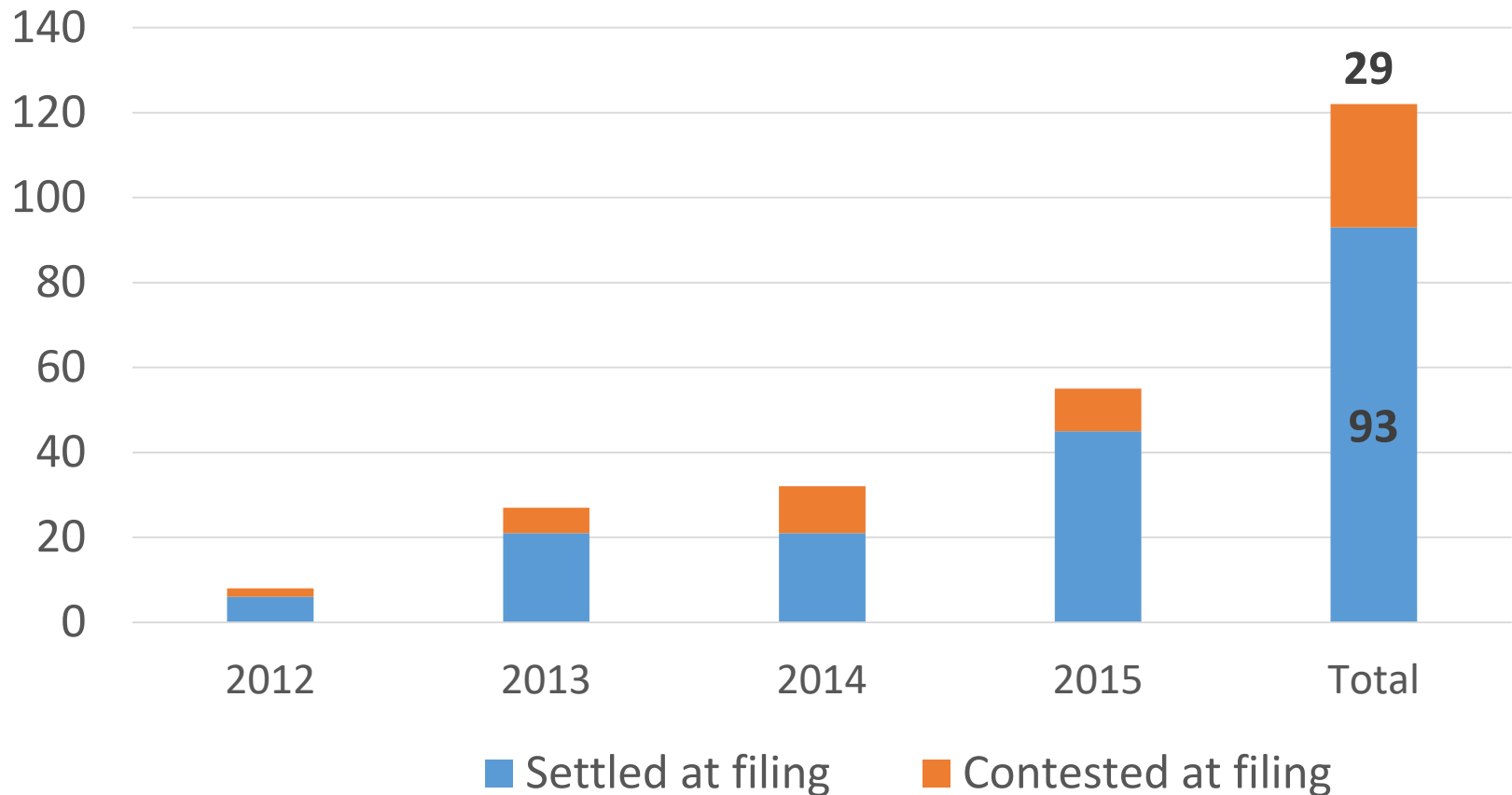
# UDAAP

- **Unfair:** substantial injury not outweighed by benefits
- **Deceptive:** not defined. FTC case law
- **Abusive:** takes advantage or materially interferes with consumer understanding.

## Enforcement Activity

- Roughly 24% of the CFPB's enforcement actions have been contested.
- While 60% of public enforcement actions asserted deception, just 10% alleged abusive acts or practices.
- Recent notable examples:
  - \$100 million against Wells Fargo for unauthorized account openings and other practices.
  - Redlining ECOA violations against BancorpSouth Bank
  - PHH administrative decision—and appeal—and appeal

## Number of Public CFPB Enforcement Actions Settled or Contested at Filing







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