PANEL DISCUSSION

A CONVERSATION ON FINANCIAL LITERACY

MODERATOR

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Fordham Law Review

PANELISTS

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MS. ROTHMAN: Good afternoon and welcome to "A Conversation on Financial Literacy," organized by *Res Gestae*, the online companion to the *Fordham Law Review*.[1]

My name is Alexie Rothman, and I am the Online Editor for Volume 80 of the *Law Review*. I am honored to introduce Professors Susan Block-Lieb and Andrea Boyack, our two panelists today.

Professor Block-Lieb, the Cooper Family Chair of Urban Legal Studies at Fordham University School of Law, teaches courses in bankruptcy, secured transactions, consumer protection, and other commercial law. She is General Counsel and sits on the Board of Directors for the Coalition for Debtor Education housed at the Law School. Among other honors, Professor Block-Lieb sits on the Board of Directors for Fordham University's Center on International Policy Studies and is an inducted member of the International Academy of Commercial and Consumer Law, the American College of Bankruptcy, and the International Insolvency Institute.

Professor Boyack is a Visiting Professor at Fordham University School of Law for the 2011–12 academic year. Professor Boyack has written extensively and presented on issues related to the recent housing crisis, the secondary mortgage market, and common-interest community governance. Prior to entering academia, Professor Boyack practiced corporate and real

1. This conversation took place on March 28, 2012 at Fordham University School of Law. The transcript has been lightly edited.

estate law for thirteen years with Reed Smith; Fried, Frank, Harris, Shriver & Jacobson; Goodwin Procter; and O'Melveny & Myers. Professor Boyack has also served as in-house counsel to Toll Brothers, Inc., a publicly held national development company.

Today's conversation focuses on financial literacy and the newly created Consumer Financial Protection Bureau (CFPB). I will ask our panelists a series of questions.

Let's start with some background. What is the Consumer Financial Protection Bureau?

PROF. BOYACK: The CFPB really arose out of the financial crisis, which arose out of the subprime crisis. For several decades, the government had been sponsoring Fannie Mae and Freddie Mac to attract capital to the housing mortgage market, and they did this through securitization.[2]

By the 1990s, what you had is private market players doing the same thing with nonprime loans.[3] Because these loans could be pooled and their risks aggregated and reallocated among tranches, you had subprime loans that could generate highly rated investment products.[4] This attracted more market capital to real estate, which grew real estate prices.[5]

We ended up having from 1996 to 2006 a housing bubble.[6] The real estate prices in the United States actually rose between 93 percent and 137 percent during that time.[7] That housing bubble was inflated by securitization, over-leveraging, and rampant subprime lending.[8] Finally, when the values started declining in 2006, the entire house of cards that was the U.S. real estate finance market collapsed.[9] The subprime crisis triggered a broader housing crisis and a financial crisis in the country, which led to what we have now, a global crisis of credit and national debt.

It's actually kind of an amazing fact that you have a few or many poorly conceived home mortgage loans in discrete segments in the country that can basically bring the entire world economy to its knees. It's a testimony not only to the huge interconnectedness of financial markets today, but also to how important it is to look at what loans are made and make sure that we have disincentivized faulty loan premises and that we create some ways to protect consumers from bad products.

In the aftermath of the crisis, Congress passed several acts which just dealt with the crisis itself: the Economic Stimulus Act of 2008,[10] the Emergency Economic Stabilization Act of 2008,[11] the American Recovery

2. Andrea J. Boyack, *Lessons in Price Stability from the U.S. Real Estate Market Collapse*, 2010 MICH. ST. L. REV. 925, 939–42.
3. *Id.* at 943.
4. *Id.*
5. *Id.*
6. *Id.* at 928 n.9.
7. *Id.*
8. *Id.* at 932.
9. *Id.*
10. Pub. L. No. 110-185, 122 Stat. 613.
11. Pub. L. No. 110-343, 122 Stat. 3765.

and Reinvestment Act of 2009;[12] and finally, in 2010, Congress passed a comprehensive act not just dealing with reactions to the crisis but looking prospectively at how do we address the substantive problems in the markets and create a more stable financial environment going forward. That was the Dodd-Frank Wall Street Reform and Consumer Protection Act,[13] a seminal piece of legislation, very sweeping in its scope, and at 2,300 pages not even complete, because it set up several hundred other rulemakings and studies that had to be done.

Title 10 of Dodd-Frank created this new agency of the federal government, this new bureau, the Consumer Financial Protection Bureau.[14] It was to prioritize and consolidate financial protection efforts in the government. That was the mission statement of the CFPB, to implement and, where applicable, enforce federal consumer financial law consistently and ensure that all consumers have access to the markets and that the services are fair, transparent, and competitive.[15]

PROF. BLOCK-LIEB: It's clear that the subprime mortgage crisis gave Congress the incentive to enact broad-reaching consumer financial protection regulation. But it's important to understand that Title 10 of Dodd-Frank didn't really reinvent the wheel. The Bureau is new, but consumer financial protection is not new with Dodd-Frank.

One of the most important things that Dodd-Frank did is to transfer to the Bureau jurisdiction over eighteen preexisting consumer financial protection regulations—the Truth in Lending Act,[16] for example, and the Fair Debt Collection Practices Act.[17] The jurisdiction over those statutes had been divided amongst a number of regulatory authorities, and that regulatory jurisdiction was consolidated in a single federal agency, the Bureau for Consumer Financial Protection.

This consolidation relates not only to rulemaking authority but also to the authority for enforcing those regulations. Also, remember some of these lenders are banks, who are otherwise regulated, and some of the lenders are non-bank entities. It's important for there to be a level playing field in the market for consumer financial protection so that bank and non-bank lenders face precisely the same regulation. So this consolidation of regulatory authority within the Bureau served a good purpose in that perspective as well.

Dodd-Frank was careful, however, to divide up the enforcement and the monitoring jurisdiction that the Bureau holds. So while the Bureau has exclusive rulemaking authority over consumer financial protection, it shares

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12. Pub. L. No. 111-5, 123 Stat. 115.
13. Pub. L. No. 111-203, 124 Stat. 1376 (2010) (to be codified in scattered titles of U.S.C.).
14. *Id.* § 1011, 12 U.S.C. § 5491 (Supp. IV 2010).
15. *Id.* § 1021, 12 U.S.C. § 5511.
16. 15 U.S.C. §§ 1601–1667f (2006).
17. Dodd-Frank Act §§ 1002, 1061, 12 U.S.C. §§ 5481, 5581.

enforcement authority with the prudential regulators, most notably the Office of the Controller of Currency.[18]

Now, people talk a lot about the CFPB's authority to regulate unfair, deceptive, and abusive financial practices. But again, Dodd-Frank didn't invent this terminology or this basis for rulemaking. This rulemaking authority is not new. In fact, it was adopted in 1938. Since 1938, the Federal Trade Commission has had authority to regulate unfair and deceptive practices, which they have defined certainly from the 1960s, but through their enforcement actions even earlier, to relate to financial practices that are deemed unfair and deceptive, although the FTC did not have jurisdiction to enforce these financial practice regulations against banks and other regulated entities.[19]

But that doesn't mean that the banks were free to engage in unfair and deceptive practices. It just meant that their prudential regulators were meant to enforce unfair and deceptive practices regulations as against their regulated entities. In theory, the prudential regulators should have and could have regulated in this area. They chose not to, more specifically since 1980, when deregulation has been more the vogue than enforcement of regulation or enhanced regulation.[20]

The Federal Reserve Board also had jurisdiction to regulate unfair and deceptive practices. They didn't exercise that regulatory authority until 2009, when they adopted Reg. AA.[21]

While the FTC Act, the original source of jurisdiction over unfair and deceptive practices, didn't make reference to—and so therefore didn't allow for—the regulation of abusive practices, of course the common law did. That's what the defense of unconscionability is meant to address, as well as the defense of undue influence and duress. They're about abusive practices.

Moreover, the Fair Debt Collection Practices Act (FDCPA), specifically in the statutory language, identified abusive collection practices which are subject to the authority under the FDCPA.[22]

PROF. BOYACK: It's interesting, because clearly you don't have a departure from where the law has been for a while. But the CFPB is really interesting because it is a new agency. It's an agency that is being built in the twenty-first century from the ground up.

It was an interesting development both in terms of consolidation, in terms of making sure consumer protection was owned as somebody's primary responsibility in the regulatory world, avoiding regulatory arbitrage, which we mentioned. But also, it's kind of exciting, kind of a unique opportunity for a regulatory agency to deliberately build itself in this modern way from the ground up.

18. *Id.* §§ 1025, 1026, 12 U.S.C. §§ 5515–5516.
19. *See* Federal Trade Commission Act, 12 U.S.C. § 45 (2006).
20. KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS 16 (2011).
21. Unfair or Deceptive Acts or Practices, 12 C.F.R. § 227 (2009).
22. Fair Debt Collection Practices Act § 806, 15 U.S.C. § 1692d (2006).

It spent some time as a Bureau thinking deliberately about how it was going to define itself. It seems to focus a lot on looking outside the box, trying to figure out what tools are out there and what approaches it can take to achieve its objectives—the objectives not being anything new, but what's new I think is in the broader thinking of the approach.

Also, what's kind of different about the Bureau is that they really are embracing twenty-first century technology and looking at things like the internet, and there's blogs and Twitter feeds, which they are really trying to connect and be part of people's lives in a twenty-first century technology way.[23]

So they have this ability to determine for themselves how best to achieve their objectives, and they have been very focused on doing research and seeking input. They have this rather unique mandate to solely focus on consumer financial literacy from the consumer side, rather than as part of banking safety and soundness.

MS. ROTHMAN: How exactly is the CFPB organized?

PROF. BLOCK-LIEB: Unlike some regulatory agencies, like the FTC for example, which has a Board of Commissioners (odd-numbered) appointed in staggered terms, the Bureau has a single director who is appointed for a five-year term, and the director sits in charge of the six different divisions of the Bureau.[24]

I suppose we should mention that although the director was meant to have been put in place this past summer, through political wrangling that didn't happen. President Obama has appointed Richard Cordray as the first director of the Bureau through his recess appointment powers under the Constitution.[25] Even that has been controversial. The ultimate authority of Richard Cordray, as well as other recess appointments, will be resolved through litigation.

If President Obama is elected to a second term, this issue almost necessarily goes away. It is a first-mover problem, in that the second director appointed by whomever the President is after the expiration of the first director's five-year term—there is not the same political incentive for stalling, because the first director sits in his office until the second director is appointed. So there is no point in failing to appoint a second director.

Now, the six divisions of the Bureau—three of them are, I suppose, the divisions that we would see in any regulatory agency: a General Counsel's Office; External Affairs; a Chief Operating Officer, which handles employment and other issues; as well as the Consumer Complaint Division, which is new to the Bureau.[26]

23. *See* CONSUMER FIN. PROTECTION BUREAU, http://www.consumerfinance.gov/ (last visited May 11, 2012).

24. Dodd-Frank Act § 1011(b)–(c), 12 U.S.C. § 5491 (Supp. IV 2010).

25. Helene Cooper & Jennifer Steinhauer, *Bucking Senate, Obama Appoints Consumer Chief*, N.Y. TIMES, Jan. 5, 2012, at A1.

26. *Learn About the Bureau*, CONSUMER FIN. PROTECTION BUREAU, http://www.consumerfinance.gov/the-bureau/ (last visited May 11, 2012).

And, like other regulatory agencies, the Bureau has charge of regulatory authority, which their division has called Research Markets and Regulation.[27] It's interesting to me when they choose to put "regulation" at the end of the sentence rather than at the beginning, although I think it's kind of a German verb here. I think that really is what the division is about.

Not very uncommon in regulatory agencies, there is a Division of Supervision, Enforcement, Fair Lending and Equal Opportunity.[28] Not surprising. What is relatively new about the Bureau, and what we want to focus on, is its Division of Consumer Education and Engagement.[29]

MS. ROTHMAN: Can you actually explain a bit about what that division is focused on?

PROF. BOYACK: It's one of the six major divisions, which itself indicates the priority level that financial literacy has within the modern concept of consumer protection. Its mission is to provide information and tools to consumers so they can make good financial decisions.

The catchphrase you always hear is they are trying to "get people the right information at the right time."[30] What's interesting is that they have been engaging in a rather broad effort to determine exactly what is "right" in this context, and "right" meaning not only the quantity of information or the amount of information, but the effectiveness of the method of disseminating information.

Now, there is an education and engagement part of the office. Education focuses on providing this information to the public. They have been working a lot with the existing framework of consumer financial literacy efforts of a lot of private and public consumer educators to accomplish that.

The engagement piece focuses instead on soliciting information from the public. This is where you see some rather innovative things going on: internet-based feedback solicitation; there's the "Tell Your Story" effort, where if you go on the CFPB website you can click there and type in what happened to you;[31] and they are soliciting comments on their preliminary-stage regulatory products there.[32] So there is a lot of effort to try to get input from the public. They have live meetings with consumers. They have had various town hall meetings—I believe over sixty.[33]

So this engagement piece also overlaps with this consumer response piece, the Division of Complaints, because those consumer engagements also include soliciting people to make complaints about issues that they

27. *Id.*
28. *Id.*
29. *Id.*
30. *See* Richard Cordray, Dir., CFPB, Prepared Remarks Before the Consumer Bankers Association (Mar. 21, 2012), *available at* http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-before-the-consumer-bankers-association/.
31. *Tell Your Story*, CONSUMER FIN. PROTECTION BUREAU, https://help.consumerfinance.gov/app/tellyourstory/ (last visited May 11, 2012).
32. *Know Before You Owe*, CONSUMER FIN. PROTECTION BUREAU, http://www.consumerfinance.gov/knowbeforeyouowe/ (last visited May 11, 2012).
33. *Cf.* Zixta Q. Martinez, *Save the Date, New York!*, CONSUMER FIN. PROTECTION BUREAU (Feb. 10, 2012), http://www.consumerfinance.gov/blog/save-the-date-new-york/.

have with their mortgage provider, their credit card provider, and then they will work to resolve it through working with both the consumer and the financial service provider.[34] It's sort of an ombudsman office role, but it's like an ombudsman with a regulatory hammer, so they have a little more power to get that resolved.

They focus the education initiative not just generally, as we'll be talking more, but also they have four specific vulnerable populations that they have tried to make sure are particularly considered and protected, the financial educations through those four focus groups of citizens. They are deemed the most vulnerable segments of society and make up about 150–200 million people in the United States. That includes the servicemen; students; older Americans sixty-two and up; and the group that they call "financial empowerment," which essentially covers lower-income people and people who have been outside the financial mainstream—for example, not having a bank account.[35]

MS. ROTHMAN: So let's focus a bit on financial literacy. Aside from putting it within the Division of Education and Engagement, how does it fit into the CFPB's mandate?

PROF. BLOCK-LIEB: There are two different ways of looking at how education fits into the Bureau's mandate. One way is maybe in terms of the organizational chart of the Bureau. Normally you would think of sort of a top-down organizational chart where the director has six offices, he has six direct reporters, and each of the six direct reporters has a silo of authority over which they devote their attention.

Although the Bureau describes its organization with that typical sort of organization chart, I actually conceive of the Bureau's mandate as involving more of a hub-and-spoke sort of organizational chart, in that the educational mandate is one that the Bureau is using, maybe together with its research mandate, to inform itself regarding what it is that isn't working about the markets and what it is that isn't working about existing regulation, so that their regulatory and enforcement efforts can both be informed by that sort of detailed and fine-grained information—detailed and fine-grained because literally they are receiving information from individual consumers. You would think maybe in the nineteenth or the twentieth century that would be a hugely inefficient way of regulating. But over the internet, the Bureau can keep track of that kind of fine-grained level of information. So that's one way of looking at the interrelationship.

The other way I think about it, from an academic perspective, is the Bureau as a twenty-first century regulator who learns from Cass Sunstein and other behavioral research decision making scholarship that looks to nudge both ends of the marketplace through use of what they refer to as "soft paternalism"—not paternalism; we're not telling consumers what they have to do, we're not telling them that they're stupid and here's how they

34. *Submit a Complaint*, CONSUMER FIN. PROTECTION BUREAU, http://www.consumerfinance.gov/complaint/ (last visited Apr. 9, 2012).

35. *Learn About the Bureau*, *supra* note 26.

can learn more—but instead, setting up regulations so that incentives exist and information is available both on the demand and the supply side of that market.[36] I wasn't just reading this into what the organization chart is of the Bureau. In one of Rich Cordray's most recent speeches, he describes consumer financial protection as a partnership, if you will, between consumers and lenders.[37]

Clearly, regulation is in some respects about constraining lenders' behaviors in the marketplace, but very little of consumer financial protection regulation outright regulates either financial products or financial practices. We do have some of these, but the goal is not to over-regulate but rather to tweak the level of regulation so that we're not over-regulating lenders. On the other hand, there are incentives that are built into the regulation to nudge lenders into particular situations. The idea in this context is to nudge them into situations that are more favorable for consumers overall.

Similarly, regulation could outright affect consumers' behavior by making certain products unavailable to them or by mandating education initiatives, or what have you, that would be sort of a hard paternalism. But here the nudging is about making opportunities available, opening up other opportunities for consumers. So for example, in the CARD Act of 2009, which the Bureau takes jurisdiction over as a part of this transfer of jurisdiction, there are a variety of contract terms in credit card agreements that the public and that consumer advocates had viewed as unfair, indeed predatory. They came to convince Congress that this was perhaps the case.

But, rather than outlawing these practices outright, what the CARD Act does is—just to take one of them, with the over-limit fees associated with debit cards, the notion here is that it's a product, and for some consumers a very useful product, but for others a trap, a trick, that's buried in the fine print of their debit card agreement. So the regulation, rather than prohibit over-limit fees, nudges both the lenders and the consumers by requiring consumers to opt in to these over-limit fee arrangements rather than opt out.[38]

MS. ROTHMAN: So thinking about some of the nudges we might see from the CFPB with respect to financial literacy, what are some of the specific programs or initiatives that have been started in the past year?

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36. *See* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 4–6 (2008); Michael S. Barr, Sendhil Mullainathan & Eldar Shafir, *Behaviorally Informed Home Mortgage Credit Regulation*, *in* BORROWING TO LIVE: CONSUMER AND MORTGAGE CREDIT REVISITED 170, 188–98 (Nicolas P. Retsinas & Eric S. Belsky eds., 2008).

37. *See* Justin T. Hilley, *Citizens and Government Must Change Mortgage Finance Together: Cordray*, HOUSINGWIRE (Mar. 16, 2012, 11:59 AM), http://www.housingwire.com/news/citizens-and-government-must-change-mortgage-finance-together-cordray.

38. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 102, 123 Stat. 1734, 1739 (codified as amended in scattered sections of 15 U.S.C.).

PROF. BOYACK: One of the ones that has gotten a lot of attention that President Obama mentioned in his State of the Union is the "Know Before You Owe"[39]—it's just a fun phrase to say. This is a disclosure regime. But it goes beyond what we have been seeing before. Disclosure was really the cornerstone of consumer financial protection before the crisis. What ended up happening is, when you had disclosure as a mandate, it started being used by the financial institutions, instead of being a tool for financial empowerment; it was really a tool for risk management for those entities. Those entities said, "Well, this is great. If we put all this stuff in the disclosure, then nobody can come to us later and say 'You never told us this was there.'" And so what you ended up having was really unmanageable, inaccessible, sometimes unintelligible, disclosure. It was criticized by a lot of people. Elizabeth Warren said, "It's not real disclosure if it's so vast."[40]

So I think the CFPB is recognizing this, that too much information that is poorly communicated is actually bad, and what we need to do is make sure that the consumers get the information, but make sure that we focus on what information is key and what is the key way to communicate that information.

That's where "Know Before You Owe" comes in, about making disclosure effective rather than comprehensive, focusing on the quality of the communication rather than the quantity. The approach is to set up a standard form whereby you will have disclosure of various different pieces or characteristics of financial products. That will aid the consumer in knowing what they actually need to know so their expectations are properly set, but also create an apples-to-apples comparison possibility, that you can look at two different possible loan products and be able to actually very clearly (is the hope) compare how much you'd have to pay or what the different possible fees would be under each of those.

It has been interesting to see how this is still very much a work in progress. In fact, they have just started the student loan and credit card disclosure form process. But they have been working for a while on the one for a mortgage closing disclosure.[41] Prior to this, we have already had mortgage disclosure forms. We have the Truth in Lending Act Form, and we have the Real Estate Settlement Procedures Act (RESPA) Form, HUD-1.[42] So if you go today to close on your mortgage loan for your home, they will give you these papers with a lot of line items and a lot of numbers. But the "Know Before You Owe" form is trying to replace that with one form, rather than two, that makes the information a little more accessible to the consumer.[43] One of the ways is it's just actually easier to read.

I have looked at the forms. One thing that has been interesting is that the Bureau itself has been very transparent with their effort to come up with the forms. They posted very preliminary forms on their website, solicited

39. *Cf. Know Before You Owe*, *supra* note 32.
40. *See* Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY J., Summer 2007, at 8, 11.
41. *See Know Before You Owe*, *supra* note 32.
42. *Id.*
43. *Id.*

comments.[44] They have run focus group testing of prototype forms. They have one called, I think, Butternut, and Hemlock, which right now are their two finalists.[45] They are looking at them and soliciting people to actually write in and say, "I thought this part was confusing."

But they also, interestingly, are tracking what people are looking at on the internet, what parts they have to keep seeking more information about, to see either what interests people to find out or what parts are maybe not as accessible as they might think.[46] They are almost ready to roll that out into a Notice of Proposed Rulemaking now.

But the interesting thing is all this happened before that. They have already gotten all these comments. They had 27,000 comments on the mortgage form, which is kind of amazing.[47] So the form disclosure for mortgages and next student loans and credit cards has been the big push of "Know Before You Owe."

PROF. BLOCK-LIEB: And it's important to understand that the goal of this "Know Before You Owe" is not about standardization of financial products. I know it's a concern that the industry has raised. But in talking to experts at the Bureau, it's clear that their intention is not to limit innovation in the marketplace.[48]

That's very much consistent with this perspective of nudging lenders and nudging borrowers. So the forms are there to provide safe harbors so that lenders can bury themselves in those safe harbors if risk management is the most important thing to them. On the other hand, if they want to take a little more risk and think outside the box, that's fine, but they have to take responsibility for those products. So the statute is set up in order to make some of those less standardized products harder to securitize.

PROF. BOYACK: Right. And the interesting thing here is you don't have as much direct regulation of products saying, "This product is bad, you can't use it." There is an attempt to foster product innovation. You have a nudge towards plain-vanilla types of products, both because, in the Sunstein view of nudging, if you have a default product, you want it to be what most people want.[49] So if people don't take the opportunity to look at the more exotic products, they can get into one that we have determined is fairly safe.

But also as a way to put a thumb on the scale to encourage those offerings of products by the lenders—not to prohibit exotic ones, but to make the mainstream, plain-vanilla ones probably the most common.

44. *Id.*

45. *Id.*

46. *Id.*

47. Press Release, CFPB, Consumer Financial Protection Bureau Convenes Small Business Panel for Know Before You Owe Mortgage Disclosures (Feb. 21, 2012), http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-convenes-small-business-panel-for-know-before-you-owe-mortgage-disclosures/.

48. *See* Richard Cordray, Dir., CFPB, Prepared Remarks Before the U.S. Chamber of Commerce (Mar. 28, 2012), *available at* http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-before-the-u-s-chamber-of-commerce/.

49. *See* THALER & SUNSTEIN, *supra* note 36, at 12.

You see this in the mortgage world with the Qualified Residential Mortgage efforts, where they are defining characteristics, that if you make your mortgage a Qualified Residential Mortgage, then you as a financial provider, as a financial institution, a bank or whatever, you don't have to go through the same types of hurdles to protect the consumer on the regulatory side.[50] You don't have to have the same kind of skin in the game; you don't have the same worries with disclosure because you can fit it into that model. So that's an interesting way that they have balanced the worry that over-regulation is going to quash innovation with the concern that we need to have some sort of thumbs on the scale for the actual product types because sometimes you can't get there just through disclosure. That's basically the big lesson leading up to the crisis.

MS. ROTHMAN: Maybe to switch gears for a second, there are existing federal initiatives to promote financial literacy. How do Dodd-Frank and the Consumer Financial Protection Bureau work with those preexisting programs?

PROFESSOR BLOCK-LIEB: Dodd-Frank took a very interesting direction here. Unlike with rulemaking authority, for example, where the CFPB by statute holds the central rulemaking authority relating to consumer financial protection, with the educational initiatives, with financial literacy, Congress left existing financial literacy initiatives in place, but it rearranged the table setting a little bit.

Nearly all of the prudential regulators have financial literacy initiatives housed within their community affairs divisions. Years ago, efforts were made to coordinate among these initiatives, because obviously that's problematic to have so many cooks in the kitchen.

Years ago, the Financial Literacy Education Commission (FLEC) was created. Under Dodd-Frank, the Bureau will have not only a seat at the table and not only be a member of FLEC, but they will serve as its Vice Chair.[51] So they will assist with some of the coordinating that FLEC otherwise provides.

PROF. BOYACK: And it's kind of interesting, because using FLEC shows that CFPB's goal really isn't to reinvent the wheel, it isn't to start over, that they are really trying to coordinate with the efforts that are already there. For example, CFPB has embraced and specifically refers and links to the FDIC MyMoney website.[52]

But they did see their role at FLEC being a little different than the role of the folks that are already there, because the banking regulators are coming into the question of what can be done for financial literacy from a banking safety and soundness perspective, which is right and proper.

50. *See* Dodd-Frank Act § 941, 15 U.S.C. § 78o-11 (Supp. IV 2010).

51. *See* Richard Cordray, *Joining the Financial Literacy and Education Commission*, CONSUMER FIN. PROTECTION BUREAU (Feb. 14, 2012), http://www.consumerfinance.gov/blog/joining-the-financial-literacy-and-education-commission/.

52. *See Financial Education for Moms and All Women*, CONSUMER FIN. PROTECTION BUREAU (May 8, 2011), http://www.consumerfinance.gov/blog/category/mymoney-gov/.

But at the Consumer Finance Protection Bureau, they are concerned with consumer protection from the other side, from the consumer side, and how consumers can be using financial products safely. So it's a new perspective at the table as well.

PROF. BLOCK-LIEB: And also would apply to lenders who are non-banks, who are otherwise unregulated, which the existing situation of financial literacy initiatives within the prudential regulators left off the table, the possibility of imposing those obligations on non-bank lenders.

PROF. BOYACK: Right, which was another big problem from the crisis, is that you focus on certain entity types, and then the people who have been left out fall between the cracks and aren't regulated at all.

MS. ROTHMAN: I'd like to pose the question, because I think it's interesting: How do you measure success in terms of financial literacy?

PROF. BLOCK-LIEB: Well, evidence-based research is better than anecdotally based research because it's better to have a broad range of data on which to base your conclusions. And yet, with financial literacy there are so many potential movements within the behaviors of especially borrowers, but also lenders that might be measured in terms of measuring success in a financial literacy education initiative.

I was involved a couple of years ago in an academic group that had to put on the educational initiative in order to measure its success, because there weren't any at the time.[53] But we did both of those things and kept a little bit of a wall between us. What I learned in interacting with social scientists was that, especially with these sorts of qualitative concerns, the better way of measuring success is to look at it from several different perspectives.

One way of looking at success in financial literacy is knowledge acquisition—literally, the way a fourth-grade teacher would measure success: did the children know more about financial literacy before or after having gone to the class? That's one.

But it's only a very limited measure of success because, as we're reminded, we are concerned not so much about whether consumers can, for example, recite to you the formula for present valuation; we're actually much more concerned about whether they understand the implications of making only minimum payments on their credit cards, for example. So we have to be very careful about what questions we ask in terms of assessing knowledge acquisition. That's just one.

Another thing we would want to measure is behaviors. So even those consumers who attend financial literacy classes or counseling sessions may not be able to recite back to you the things that the teacher wants them to recite back, so they measure poorly on knowledge acquisition scores, but their behaviors may change. They may think before they use their credit card, they may open a bank account, they may read a contract before signing it. So those sorts of behaviors are important.

53. *See* Richard L. Wiener, Corinne Baron-Donovan, Karen Gross & Susan Block-Lieb, *Debtor Education, Financial Literacy, and Pending Bankruptcy Legislation*, 23 BEHAV. SCI. & L. 347 (2005).

There are also lenders' behaviors. Much of our economy, not limited to our financial decision making, is subject to various gatekeeping procedures—so credit history, credit reports, credit scores. Another way of measuring success is to see whether lenders—that is, those keeping those scores—think that creditors are more successful as a result of the financial literacy education. That's just two of many.

MS. ROTHMAN: There are some, though, who might be skeptical about financial literacy,[54] and we can't ignore those when thinking about financial literacy and the CFPB. So where are those skeptics coming from and how do you respond?

PROF. BOYACK: I think a lot of this comes from the view that the disclosure-only regime leading up to the crisis was not effective and that merely trying to empower consumers in a way takes the focus off of the regulatory side and burdens the consumers with the responsibility of protecting themselves; and then, if they don't protect themselves, they only have themselves to blame.

There's some resistance in this country. We have an individual liberty presumption in this country. There is resistance to the paternalism that you'd have if you had more of an active method of protecting consumers, sort of protecting them from themselves: "We're not going to let you make a bad loan because we think that you are not wise enough to do it."

On the other side, you say, "Clearly the solution is consumer empowerment through literacy-building efforts." They are sometimes criticized as not being effective, or maybe creating false confidence, or just letting the financial institutions off the hook. There is never really going to be an even playing field between the consumer and the institutions.

But I think that the skeptics focus so narrowly on this one piece of the equation, they don't realize that in the post-crisis world, we are trying to pursue consumer financial literacy as part of a comprehensive market-improvement plan.

It's not just the one side. You also have the idea that we're going to have nudges, we're going to have types of preferred products, and we are going to have regulatory oversight. You can't ignore that piece. If you just focus on the one piece, you say, "It's not as effective as it could be, therefore it's bad," it's kind of this nirvana fallacy.[55]

PROF. BLOCK-LIEB: So absolutely there was this ideological core to financial literacy education being pushed in earlier administrations. I think that there is a reaction against financial literacy as being promoted as the only option: "Disclosure plus financial literacy, that's all we need. Consumers don't really need paternalistic regulation in the marketplace, and certainly the marketplace would be harmed by it."

54. *See, e.g.*, Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197 (2008).

55. *See* Harold Demsetz, *Information and Efficiency: Another Viewpoint*, 12 J.L. & ECON. 1, 1 (1969).

But the current Bureau's perspective on education—and not just the Consumer Financial Protection Bureau but I think more generally across the Obama Administration—is not to embrace regulation as the solution, but very much to view financial decision making as necessarily involving a decision both by consumers and by lenders to enter into a contract that is a bilateral arrangement, and therefore that both have some responsibility in the arrangement—which isn't to push all of the faults or the responsibility on one side or the other of that financial transaction. Also an understanding, as mentioned earlier, that these education initiatives can actually assist with disclosure. So if you know more about what is being disclosed, then the disclosure is more meaningful.

It can also interact with regulators' responsibilities. If they understand what it is about disclosure that consumers are having trouble with understanding, then that will help them both in formulating educational initiatives as well as the regulation. So they work together.

One of the takeaways here is that although it's obviously very difficult to get it perfectly, what's very interesting is that empirical studies show that consumers actually like it, even when it's mandated.[56] So in a context where you would think they would bridle and they would object, in the context that I know a lot about, in bankruptcy, consumer individuals now are required to obtain credit counseling before entering bankruptcy and to, in addition, obtain what I refer to as debtor education as a condition to receiving their ultimate discharge at the end of bankruptcy.

I would have expected adults saying, "Why are you making me sit through this class? This is boring, it's unnecessary, it's expensive." And yet, empirical data show that consumer debtors in the bankruptcy context quite like the course and think that they've learned a lot from it.[57]

One of the measures of success, which you referred to earlier, Alexie, was we talked about knowledge acquisition and behavioral measures. But another measure is just attitudinal. So if financial decision making is all about having a different attitude about credit, if consumers like the education they are going to have a different attitude about credit.

PROF. BOYACK: I think that a main point is to find that sweet spot. We're trying to find that sweet spot between too much regulatory paternalism and too much relying solely on consumer empowerment. We want to do both so we can be right at the right—

PROF. BLOCK-LIEB: It's not even necessarily 50/50.

PROF. BOYACK: No, no. Whatever the right balance is.

MS. ROTHMAN: On that note, maybe the final question is: In your opinion, has the current CFPB regime gone far enough or is there more that

56. *See* Deborah Thorne & Katherine Porter, *Debtors' Assessments of Bankruptcy Financial Education*, *in* CONSUMER KNOWLEDGE AND FINANCIAL DECISIONS 197, 201 (Douglas J. Lamdin ed., 2012) ("[A]pproximately 330,000 debtors each year may be enthusiastic about the ability of financial education courses to help people avoid financial collapse.").

57. *See id.*

needs to happen for financial literacy and consumer protection to have real meaning?

PROF. BLOCK-LIEB: This is a long-term project.

PROF. BOYACK: And we're just at the very first stage.

PROF. BLOCK-LIEB: We don't even have a real director yet—no offense to Rich Cordray.

PROF. BOYACK: Right now we are at the very beginning of the road and we're looking ahead. It looks like we have some interesting ideas, but we'll have to see where they go.

PROF. BLOCK-LIEB: My fingers are crossed.

MS. ROTHMAN: Thank you very much, Professors Block-Lieb and Boyack, for joining us today, and thank you for joining us in our conversation on financial literacy.