Alan Kaplinsky: Welcome to the Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean to your business, your customers, and the industry. I'm your host today, Alan Kaplinsky, at Ballard Spahr. And I'll be moderating today's program. For those of you who want even more information about the subjects that we are covering in our podcast, please remember to subscribe to our blog, which is also called Consumer Finance Monitor. We've hosted this blog since 2011 and there is a lot of content on there. And indeed, we recently published a blog about the very subject that we're going to be talking about today.

So, let's get to our topic of today and in just a moment, I'm going to introduce our speakers today. The topic is a report recently issued by the Taskforce on Federal Consumer Financial Law. This was issued in early January after the CFPB about a little more than a year ago, decided that it was high time to appoint a illustrious group of experts in the area of consumer financial services and have them take a broad holistic view of the consumer financial services industry and the laws that apply to it and the things that are outdated and the things that are missing because of technological changes and they produced a report that is very worthwhile for anybody that spends any time in the industry to study in detail. But let me warn you, it's not bedtime reading. This is a long report. It's in two volumes. There's 700 pages of background and one report, which is going to be a fantastic resource for people who are studying particular issues that pertain to consumer financial services law. And then there is about a hundred page volume two, which contains 102 separate recommendations about various changes that the task force unanimously agreed upon.

And these changes, recommendations really cover the waterfront of consumer finance. There is a lot there. Now, who would be better to have as my guest on a program covering this topic than the chair of the committee of the task force that put together this report. So, once again, I want to welcome back to our podcast, Professor Todd Zywicki. Welcome back, Todd. Delighted to have you.

Todd Zywicki: Thank you, Alan. Thanks for the invitation. And also thank you for your blog, which I read every day and is an essential resource for those of us trying to keep up in the fast moving developments in this world. So, thrilled to be with you.

Alan Kaplinsky: Thank you. Let me say a few things about Todd. He has previously been a guest on our podcast, so this isn't the first time and I'm sure it won't be the last time. He is a George Mason University Foundation professor of law at George Mason University and Antonin Scalia School of Law. He is also senior fellow of the Cato Institute. He has a bio and a resume, literally a mile long. He teaches at George Mason a number of areas of law; bankruptcy, contracts, commercial law, law and economics, and public choice in the law. I've known him because of the focus that he's had over most of his career on consumer financial services law. He also has been a frequent commentator, I should say, on just about every notable talk show on radio and TV. Also, too lengthy to mention.

Before we get into the heart of our program today, let me also introduce my partner, Chris Willis. Chris Willis just succeeded me as co-chair of our consumer financial services group. Chris's practice deals with consumer finance. So he is a litigator by background, has probably handled more CFPB investigations than anybody else I know of in the country, literally dozens and dozens of them. Surprisingly, not just during the Richard Cordray era, but during the Kathy Kraninger era. And he is expert in a lot of the areas that the task force focused on. That's why I want to have him as my... Also a guest today, but our principle focus is going to be in asking Todd a number of questions about the task force and then having Chris chime in when appropriate in certain areas.

So, let's begin it. So, Todd, how did you get so lucky to be selected as chair of this incredible task force? I mean, how did that happen?

Todd Zywicki: Well, Alan, I have to say it was a real privilege and an honor to be trusted with this. I want to... At the outset, it's often proforma, but it's sincere here. I want to thank Director Kraninger for envisioning this and committing to it as a big project and particularly, personally, for not only having the opportunity to serve as the chair, but to work with this unbelievably gifted group of fellow task force members; Howard Beales, Tom Durkin, [Bill] McCloud and Jean Noonan and our staff who was incredible. We had a small staff, but they did unbelievable work. And most of them I've not even ever had a chance to meet in person because the task force started in January. We had two in-person meetings, and literally, the day we were finishing our second week of in-person meetings is the day they closed the building in March. And we've done the whole thing virtually since then. And the staff has just been unbelievable that members are unbelievable. It's just been a real thrill.

Alan Kaplinsky: So, I take it the staff was drawn from staff at the CFPB. Is that how it worked?

Todd Zywicki: Most of them, yes. Well, we had a combination of a couple of staff members drawn directly from the CFPB. We borrowed some people from other agencies. One from Department of Transportation, one from the Fed and we hired some new hires into the task force. And for all of that, I want to recognize that Weber, in particular, who was our staff director who oversaw all that and built a great team. And I also... While I'm thinking people, I want to recognize Brian Johnson, Leonard Chanin and Tom Paul, who were the three deputy directors during the time that we... This was ongoing. Who just really were totally enthusiastic about it and supportive.

Alan Kaplinsky: Yeah. So, when you got together for the first time, how did the task force decide what issues it was going to focus on? How did that come about?

Todd Zywicki: Yeah, that's a great question, Alan, because this is... So, these efforts at consumer financial reform coincidentally seemed to come on 50 year cycles. In the 1920s, it was the modernization. Sort of people left the farms and immigrants moved into the cities. There was a need for consumer finance like

they didn't have in the past and that led to the Uniform Small Loan Law and a lot of reforms. By the 1970s, 1960s, what we saw was sort of a more national economy and the national economy basically called for modernization and consumer finance laws, but also a larger federal presence for things like dealing with declining cost of long distance calls for something. For example, if you don't think about but which made the system of purely state-based regulation of debt collection unworkable. And so, we get federal financial laws on debt collection and the like.

So, we're on this 50 year cycle now. And, of course, the great development was the internet, right? It's not just the national economy. We've got technology, people use information differently, people shop differently. All these different sorts of things. So, what we had was we did have a big template to paint on, Alan. And what sort of focused us throughout or three goals. First was a focus on inclusion. Financial inclusion and access, which all of us believe is a moral imperative and the creating a financial system that works for everyone was really important and so that focused us a lot.

A second was thinking about focusing on consumer harm and the like. How to best use resources to minimize consumer harm and maximize consumer welfare. And the third thing was really modernization, which was to deal with the impact of technology and those sorts of shocks. And so, one of the things you'll see, Alan, is that the second half of that is, what didn't we address? Because people are often surprised just because something was important, and we acknowledge a lot of things were important, that doesn't necessarily mean we address this. And we laid this out in the forward. The most obvious omission is we don't say a lot about mortgages. Partly because mortgages is sort of a subject unto itself, but when we are deciding what to address, we ask three questions, which is first, is this important? Second, do we have a comparative advantage in saying something about it? And third is, do we have something useful to say about it?

And so, if you take mortgages, for example, obviously that's hugely important, but it's also the case that the CFPB has done a huge amount of work on mortgages over the past few years. So, there's a lot going on on that... And so that was our three-part test and people can figure out what we decided to address and what we didn't, partly based on that.

Alan Kaplinsky: So, one of the other things I noted that you didn't directly get into it, although I guess, I think, it may be implicit in the section of the recommendations that deals with small dollar lending. I don't think I saw anything in the report about the bill pending before Congress to create a 36% interest rate cap.

Todd Zywicki: We did not address that. And Alan, partly, what it is, is I think... As you said, there's two volumes. The second volume is addressed to specific issues that exist. And I think there's a lot there that one could easily read and figure out what, but it's not intended to just be addressing current bills, current legislation,

right? It's basically, here's some concrete proposals that might be done immediately next year or the next five years. Volume one is the longer term sort of addressed in the next 10 or 20 years of concepts and that sort of thing. And so I think, the idea there is this specific issues that come before... The CFPB Congress and other regulators, they're going to change, right? They're going to vary over time.

And so what we try to do is basically say, "Look, we're not going to write a report that's going to be obsolete in a month or whatever." We're going to write a report that addresses specific things that we think today could be things that would make the lives of consumers better. And then we're also going to write a gigantic volume, little say, as new issues arise. Here's how you can go back to the principles we've laid out and apply those principles to specific proposals that come along or specific proposals that might come along. And so, but there's really not anything in there that's addressed to particular legislative proposals and the like, but as the specific issues change, I think the report should be evergreen to say, "Well, here's the starting point to start thinking about things like a specific interest rate cap on and the like."

Alan Kaplinsky: Right. So, I think out of fairness to our listeners, they ought to be aware that there was and maybe still is, some controversy surrounding the creation of the task force. A number of consumer advocacy groups and a law professor... I'm drawing a blank on her name right now, but really... I guess you could say they got their nose out of joint because they felt that the CFPB had appointed only industry people and that they didn't appoint any consumer advocates and therefore no matter what is in the report, it ought to be disregarded because it doesn't represent a fair cross-section of views in the industry. And they even filed a lawsuit against the CFPB related to that. What's your reaction to that criticism, Todd?

Todd Zywicki: Sure. Well, I'll say a few things first, and obviously I'm not going to comment on the lawsuit and like, but the first thing I want to make clear is, the five of us, we had nothing to do with selecting who was on the task force. We were selectees, not selectors, and whether they may have asked other people who chose not to do it because they didn't want to or because they had conflicts issues or didn't want to cause conflicts issues is all kind of possibilities. I don't know what it was. All I know is that we had nothing to do with selecting the task force. We were chosen.

I think the second thing is, our backgrounds and qualifications as consumer advocates, I think, speak for itself. We had two former bureau directors for the Bureau of Consumer Protection at the Federal Trade Commission. Tom Durkin, as I think, generally regarded and renowned as the leading consumer finance economist of his generation. He was just honored last year by the CFPB at their annual research conference for his contributions to this. And Jean Noonan was the founder of the first lawyer hired in the credit practices division at the FTC many years ago and later went on to the farmers bureau. I can't remember the

name offhand. So I think what we have speaks for itself. People can decide what that is, but there's a larger point here, Alan, which is that I think this whole idea of consumer advocate and industry and all this sort of stuff, it's just... We wanted to get beyond that in this report.

This whole idea that consumer financial regulation is a zero sum game, it's a zero sum conflict between more and less regulation. It's just not a productive way to think about this. I don't even know if we use the term deregulation in the entire report because that's just not the way we think of it. And we say specifically in chapter six of volume one, we got to get beyond the idea that there's a zero sum game here. Consumer financial regulation should be aiming at creating a positive sum game with regulations that are good for consumers, good for providers and good for the economy at large, right. And that's what we should be aiming for.

And a lot of regulations are like that and that should be the goal. So, I think from that perspective, that's what oriented us. That's why we have a 798 page volume one. So, we show our homework. I think they should be able... Our overarching goals of a more effective regulatory system, financial inclusion, and financial modernization, everybody should be able to agree on that. The goals that we do or the goals of the national consumer, NCCF, 50 years ago, they may disagree with specific proposals and recommendations we have, but we go through in painstaking detail over 798 pages to explain where we came down and what we came down on and if they disagree, they can disagree, but I think we are about as transparent as you can be as to our reasons for why we said and concluded what we did.

Alan Kaplinsky: Right. So, let's dive into the report right now. One of the... I thought more interesting segments of the report, was the one dealing with alternative data. And maybe before we get into what the task force recommended, how do you define alternative data, Todd? What is it?

Todd Zywicki: Well, really the way we define it... And one thing I should say, Alan, is also... This was a consensus report. Everything in this report, all five of us agreed to, it speaks for all of us. Alternative data, we just kind of a working definition, not a specific one, but really what it is, is the use of data and information that's not part of a traditional credit underwriting model. Essentially the things that go into a FICO score. And that's really sort of our working definition of what is alternative data, but we don't try to pin it down specifically because we kind of wanted to keep a functional definition rather than some formal definition, which I think is important, right? And this might seem like a bit of a digression, but one of the other things we say is, this whole idea of banked or unbanked is not a productive way of thinking about financial inclusion. People consume financial services in all kinds of different ways. They use different types of payment providers. And so I think alternative data versus regular data, it's kind of a continuum, but it's really information that could be provided in the system that's not part of a traditional underwriting model that could be useful for

consumers in gaining access to financial products and financial products, a greater variety at a lower price.

Alan Kaplinsky: Okay. And what exactly did the task force recommend with respect to alternative data? And then after you comment on that, I'd like to get Chris's reaction as an industry lawyer to what has been recommended.

Todd Zywicki: So, we have three things, three specific recommendations on this. The first is an access to financial data, which is that cash flow payments information, things like that, right? This is something that everybody agrees is useful in probative and should be allowed to happen. Basically, can you pay your bills even if you don't have a credit card now that you're paying regularly? Do you have adequate cash flow to be able to service a debt, for example? These sorts of things, right. Your ability to pay bills like rent and utilities and things like that to the extent that that could be useful to consumers to include this.

The second thing we were really careful about and it's kind of a negative recommendation in some sense, which is to say, whatever we have today, don't freeze it in place. People's preferences, people's expectations change over time, right. What people think of as inappropriate or an inappropriate use of consumer information changes. And so, don't put in very prescriptive rules that are going to tie the hands of people in the future as to what they think should not be permissible to include an allow that to evolve without heavy-handed legislation or something like that.

The third thing that we point to is... A lot of it is just simply... It's focused on... Particularly with people for thin or no credit report files and it also relates to any place that it's necessary for Congress. And this is kind of a catch all to include clarification of laws or statutes that might be necessary to use this information. As part of the report we sent out, RFI request, our staff did a... And we did a comprehensive review of all the websites and materials put out by consumer advocacy groups and others. And we got a lot of feedback and one of the things we heard was that one of the obstacles to greater use of alternative data was a perception of regulatory uncertainty. It wasn't always clear to us whether that was justified or not, but we did hear that. And so we said basically, wherever it is thought useful to clarify people's opportunities to furnish data, that should be done to add those kind of clarifications, whether through rule guidance or some other vehicle.

Alan Kaplinsky: Right. Chris, what is your reaction? I know you've done a lot of counseling of clients about alternative data. What do you think?

Chris Willis: I think this is one of the recommendations that the task force made that holds the greatest promise for increasing inclusion in our financial services system. We have been stuck for a long time in a traditional way of underwriting for credit products that looks at what's on a person's credit bureau with the three big national credit reporting agencies, and that's it. And the CFPB has expressed

a massive amount of concern over what it calls the credit invisibles. Even writing three reports about them. And this isn't a small group of people. The CFPB's reports say that there were 30 million American adults who are frozen out of access to credit because their thin files are no hits with the three national credit reporting agencies. And they may have patterns of behavior that don't cause them to be reflected in those databases.

So, right now, if we don't use alternative data, they're frozen out of the system and that's not desirable, not from anybody's standpoint. And the CFPB, in particular, has said that it's not desirable. And I think the Bureau has recognized that the use of alternative data is the number one thing that can be done to accurately underwrite applications from people like this. And so one of the things that I found most telling about the task force report was it's admonition for regulators to be cautious about restricting the use of that data and credit underwriting. And in that vein, what I would point out is, the use of alternative data is subject in today's conversation to both general and specific attacks that I think are very unfounded and very counterproductive from a consumer welfare standpoint. You have this general attack that, well, if we use alternative data in credit underwriting models, it may have a disparate impact and it may reinforce or perpetuate traditional notions of discrimination that are embedded in our society. And so, therefore, it must be a bad thing to use it.

And then you have specific attacks on the use of specific types of alternative data. So, for example, you have a collection of democratic senators who wrote letters to the CFPB accusing various student lenders of using alternative data in student loan underwriting that the senators say is a potential violation of the Equal Credit Opportunity Act. Again, based on this idea that there may be a disparate impact in the use of that data and credit underwriting. What I think all of this criticism fails to realize is the level of disparate impact that's present in the use of FICO scores or traditional credit Bureau attributes is very large and all of the data that I've seen, and we do work for a lot of alternative data providers as well as creditors who use alternative data in their models. And invariably, the data shows that the use of that alternative data increases the inclusiveness of the credit underwriting models.

So, it moves us in the right direction. It doesn't eliminate disparate impact. There's nothing that I'm aware of in credit that will eliminate it altogether, but what we should do is we should move as an industry and as regulators in the right direction of allowing this data to be used and to be very cautious about starting to attach fair lending problem areas to the use of alternative data because if you want to deter the industry from doing something, go out and say it's a potential fair lending violation. That is the surest way to deter it. And the CFPB to its credit has done the opposite. The CFPB granted a no-action letter to Upstart that includes the use of some elements of alternative data. And then Patrice Ficklin, the director of the Fair Lending Office at the CFPB wrote a blog post a couple of years later saying, "We've looked at the fair lending monitoring for Upstart's underwriting model, and we see no areas of fair lending concern."

So the Bureau has not been party to this attempted discouragement of the use of alternative data. It's happening more in private commentators. And so I think the task force took it upon itself to respond to that criticism, show that it is unfounded and, to me, did a very valuable service both for consumers and the industry in doing so.

Alan Kaplinsky: Okay. Thank you, Chris. While we're on the subject of fair access and we've talked about the disparate impact theory, let me, focus on something that is also a very hot issue, namely, LEP, Limited English Proficiency. That is marketing to and offering products to customers whose main language is not English. It's something else. And they may speak no English or very little English, and that's been a major headache because companies have felt that gee. Yeah, we want to make things available, but if we open up that door, saying somethings and of foreign language or languages, does that mean everything has got to be done in that language? And we've got to have documents in that language. We have to have people who speak the language in every branch. So, what did the task force do there, Todd?

Todd Zywicki: Yeah, that's a great... I'm glad you picked up on that one, Alan. And one of the things that I've been gratified with is that some people have picked up... The media has picked up sort of the flash and dazzle, big, high profile things, but I appreciate that you and Chris and others have noted how much value there is in a lot of these relatively smaller, more technical amendments that could really benefit consumers. And I think that's a good example, the recommendation we have on that. And, again, as Chris was just suggesting in many ways with alternative data, it's a trade off question that there's great benefit to be able for financial inclusion being able to reach out to consumers, but if it's going to be a huge, costly undertaking, especially to reach consumers with relatively limited assets and income, and open you up to liability and large costs like you're saying to make everything comprehensively in that language, that's going to raise the cost of servicing those consumers.

And so our report on this is, basically, let's focus on making sure that the most important information and the things that really matter are given to people in a language accessible version, think about more flexible ways of serving those consumers. And why does this matter? Well, if you look at the FDIC studies on unbanked consumers, what you see is... And then we talk about this in chapter 10 of the report, which is what you see is, the FDIC reports that the second largest cause of why consumers say they're unbanked is a generic expression, it's called "don't trust banks", but it turns out if you peel that back a little bit, what you see is that's now a catchall for questions that were asked in earlier studies that were more disaggregated. They limited the number of choices and one of the things that seems to be picking up is this question of foreign language access that back when they asked this question, one of the big reasons consumers say they were unbanked was because of foreign language problems.

And so we wanted to try to make it the case that you could in a cost-effective efficient manner provide information in a foreign language so the customers could feel like they knew at least what was going on. Obviously, you want to police that with UDAP and other sorts of things, but this is a good example of using those sorts of more principles based flexible rules of dealing with a problem rather than a highly prescriptive, expensive regulatory system that has unintended consequences.

Alan Kaplinsky: Yeah. Chris, what's your reaction to what the task force did with respect to LEP?

Chris Willis: Again, I think it's a step in the right direction, and it's really consistent with the position that the Bureau has been taking over the last several years with respect to non-English languages. If you look at the supervisory highlights guidance that the Bureau put out in 2016 on LEP, they were very much of the view of trying to encourage financial institutions to do something in non-English languages and not requiring then everything had to be in the non-English language because the Bureau rightly perceived that that would be a barrier to doing anything in a non-English language. And you see it again in a very recent reflection, the final CFPB debt collection rule, which is just the second piece of it just came out on December 18th. It contains a provision about providing validation notices under the FDCPA to consumers by debt collectors and giving them the option of providing it in Spanish. It's not required, but a debt collector has the option of giving one in Spanish.

Notably though, the rule or the official commentary says that if a debt collector chooses to provide that validation notice in Spanish, it doesn't imply a requirement for the debt collector to do other activities in the collection of the debt in that other language. The idea is to ease the industry in to providing non-English language support by allowing them to do it one small piece at a time, which is actually ascertainable and easy for the industry to do because if you tell the industry, you can't roll out any part in Spanish until you can do it all in Spanish, then no one will ever do it. And when the industry believed that was the rule based on some consent orders that predated the supervisory highlights in 2016, guess what? Nobody was doing anything in non-English languages. So, I think the task force and the CFPB's fair lending staff have both seized on the correct way to address this in a way that in the practical real world means more financial inclusion for people who don't speak English as their first language.

Alan Kaplinsky: Okay. While we're on a roll talking about the fair lending and fair access, reference has been made to this disparate impact doctrine and our disparate effect doctrine. A doctrine very heavily utilized by Director Cordray for many years when they were investigating auto finance companies. Companies that were buying retail installment sale contracts from auto dealers around the country. And, first of all, just to make sure everybody listening to our program today understands what it is, maybe you could describe, Todd, what is disparate impact and under the Equal Credit Opportunity Act and then I'd like to you to tell our listeners, what did you recommend there?

Todd Zywicki: Well, that's a hard one to summarize and if you look at the recommendations, that's one of the more complicated and dense recommendations that-

Alan Kaplinsky: Give us the reader's digest version.

Todd Zywicki: Because there's questions about disparate... Basically, what it did... For the reader's digest version, most people think about discrimination through a lens of whether somebody intentionally discriminates against some other person based on their race, sex, or some other characteristic. Disparate impact concepts basically deal with the idea of if you find a statistical disparity among people that is correlated in some way with their race, sex, or some other impermissible characteristic, that what are the circumstances under which that can be inferred to be caused by discrimination. And Chris might have a clarification on that. And that's why I say it's very dense and very detailed as to what it is.

And, obviously, this is something we took very seriously because we feel very strongly. In equal credit access, that's a very strong societal view with respect to that. One of the things that particularly, I think is important in our report is that we urge more attention to that and modernization and review of fair lending generally. So, for example, one of our proposals is that we should study and consider the obstacles with respect to disability. Disability is not currently included. We don't say that it should necessarily be, but what the report does say is we should investigate to see what the challenges are. We know that households with disabled people are more likely to be unbanked, for example. And so we don't know whether there's issues there or not, but it's worthy of consideration.

We also talk about modernizing it to get rid of sort of somewhat archaic regulations. So, for example, one of the... Where it's not really necessary anymore counterproductive. So, one of the interesting things is, you're not allowed to ask about somebody's childbearing plans. Well, one product that's emerged in recent years is people providing financing for expensive alternative fertility, right. IVF and that sort of thing. And this may come as a shock to you, but that tends to be disproportionately women who have childbearing plans, and nobody really thinks anymore that somebody is going to discriminate against you because you have childbearing plans, but it could interfere with these things.

A lot of what we're saying is, let's look at this. It's been a real chatter that people believe in since the '70s, but there may be some changes with respect to this. But let's also... A lot of what we talk about here is... And this is I say, it's very detailed, very precise is drawing the line that Chris was talking about, which is ensuring fair access, but in non-discrimination, but also doing it in such a fashion that it doesn't unduly interfere with financial inclusion and the other things that people have and want. It can make their lives better off.

And so a lot of our recommendations are sort of tailored towards drawing that line, creating more predictability in this world, so that people aren't chilled in the way Chris was describing earlier for lending purposes and the like, and so a lot of what we have, relates to things basically like clarifying the law and the like.

Alan Kaplinsky: All right. So, Chris, any reaction to what Todd has said to say?

Chris Willis: One of the things that I've always said to clients about the fair lending laws is that the first mistake that lawyers make is trying to make rational sense out of them and the way that they're applied. And the reason that I say that is because it's one of the least predictable consumer credit regulations that we have on the books because you have this idea that first, you have a disparate impact. So whatever the creditor's doing will disproportionately impact someone on the basis of a protected characteristic. But the thing is, a lot of things creditors do have such an impact like using FICO scores, for example, but that by itself doesn't make it illegal, right? Because the disparate impact test has three parts.

First, there has to be a disparate impact. Then if the creditor shows that it's doing whatever it's doing for a legitimate business purpose, then it's okay. Theoretically, it's off the hook. Only does it then get liability imposed on it if the government or the plaintiff proves that there's a less discriminatory alternative that serves the business justification equally well. The problem though is that everything creates a disparate impact in credit because that's just the way that the data is and we hope to move in the right direction on that, but that's the state of affairs and the enforcement activity that we've seen under the fair lending laws is marked by a selective disregard of company's legitimate business interests. And so you could say, "Well, hey. I'm doing something and here's my legitimate business interest." And sometimes the government will say that interest is okay. And sometimes the government will say we disregard it. And there's no predicting when the government will disregard versus not disregard what your legitimate business interest is for doing something in connection with a credit product.

And so, the predictability point that Todd just made is one that the industry could really use because I think there's very little predictability because the thing is you can sit there and look at what the enforcement activity has been over the past 10, 20, 30 years and say, "Okay, I don't want to do that." The thing that other entity got in trouble for, I won't do that. But what you don't know is what's the next innovation that the regulator or a court may take, but more likely a regulator and say, "Okay. Here's something that hasn't been done before, but now I will find this to be a violation of the Equal Credit Opportunity Act under the disparate impact doctrine." There's no predicting that. And that does act as a great sort of deterrent to innovation. And I think to strategies that would involve more inclusion of more people within the credit system.

Todd Zywicki: If I could just add on that because this is something that the task force talks a lot about in the report is sort of thinking about this in a wide angle lens, but overall, as I already mentioned inclusion, but if you think about the auto dealer example, for example, in chapter 10, we note that the CFPB chose a particular way of dealing with the allegations of the disparate impact in dealing with the auto dealer litigation. There's some evidence that what they ended up doing was essentially the effect of it to make sure everybody's getting the same price was to raise prices for all consumers and stifled competition, right? So, one way in which you can make sure nobody gets a different price is to have a perfect cartel, right? Where all consumers pay more.

Now, we don't know that that's the case. There's some suggestion that it was, but one of the proposals that we have in the report that are kind of under a good government type thing is, we suggest that the Bureau should do justice. The Bureau does retrospective review of its major regulations. We say the Bureau should do retrospective review of its major enforcement initiatives to find out sort of what they wanted to do, whether they did it, and what were the unintended consequences that it might've flowed from it because that's a possible example of a situation in which the tool that they chose may have reduced disparities in pricing between different groups, but maybe at the cost of increasing costs for everybody, bringing the bottom up rather than the top down, which would be very informative, of course, going forward is to how you might want to deal with situations like that in the future.

Alan Kaplinsky: Well, we've covered a lot of ground today, Todd and we're going to have to bring this segment to a close. However, next week, we will continue on because I still have a lot of areas to explore with you. So, let me thank you so far, Todd, but you're not done yet. And let me also thank all of our listeners today and I urge all of you to download the next podcast in which we will deal with the remaining important issues pertaining to the CFPB's task force on federal consumer financial law with our special guest, Professor Todd Zywicki.