EXAMINING LEGISLATIVE PROPOSALS TO REFORM THE CONSUMER FINANCIAL PROTECTION BUREAU

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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Tuesday, October 29, 2013

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EXAMINING LEGISLATIVE PROPOSALS TO REFORM THE CONSUMER FINANCIAL PROTECTION BUREAU

Tuesday, October 29, 2013

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Duffy, Bachus, Pearce, Westmoreland, Luetkemeyer, Stutzman, Pittenger, Barr, Cotton, Rothfus; Meeks, Green, and Lynch.

Chairwoman CAPITO. The subcommittee will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

The ranking member is on his way, but I am going to go ahead and give my opening statement.

This morning's hearing begins a very important discussion about the structure of the Consumer Financial Protection Bureau (CFPB). Although the CFPB is in its third year of existence, members of this committee have significant concerns about the structural flaws in the leadership of the CFPB. We are here this morning to gain insight on proposals to reform the CFPB so that it is better suited to provide a stable regulatory environment for consumer credit.

Consumer protection is not a partisan issue, and the proposals before this committee do not attempt to weaken the CFPB in any way. Rather, these measures attempt to provide more accountability and transparency to an agency whose structure makes it susceptible to regulatory overreach and unbalanced rule-writing.

The first reform that we will discuss today is moving the leadership of the CFPB from a single director to a five-member commission. This change will provide the CFPB with greater accountability and diversity of opinion. These are positive steps for consumers, who will best be served by regulations developed by consensus among commissioners of various professional and educational backgrounds. This diversity of opinion is critical to ensuring that regulations are drafted in a manner that strikes an appropriate balance between protecting consumers and preserving a variety of ways for consumers to access financial products.

Another proposal before us today is to modify the threshold for the Financial Stability Oversight Council (FSOC) to review a CFPB rule. Under the Dodd-Frank Act, the threshold for reviewing a rule is so high that it is unlikely it will ever be triggered. An FSOC review of CFPB rules is critical because for the first time, a Federal agency is solely responsible for developing consumer credit rules without any concern for the relationship these rules will have with the safety and soundness of the financial institutions governed by the rules.

The tension between safety and soundness and consumer protection is essential to the health and safety of our Nation's financial system. Legislation before us today to restore that tension by lowering the threshold for FSOC reviews is of critical importance.

Finally, we will discuss other legislative proposals to modify the manner in which the CFPB draws its funding. Currently, the CFPB is an independent agency housed within another independent agency, the Federal Reserve. The CFPB draws its funding from the Federal Reserve's operating expenses without any consultation from Congress. This arrangement is unprecedented and a fundamental flaw in the structure of the CFPB. It is virtually impossible for Congress to carry out its oversight responsibilities without the ability to reshape the agency's budget.

In previous cases, this has been the only way for Congress and the public to rein in an agency that has stepped beyond its bounds. Given the CFPB's core mission of regulating consumer credit product, it is essential for Congress to have oversight over the budget.

I would like to thank the authors of the legislation before us today for their leadership: Chairman Emeritus Bachus; Representative Neugebauer; Representative Duffy; Representative Posey; and Representative Westmoreland. I look forward to hearing from our witnesses on these proposals.

And until the ranking member gets here, I will yield Congressman Duffy 2 minutes for the purpose of making an opening statement.

Mr. DUFFY. Thank you, Madam Chairwoman. I appreciate the panel coming in. And I am grateful that you called this very important hearing. I would echo your comments, Madam Chairwoman, in that the CFPB is a large and powerful agency which is unaccountable. It is unaccountable to Congress, which means it is unaccountable to the American people. It is unaccountable to the appropriations process. We are concerned about the accountability as it relates to a director versus a board governing the agency. And we are concerned about the review process as set out in FSOC for rules that come out of the CFPB.

But one of my main concerns as we have looked at the American people's relationship with its government is in regard to data collection. We have learned a lot about what the NSA is doing with regard to Americans' phone records. We have a lot of concern about what the IRS is doing in regard to political activity with our financial information that is given to them. We are concerned about our health records and Obamacare.

But now we are concerned about the CFPB and its collection of our credit card information and our mortgage information. And when the government has access to so much of America's information, it truly changes the dynamic between the people and their government. And I would like to hear the panel's views on the amount of information that the CFPB is collecting in regard to credit card data—it is our understanding that they are collecting almost a billion cards or more—and whether that is necessary or not. Oftentimes, we hear how effective sampling can be in regard to garnering a pretty good perspective of what is happening in the whole as opposed to the CFPB and its near 100 percent collection on information in the credit card space.

I think this is a very important topic in regard to an agency that has very limited accountability to the American people and Congress. And again, I thank the chairwoman for calling this hearing, and I yield back.

Chairwoman CAPITO. Thank you.

Mr. Luetkemeyer for 1 minute.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

As I have said in the past, it is important that Congress examine the CFPB at every opportunity, particularly given that there are still considerable structural challenges at this agency. The legislative proposals we will examine today take great steps toward creating a Bureau that is responsible, transparent, and as has been testified to here today, accountable. These reforms are reasonable, take steps to protect taxpayer dollars, and represent good government, something that should gain support on both sides of the aisle.

This agency has been given some of the broadest, most unchecked authorities in the history of our Federal Government. It can wade into nearly any territory and operate without any meaningful oversight from Congress. I believe we need reform at the CFPB and these legislative initiatives we are discussing today are steps in the right direction. I thank the chairwoman, and I look forward to a productive hearing. I yield back the balance of my time.

Chairwoman CAPITO. Thank you.

Mr. Westmoreland for 1½ minutes.

Mr. WESTMORELAND. Thank you, Chairwoman Capito, and thank you for having this hearing. And I am grateful to you for including the bill that I introduced, H.R. 3183, in this hearing.

Today, it seems that government agencies like the CFPB know more about me than I do. H.R. 3183 is designed to give individuals control of their financial data. To me, H.R. 3183 is a simple bill, but so powerful because it allows individual consumers oversight over the agency that is supposedly looking out for them.

Simply put, H.R. 3183 would allow an individual, once a year, to request from the CFPB all the information CFPB has collected and stored on them. This bill has been modeled on the very successful program allowing individuals to acquire one free annual credit report. This bill hopes to apply this success to your CFPB data file.

Since the bill attempts to apply commonsense reforms to the CFPB, my guess is that the CFPB won't like it. I am sure we will hear that they don't have the money, or the staff, or the ability to implement this commonsense legislation. Let me just say to the CFPB, do not obstruct commonsense, bipartisan legislation. The CFPB collects the data, analyzes the data, and uses the data for supervision and enforcement.

My question to the CFPB is, if you don't want to disclose it to the individuals that you were supposedly created to protect, then what do you have to hide?

With that, I yield back.

Chairwoman CAPITO. The gentleman yields back.

Mr. Bachus for 2 minutes.

Mr. BACHUS. I thank the Chair.

When school groups come to the Capitol, most Members of Congress get to host them and sometimes we get our picture taken on the steps of the Capitol. And many of us pull out a copy of the Constitution, and we say, this is your Capitol and this is your Constitution. And it is all based on the Constitution. It starts with the three branches of government. And we talk about checks and balances, and that is what we are talking about here, that no branch of government would have an overriding power over another.

And when we form government agencies, we carried this a step further. They are not elected. Members of Congress, we have an additional check that is written into Article I, and that is we have to run for reelection. But with government agencies, the Constitution said that the Legislative Branch will make an appropriation. Well, that didn't happen with the CFPB. So we don't have that check and balance. But with every other agency, with the exception of the EPA, which is actually under our power, our budgetary power, all the others were commissions, bipartisan commissions. And I think we have seen in the past few weeks when we don't have compromise, when we don't try to build consensus, we see that things get badly off track.

That is why I have introduced a bill which was not an original thought in my mind, but it was what this committee passed originally in Dodd-Frank, and that was for a bipartisan commission of five people. There was agreement on both sides of the aisle that it is what we need to do. That is what we have done in the past. It helps build consensus. Bipartisanship, we say we are starved for that.

That bill has already been introduced again, and this committee will get the right to do the same thing it did back when we originally passed Dodd-Frank in 2009, and that is to create a check and balance. And that is for protection of the people, not for Members of Congress, or not for any one group, but for the people.

Thank you.

Chairwoman CAPITO. Thank you.

We are going to go to another Member on the Republican side, Mr. Pittenger, for 1 minute, and then I will yield to the ranking member.

Mr. PITTENGER. Thank you, Madam Chairwoman, for yielding me the time.

We are here today to highlight the structural problems with the CFPB. This has already been touched upon throughout several hearings this year, but with the immense power that the CFPB yields, it is vital the American people know the scope and the reach of this government agency. One of the major causes for concern is that the CFPB lacks internal checks and balances because it has a sole director with absolute and unchecked control rather than a multimember, bipartisan commission.

Another major issue of concern is their budget is not subject to the appropriations process. The CFPB receives its funding from the Federal Reserve, which presents robust congressional oversight. These defects, along with others, make the CFPB one of the most unaccountable agencies in American history. As a result, the CFPB will continue to be extremely susceptible to the bureaucratic pathologies that manifest themselves in overly burdensome regulation and overly aggressive enforcement action, which will harm consumers by making credit scarce and more expensive.

This regulatory onslaught will only end when people recognize the harm that has been done. We have already seen this with the IRS. I look forward to hearing the witnesses' testimony on how we can reform the CFPB for the betterment of the American people. I yield back the balance of my time. Thank you.

Chairwoman CAPITO. Thank you.

I would now like to yield to the ranking member for the purpose of an opening statement.

Mr. MEEKS. Thank you, Madam Chairwoman.

Ever since legislation was enacted in 1872 to protect consumers from frauds involving the U.S. mail, the Congress, and the Executive Branch have been increasingly aware of the responsibility to make certain that our Nation's economy fairly and adequately serves consumers' interests.

In certain sectors of our economy, we have done pretty well. Today, American consumers enjoy the safest products and services in the world in various sectors such as agriculture, health care, aviation, construction, manufacturing, and the list goes on and on. In fact, throughout the history of our Nation, consumers have depended on the government to ensure the safety and quality of the products and services we consume on a daily basis. And the success we have had in doing so has led to the biggest consumer-based economy in the world. Each succeeding generation has enjoyed a greater variety of goods and services due to our strong consumer rights laws and culture.

But our success has not been evenhanded in all sectors, nor has it been present at all times in the history of our Nation. Just a few short years ago, we found out the hard way that the financial sector remained one of the major sectors of our economy where consumer rights were still treated as a stepchild among other issues. The philosophy was that banks and other market participants were conscientious and logical institutions, and that they would never do something which would undermine their own survival or lead to their self-destruction.

As former Fed Chairman Greenspan later recognized, boy, were we wrong. Not only were they able to do great harm to themselves, they were also capable of bringing the whole financial sector and economy down the drain with them. In other words, the lesson learned was that consumer rights remain and will continue to remain government's business and ultimate responsibility. And when left unchecked, the damage can be devastating for everyone.

And devastating it was: 10 million foreclosures; 8 million jobs lost; and trillions lost in wealth. Between November 2008 and April 2010, about 39 percent of households had either been unemployed, had negative equity in their house, or had been in arrears in their house payments. Thirty-nine percent of all American households. Indeed, we paid a heavy price for not putting consumer rights at the top of our priorities.

Fortunately, Congress acted to address this flawed philosophy with the creation of the CFPB. Just like we have with the FDA for the safety of the food and drug industry, or the Federal Aviation agency for the safety of our aviation industry, we now have the CFPB for protecting consumer rights in the financial services industry. Consumers shopping for mortgages, applying for credit cards, or simply using their checking account can now do so with a little more confidence that someone is looking out for their rights.

Furthermore, because we have the CFPB, it is my hope that we will never see another financial crisis resulting from the massive abuse of consumers being misled into products and services they neither understand nor can afford. With two-thirds of our economy depending on consumer spending, our Nation simply can't afford any attempt to weaken or undermine consumer rights protections. I know that my constituents in southeastern Queens can't afford it, after having suffered one of the highest rates of fraudulent mortgages in the country, resulting in an overwhelming number of people with mortgages underwater or facing foreclosure. And if the financial crisis taught us anything, it is that we need a strong, independent agency to focus on predatory lending practices.

In fact, let me share with you a quote from a well-recognized consumer advocate: "Strong regulatory standards, adequate review of new products, and transparency to consumers are all good things. Indeed, had there been stronger standards in the mortgage markets, one huge cause of the recent crisis might have been avoided." That was Jamie Dimon, the CEO of JPMorgan, addressing his shareholders a few years after the crisis.

Yet today, we sit here considering a number of bills to defang the consumer bureau that even Wall Street supports. I wonder why and when we keep choosing to pick on the most crucial part of financial reform in an agency that my constituents and all Americans desperately need and desire.

Thank you. I yield back the balance of my time.

Chairwoman CAPITO. Do either of the gentlemen on the other side have an opening statement?

Mr. GREEN. Yes.

Chairwoman CAPITO. Yes. Mr. Green is recognized for how many minutes, sir?

Mr. GREEN. Two minutes will be fine.

Chairwoman CAPITO. Two minutes.

Mr. GREEN. Thank you, Madam Chairwoman. And I thank the ranking member as well.

And thank you for the appearing, witnesses.

We have a Consumer Financial Protection Bureau because we went through some very difficult times. It is not something that materialized out of thin air. We had a circumstance wherein the economy was pulled down because of some what were called toxic assets. We had these 2/28s, and 3/27s. We had no-doc loans. We had negative amortization.

All of these things became what were called exotic products, and as a result we had them packaged and sent into a secondary marketplace; they were securitized. And it made quite an impact on the economy. It shocked the economy. And as a result of this, we decided that consumers didn't get a fair shake, and that we would try as best we could to put in place an agency that could benefit consumers. Obviously, the prudential regulators have had some impact on regulations and laws that could help consumers, but this agency is there for consumers.

I think, quite candidly, as I reflect on it now, that it is a little bit short of a miracle that we were able to do it. Mr. Dodd and Mr. Frank ought to be canonized. Perhaps we should name a small State after them. I am just not sure what we can do to adequately recognize the accomplishment of the Consumer Financial Protection Bureau. So I am one of the supporters of it, as you might guess, and my hope is that we will not lose something that was nearly impossible to achieve.

I yield back.

Chairwoman CAPITO. Okay. The gentleman yields back.

And with that, we conclude our opening statements, and I would like to welcome our panel of distinguished witnesses. Each of you will be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, each of your written statements will be made a part of the record.

I also ask unanimous consent to submit statements for the record from the Independent Community Bankers of America, the Credit Union National Association, and the Financial Services Roundtable. Without objection, it is so ordered.

Our first witness is Mr. Jess Sharp, managing director, U.S. Chamber Center for Capital Markets Competitiveness.

Welcome, Mr. Sharp.

STATEMENT OF JESS SHARP, MANAGING DIRECTOR, CENTER FOR CAPITAL MARKETS COMPETITIVENESS, U.S. CHAMBER OF COMMERCE

Mr. SHARP. Thank you, Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee. Thank you for having me here this morning before the subcommittee to testify on behalf of the hundreds of thousands of businesses that the U.S. Chamber represents. The Chamber firmly supports sound consumer protection regulation that deters and punishes financial fraud and predation. But consumer protection, like every other government function, must be carried out in a fair, transparent manner consistent with the principles embodied in the Constitution.

The CFPB, by design, fails these basic tests. Structural reforms such as those specified in the bills now before the subcommittee are urgently needed to incorporate the controls and oversight that apply to other Federal regulatory agencies, which will, in turn, ensure far greater stability over the long term for those who provide and rely on consumer credit.

As the Chamber and others have pointed out on many occasions, the CFPB places extraordinary unchecked power in the hands of a single individual. Some agencies have single directors, that is true, and the heads of independent regulatory agencies generally do serve for fixed terms. And a few agencies are even funded outside the appropriations process. But there is no other entity in the Federal Government that combines all of these features in one place. And together, they render the Bureau virtually immune from the checks and balances that normally constrain agency action.

Moreover, the regulatory and enforcement authority exercised by the Director is extraordinarily broad. It has the power to regulate a number of consumer products and services that are common sources of financing for Main Street businesses, and in some cases to regulate the service providers to those companies. And it has a very broad standard to enforce as well, the prevention of unfair, deceptive, or abusive acts or practices.

So what are the real-world consequences of giving up some of these important oversight tools? Here are just a couple of examples. You begin to lose transparency, we believe, and we are very concerned about that. The Bureau frequently argues that it is subject to unprecedented oversight, pointing to hearings before this committee, sort of the budget documentation they submit and their semiannual reports as evidence of that. But the number of hearing appearances and reports is irrelevant if little or no information is conveyed in the testimony or those documents. To this day, for example, despite multiple congressional appearances, the Bureau has never coherently explained the legal justification for its data collection programs, discussed the reasons why the collection is necessary, or adequately responded to concerns about the security of consumers' financial data. And the Bureau certainly has not explained why it believes the benefits of these collection programs outweigh the costs being imposed on the affected companies.

Businesses want to comply with government regulations, but they need the government to set clear rules. But rather than following the rulemaking process, the CFPB prefers to set standards through enforcement actions and brief informal guidance memos. For example, the Bureau issued a bulletin explaining that when a service provider violates an applicable law or regulation, "Depending on the circumstances, legal responsibility may lie with the supervised entity as well as with the supervised service provider." This vague language provides no real information to companies wishing to exercise appropriate oversight of service providers, and we are hearing this is already leading companies to limit the number of vendors with which they work. The Bureau has declined to provide any additional information.

Similarly, the Bureau has issued guidance regarding possible unfair, deceptive, or abusive acts or practices in connection with debt collection. The guidance document includes descriptions and examples of conduct that the Bureau deems unfair or deceptive, but provides no guidance regarding the meaning of "abusive" other than simply reciting the statutory definition. If ever a term required a notice and public comment rulemaking process to establish a workable transparent standard, it is "abusive." But the CFPB expects companies to do for themselves what the CFPB is unable to do, and that is to define the term.

Finally, at least two separate letters from members of this committee have raised questions about the CFPB's actions with regard to indirect auto lending in compliance with ECOA. Members have asked for more information about the CFPB's methodology and the Bureau's apparent choice to create new legal standards that will fundamentally alter the economics of the market through enforcement rather through notice and comment rulemaking. Thus far, the Bureau has not meaningfully clarified its approach.

The CFPB operates this way because it is fast and because it maximizes their flexibility, but this approach is enabled by the Bureau's structure, which makes this strategy virtually impossible to second-guess. And we just think that is not a way to design or to run a transparent regulatory agency.

Even the Bipartisan Policy Center just last month said that the CFPB succeeds when it writes rules, and I think there is good evidence to illustrate that point. The Qualified Mortgage rule, I think there is substantial support for where that process ended up. The remittances rule had some false starts, but I think it ended up in a reasonable place. When you have a notice-and-comment process that is informed by the public and there is collaboration among the parties, you end up with better results.

So we believe there is urgent need for reform on the structural side, including the transition to a commission, including bringing the CFPB under appropriations, and we have also heard that there may be consideration of a dedicated Inspector General, which we also think is a terrific idea. So with that, thank you for the opportunity to testify, and I am happy to answer your questions.

[The prepared statement of Mr. Sharp can be found on page 32 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is from my home State of West Virginia, and I appreciate him driving over the mountains into the traffic to help us out here today. Mr. Robert S. Tissue is the chief financial officer of Summit Financial Group, and is testifying today on behalf of Summit, and also the West Virginia Bankers Association.

Welcome, Rob.

STATEMENT OF ROBERT S. TISSUE, CHIEF FINANCIAL OFFICER, SUMMIT FINANCIAL GROUP (SUMMIT), ON BEHALF OF SUMMIT, AND THE WEST VIRGINIA BANKERS ASSOCIATION

Mr. TISSUE. Good afternoon, Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee. My name is Rob Tissue. I am the chief financial officer of Summit Financial Group. Summit is a financial holding company headquartered in Moorefield, West Virginia, and provides banking and insurance services to the communities located in the eastern panhandle and south-central regions of West Virginia, as well as in the Shenandoah Valley and northern regions of Virginia. I appreciate the opportunity to present my views on legislation that we believe would improve the accountability of the CFPB.

But let me begin by first emphasizing that the banking industry fully supports effective consumer protection. Americans are best served by a financially sound banking industry that safeguards deposits, lends those deposits responsibly, and processes payments efficiently. My bank's philosophy has always been to treat our customers right and do whatever we can to make sure that they understand the terms of their loans and their obligations. Fair service to our customers is inseparable from sound management of our banks.

Despite this, Dodd-Frank erected a Bureau that divides consumer protection regulation from safety and soundness supervision. As such, we must ensure that this new Bureau is accountable to the fundamentals of safe and sound operation, to the gaps in regulating nonbanks that motivated financial reform, and to the principles of consistent regulatory standards.

There are several features of the Bureau that make improved accountability imperative. Dodd-Frank gave the Bureau expansive new quasi-legislative powers and the discretion to rewrite rules of the consumer financial services industry based on its own initiative and conclusions about the needs of consumers. The resulting, practically boundless grant of agency discretion is exasperated by giving the head of the Bureau sole authority to make decisions that could fundamentally alter the financial choices available to consumers.

Not only has the Bureau been given these extraordinary powers, but it also lacks the accountability that comes with budgetary oversight. Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. This lack of oversight means that the Bureau is free to direct its nearly $600 million budget towards any issue it sees fit, without input from Congress. Because of its pivotal role, the CFPB must be held accountable for the consequences of its actions, which includes the availability of, or the lack thereof, of credit and financial services to deserving people.

There were a number of bills proposed that begin to address the accountability of the CFPB. For example, Representatives Bachus and Duffy begin to address the issue of the structure of the Bureau in their bills, while Representatives Posey and Duffy address what the oversight and source of funding should be in their bills. These bills are a few of many options to address concerns about the role of the Bureau and its exercise of power.

An important principle that underlines these and other bills is that there needs to be an effective check and balance on the Bureau's authority. We must also ensure that the Bureau's funds are used effectively and disclosed fully.

I support this principle of accountability and balance and applaud the congressional efforts to ensure an effective mechanism is in place to achieve it for the Bureau.

Finally, the improved oversight of the Bureau should be utilized to guide it to better accomplish its mission. Specifically, Congress should ensure that nonbanks receive equal regulation and that new mortgage rules do not prevent qualified borrowers from obtaining loans. Too often, the focus seems only to be on banks and other regulated financial institutions, which are already subject to significant regulation. This focus will inevitably push customers to less regulated nonbanks that were one of the major key offenders leading up to the crisis.

In summary, Congress must take steps to ensure the CFPB is held accountable or it risks allowing it to harm the very consumers it is designed to protect. Congress must be vigilant in overseeing that the actions of the Bureau do not restrict access to good financial products by responsible American families.

Thank you, and I welcome the opportunity to answer your questions.

[The prepared statement of Mr. Tissue can be found on page 61 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is Ms. Lynette Smith, president and chief executive officer, Washington Gas Light Federal Credit Union, on behalf of the National Association of Federal Credit Unions.

Welcome.

STATEMENT OF LYNETTE SMITH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WASHINGTON GAS LIGHT FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS (NAFCU)

Ms. SMITH. Thank you. Good afternoon. Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee, my name is Lynette Smith, and I am testifying today on behalf of NAFCU. I serve as the president and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia. Washington Gas Light has more than 7,200 members and $90 million in assets. NAFCU appreciates the opportunity to participate in this hearing today concerning legislative proposals to improve the structure of the Consumer Financial Protection Bureau.

Credit unions were not the cause of the financial crisis, and yet we are still greatly impacted by a number of provisions contained in the Dodd-Frank Act. For example, all credit unions are subject to the rulemaking authority of the new CFPB. The requirements in Dodd-Frank have created a number of new and unnecessary compliance burdens for small credit unions like mine.

NAFCU believes consumer protection is important, and supported new regulations for the unregulated bad actors during the financial crisis. Because consumer protection provisions already existed in the Federal Credit Union Act, that laws other governing institutions did not have, NAFCU was the only financial services trade association to oppose credit unions of any size being placed under the CFPB's direct regulatory authority.

Unfortunately, our concerns have proven to be true. A recent survey of NAFCU members found that 94 percent have seen their regulatory burden increase since enactment of the Dodd-Frank Act. We believe that the CFPB's focus should be on regulating the unregulated entities that contributed to the financial crisis, not increasing the regulatory burden on good actors.

While the current CFPB leadership has been open to listening to credit unions' concerns, NAFCU believes that some fundamental structure changes at the CFPB could be helpful in the long term. We believe changes could improve operations, give it the proper oversight, and result in better understanding between the Bureau and the entities it regulates.

First, NAFCU supports the concept of creating a five-person board or commission to govern the CFPB. No matter how qualified and competent a single individual is, a commission setup would allow multiple consumer perspectives to be brought to the table in the CFPB's decision-making process. This would allow for a healthy debate on new proposals before they are issued.

Second, NAFCU supports legislation that would modify the threshold needed for the FSOC to veto a proposed rule, and that clarifies the standard of what can be considered.

Third, NAFCU supports legislative efforts to help ensure that the government, including the CFPB, does everything possible to take great care in handling member financial information.

Fourth, NAFCU believes that Congress should change the funding mechanism for the CFPB to require annual congressional appropriation. We believe that subjecting the Bureau to the traditional appropriations process would allow for better oversight of this powerful agency.

Finally, there are a number of other areas where CFPB operations could be improved and the regulatory burden on credit unions could be lessened. These are outlined in my written testimony and in NAFCU's five-point plan for regulatory relief.

In conclusion, I continue to remain at a loss as to why my credit union has been placed under a new regulatory regime. While consumer protection is important, credit unions like mine were good actors before the crisis and now face overwhelming regulatory burdens post-crisis. Thank you for the opportunity to participate in this discussion today as the subcommittee debates possible changes to improve the structure and the operations of the CFPB. I would welcome any questions that you may have.

[The prepared statement of Ms. Smith can be found on page 51 of the appendix.]

Mr. DUFFY [presiding]. Thank you, Ms. Smith.

The Chair now recognizes Mr. Silvers, the policy director and special counsel for the AFL-CIO, for 5 minutes.

Mr. Silvers.

STATEMENT OF DAMON A. SILVERS, POLICY DIRECTOR AND SPECIAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

Mr. SILVERS. Yes, good afternoon, Chairwoman Capito and Ranking Member Meeks. My testimony today is given on behalf of the AFL-CIO and on behalf of Americans for Financial Reform (AFR), a coalition of more than 250 national, State, and local organizations with a membership of close to 50 million people.

Congress created the Consumer Financial Protection Bureau as part of a comprehensive set of reforms designed to address the causes of the financial crisis of 2008, which cost the world economy in excess of $60 trillion, according to the Bank of England. After the crisis, a clear consensus emerged that consumer protection regulation was fragmented and essentially a stepchild within the various bank regulatory agencies that had jurisdiction over it.

In response, Congress designed the Consumer Financial Protection Bureau to unify the consumer protection work of the Federal Government in the financial services sector in one government body and to clearly define that body as part of the overall bank regulatory system. Thus, Congress located the CFPB within the Federal Reserve System, one of the three bank regulators. The Bureau, like the other bank regulators and the FHFA, has a budget that is not set through the congressional appropriations process. This is not unusual in bank regulation.

The CFPB, again like the other bank regulators, is able to offer higher salaries, above the General Schedule for Federal employees, in recognition of the need to offer salaries that are at least somewhat competitive to people with experience in the banking sector.

Finally, the CFPB, like the Comptroller of the Currency and the regional Federal Reserve banks which do the actual regulating for the Fed, is headed up by a unitary executive. None of these provisions in Dodd-Frank with respect to the CFPB are unusual for a bank regulator.

At the same time, in response to some of the concerns that appear to motivate this hearing, Congress placed a number of unique constraints on the CFPB. The CFPB is the only financial regulatory agency whose rules may be overturned by a vote of the FSOC—the only one. The CFPB must consult with other bank regulators when engaging in rulemaking and those bank regulators have no such obligation to consult with the CFPB when they do their own rulemaking.

The other bank regulators have access to CFPB inspection reports and the CFPB does not have access to theirs. The CFPB is subject to mandatory cost-benefit analyses in doing rulemaking—the other bank regulatory agencies are not—with a particular requirement to assess the effects of its rules on small banks, credit unions, and rural consumers. Compared to other bank regulators, the CFPB is actually substantially more accountable to Congress and to its fellow regulators.

Nonetheless, since its establishment the CFPB has succeeded in returning over $700 million to consumers in improperly assessed fees and charges, including $300 million from JPMorgan Chase alone. The CFPB has also established standards of conduct leading to greater transparency and more consumer-friendly financial markets, including in the critical mortgage market, as some of my fellow witnesses have attested. These rules have been hailed by industry leaders, such as David Stevens of the Mortgage Bankers Association, who said of the mortgage rule that it accomplished Congress and the CFPB's goal of "eliminating the risky products and features that once plagued our industry."

Today, the subcommittee takes up a series of measures—I believe there are 9 bills, but perhaps there are now 10, I'm not sure—each of which is designed to weaken the CFPB, to deprive the CFPB of its status as a genuine bank regulator, and to effectively subordinate the CFPB politically to the too-big-to-fail banks that dominate the markets the CFPB regulates. The AFL-CIO and Americans for Financial Reform strongly oppose weakening the CFPB in comparison to other bank regulators by: (A) replacing the Director of the CFPB with a five-member board; (B) reducing the required vote at the FSOC to a simple majority; (C) making the CFPB's budget subject to congressional appropriation; and (D) requiring the CFPB to pay its employees less than other bank regulators or limiting the CFPB's inspection powers.

To put it simply, each of the nine bills before this subcommittee has no merit. I would make an exception for the bill that I just heard about a moment or two ago around disclosing information to consumers who request it. I haven't seen it and I can't give an opinion about it. The AFL-CIO and the AFR strongly oppose all nine of these bills. Each is an effort to weaken the CFPB, will make America's consumers more vulnerable, will benefit too-big-to-fail banks at the expense of the public interest, and will make our financial system more vulnerable to systemic crises.

I appreciate being invited to testify today, and I look forward to your questions.

[The prepared statement of Mr. Silvers can be found on page 43 of the appendix.]

Mr. DUFFY. Thank you, Mr. Silvers.

The vice chair will now recognize himself for 5 minutes.

Just to note, Mr. Silvers, I have to respectfully disagree. I look at several of the bills here, one being taking the CFPB from a single director to a board and claiming that undermines the CFPB's effectiveness when you have a bipartisan commission that is actually working together on the behalf of consumers, I don't think holds water. And to think that empowering Congress through the appropriations process for the CFPB in some way diminishes the CFPB's effectiveness, I have to tell you, I disagree with that completely.

But I want to go in a little different direction here. I have a bill that tries to address many of my constituents' concerns about the CFPB collecting credit card information. They are concerned about their privacy. And I have a bill that would actually make the CFPB, under the auspices of protecting consumers, ask the consumer's permission before they take their credit card financial data.

Does anyone on the panel disagree that if we are going to protect consumers, the CFPB should ask the consumer before monitoring and collecting their financial credit card data? Mr. Sharp?

Mr. SHARP. No, I don't disagree. I think if the CFPB is going to be collecting personally identifiable information in particular, I think everybody has—I think that people have an obligation to do that sort of eyes wide open, make sure that people are consulted.

Mr. DUFFY. Mr. Tissue?

Mr. TISSUE. As the vice chair is well aware, the banks and all financial institutions are subject to very strenuous privacy laws, primarily most recently from the Gramm-Leach-Bliley Act, and we take privacy very seriously. It is very important. And obviously, our regulators should be held to similar standards to protect privacy.

Mr. DUFFY. Ms. Smith?

Ms. SMITH. Yes, I do also believe that. The CFPB cannot be too careful with personal information. There is reputation risk to my credit union members. And NCUA's part 748, which is a regulation that I have to adhere to which includes member information and how I have to protect it is a law that I have to live by every day, and I have to spend thousands of dollars making sure that my members' information is protected, and I feel that the CFPB should be held accountable for doing the same thing. Thank you.

Mr. DUFFY. Mr. Silvers?

Mr. SILVERS. Yes, I disagree with the proposal you put up there, and I think that in certain respects my fellow witnesses have not articulated clearly what the issue is here. If this information was not held by anyone other than the consumer, Mr. Vice Chairman, I think you would have a point. But this is information that already is in the hands of the consumer's bank or other financial services provider. And in total, all of that personal, private information in the hands of these commercial institutions give those institutions an ability to design intentionally exploitative products using the computer power of big data.

Mr. DUFFY. And I want to interrupt you for one moment. Now, if I am doing business with Ms. Smith in her credit union, I have knowingly given Ms. Smith and her institution access to my financial information. And we have a relationship together to which I have consented. Where would I as a consumer have consented to the CFPB taking my information?

Mr. SILVERS. Are you suggesting that you have knowingly given, for example, Jamie Dimon and his staff the ability to take your information and figure out how to cheat you with it? Because you haven't.

Mr. DUFFY. What I am saying is if I bank with Wells Fargo or a credit union—

Mr. SILVERS. Because you haven't. And my members would appreciate being protected against that type of exploitation, and there is no way to do it without giving the CFPB access to the same information that Jamie Dimon has.

Mr. DUFFY. And so my point to the panel is, and I think most of the panel would agree that we should actually give permission before the CFPB collects this information.

My time is running out. The CFPB has admitted that it is taking 80 percent or more of our credit card information. There are about a billion credit cards out there. Americans oftentimes have more than one. Does the panel, Mr. Sharp maybe to you specifically, do you see a need to collect near 100 percent of all of this information or can the same data be collected and extrapolated by sampling, let's say, 8 or 10 percent of the information as opposed to 80 to 100 percent?

Mr. SHARP. Yes, I guess the way I would answer that is, this is the conversation the CFPB should be having with the public. If they want to make the case that they need every credit card transaction or account data on every cardholder, let them make that case, and maybe there is a reasonable case they can make. But we are not having that conversation. Instead, we are sort of finding out in dribs and drabs that this collection program exists.

And so, sort of our top-line position is that the CFPB needs to be much more transparent about what they are doing and engage the public in a debate about what a reasonable program looks like and what the costs and benefits are.

Mr. DUFFY. Thank you.

My time has expired, so I now recognize the distinguished ranking member, Mr. Meeks, for 5 minutes.

Mr. MEEKS. Thank you, Mr. Vice Chairman.

Let me start out by first, I guess, asking Ms. Smith: I was listening to your testimony very carefully, and you started out by saying, which I completely agree with, that the credit unions are not or were not the cause of the financial crisis. But you acknowledged that there was a financial crisis, and that there were bad actors that helped cause that financial crisis. And you also acknowledge the fact that there is a need to protect consumers. It is just that you feel that credit unions shouldn't be part of it, is that correct?

Ms. SMITH. That is correct.

Mr. MEEKS. So if the credit unions were not covered under the CFPB, then the credit unions would agree, I would assume, to protect the good actors, that you would have a CFPB that is strong and independent so that it could do its job as other independent regulators do that are not subject, so they could have the freedom to do what they need to do as far as their jobs. Would that not also be correct?

Ms. SMITH. That would be correct.

Mr. MEEKS. Okay. And let me just—and I am just wondering on this theme of appropriations, especially coming out of what we just came out of with reference to a government shutdown and utilizing the appropriation process to somewhat hold the CFPB or others somewhat hostage to Congress, as opposed to allowing them to do what they were designed to do when we passed Dodd-Frank, would be substantial. So, for example, and I will just ask you again, Ms. Smith, and then I will leave you alone.

Ms. SMITH. Sure.

Mr. MEEKS. But you did say in your testimony that the CFPB should be subject to the traditional appropriation process to allow for better oversight of this powerful agency. Would you extend that statement to the Federal Reserve, for example, or the FDIC, or the OCC, and/or the National Credit Union Administration?

Ms. SMITH. No, I would not.

Mr. MEEKS. Those are very powerful financial institutions or regulators, and in fact I would argue that many of those are even more powerful than the CFPB. The CFPB is probably less powerful than these organizations. So my only concern is why single out the CFPB, with this requirement, and we are not talking about all the others. But I am not going to ask you to answer that question at this time.

Let me just ask Mr. Silvers a question. Our Republican friends have suggested that the Bureau's budget be set through, again, this congressional appropriations process. Can you explain to us why most of the great lessons from the financial crisis taught us that bank regulators' lack of attention to consumer protection was one of the major causes of the crises, leading to more than 10 million families losing their homes. In fact, the former Fed Chairman himself admitted that regulators had been mistaken for not paying more attention to consumer protection issues in the mortgage lending industry. Do you agree with him or don't you?

And so, can you just simply answer the question then, do you believe that if the appropriations process was covered under the CFPB, would the CFPB have the independence to perform its duties?

Mr. SILVERS. Congressman, since the 1870s, as I think you began your opening remarks, it has been well-understood on a bipartisan basis that bank regulators need to be insulated from the appropriations process, because the nature of that process tends to interfere with them making hard calls around issues of safety and soundness. That is a 150-year-old lesson that every time we back away from, we reap a catastrophe.

The particular lesson of the last 10 years is that if you allow bank regulators who are largely focused on safety and soundness and who have an ideological belief, as Chairman Greenspan did, that markets are inherently self-correcting, if you give them authority over consumer protection, then they will essentially ignore consumer protection. And the failure to do consumer protection effectively will lead to the proliferation of exploitative financial products such as the 2/28 mortgage that you referred to, that the proliferation of those products will effectively undermine the safety and soundness of the financial system.

The two lessons put together are this. First, you must have a regulatory agency within the banking regulation system that is exclusively focused on consumer protection, because otherwise it will be ignored to the Nation's peril. And second, that like the other bank regulatory agencies, the consumer protection agency must be insulated from the appropriations process, like other bank regulators are, because it is an essential part of bank regulation. It is not merely a sort of sop for consumers. It is critical to whether or not we will preserve the safety and soundness of our financial system.

Chairwoman CAPITO. Thank you. The gentleman's time has expired. I am going to recognize myself for 5 minutes for questions.

We have had a lot of rulemaking by the CFPB here over the last 3 years, and it seems to me we have a really important one coming out in January, the Qualified Mortgage (QM). And you have seen some of the projected squeezing down of the number of mortgages that are going to be able to fit into this QM box, so that the unintended consequences are still yet to be seen.

So my question would be on the structure of a singular director as opposed to a committee or a commission of five, can you speak to how you think regulations could be better formulated and better refined under a system of a commission as opposed to a singular director? And I will start with Mr. Sharp.

Mr. SHARP. Thank you for the question. I think first and foremost if we were talking about a CFPB that was run by a commission, I think we would have, and I will explain myself here, more rulemaking and less sort of shoot-from-the-hip regulation by press release.

Again, one of our major concerns here is, the CFPB is required to write certain rules. Qualified Mortgage is an example; remittances is another example. But otherwise, where they are not required by Congress to write rules, they have opted to use sort of nonrulemaking channels to set standards. They put out guidance memos. They bring enforcement cases, which may be absolutely meritorious, and I don't want to say anything good or bad about the particular enforcement cases. But that is the way they have chosen to set standards, and the concern is that it is not a transparent process, there is no opportunity for notice and comments. We just think that is not the way to run a regulatory agency and we think if we had the benefit of a commission, we think there would be much less of that, much more regular order, which we think is to the good for everybody, consumers and the business community.

Chairwoman CAPITO. Mr. Tissue?

Mr. TISSUE. Madam Chairwoman, I am not a government organization specialist. I am, to paraphrase a former Member of Congress very loosely, just a country banker.

It seems to me that we have talked about what appears to me is that we have a commission of one is the way that the CFPB is set up, that the model for the regulatory bodies of having the commission is to have the collegiality, the discussion. I know there is going to be political partisanship both ways, but just that interaction, that debate, that process, in my view, it is only commonsensical it is going to arrive at a better product, as opposed to a dictatorial—I hate to use such a harsh term, but that is all that comes to mind.

So it seems to me common sense. I think we all would agree the QM/ATR standard was challenging for the CFPB to deal with. And I will say on behalf of my folks in the banking industry, we are very pleased that particularly banks my size were given, with the small lender rule, some reprieve from the most onerous, that we can still do what we do best.

Chairwoman CAPITO. Ms. Smith, let me ask you a little bit different question. The original point of the CFPB was to put all of the consumer protection under one umbrella, and that all of the other prudential regulators would ostensibly fold their consumer protection function into the CFPB umbrella. But it doesn't seem to be pulling forth that way. You have a regulator. Are you finding at the Federal Credit Union that you are having to answer to for one consumer protection and then the overlay of the CFPB in a duplicative, or maybe even sometimes conflicting way?

Ms. SMITH. Yes. If you look at the upcoming laws and rules from the NCUA, and from the Consumer Financial Protection Bureau, the laws are lists long and very overwhelming for a credit union my size.

I don't have the infrastructure in place at my credit union. I don't have a department of lawyers who can analyze everything. So it really makes it difficult for me.

But if I can answer the board versus the single director question that you asked, the board would offer more diversity of opinion and continuity over time given the change in the Administration. And I also feel that board terms could be staggered over a period, and that would ensure continuity to leadership and be fair to all participants, which the credit union is a participant. I feel it would be fair.

Chairwoman CAPITO. Thank you. My time has expired.

Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman.

I have an idea. Why don't we a have a board of about 435 and let's give them the authority to work together and harmonize, and let's give them the opportunity to negotiate. I think that would yield some sort of work product, one that I rarely see, but I think we could get a work product out of that.

I am just curious about this idea of having a board. In another life, this is a true vignette, without giving a lot of details, we were confronted, members of this organization, with something that we wanted to slow down. And someone said, well, let's slow it down by placing it with a committee, because obviously you have a number of people to make a decision. And then someone else said, no, we don't want to kill it, we just want to slow it down, so we don't want to send it to the committee.

Friends, if we give the authority to five people, why would I conclude that these five people, appointed at some point in time by various different Presidents, are going to be on the same accord and are going to be able to work and give us a work product? We have one agency right now that is stalled, has been stymied for some time, without going into names, because they can't reach any kind of agreement. This is the protection of consumers.

Mr. Silvers, give me your thoughts on the one person versus the five people and why you see the one the better or the five the better.

Mr. SILVERS. I think—

Chairwoman CAPITO. You need to put your microphone on. Excuse me, you need to put your microphone on.

Mr. SILVERS. I'm sorry, Madam Chairwoman. Is it on now? Yes.

There are agencies in the Federal Government that have five-person boards and three-person boards, and then there are agencies with singular directors. In the bank regulation area, which is what the CFPB is in, there I think has been an understanding on the part of Congress and observers of policy for a long time that day-to-day bank regulation is best in the hands of a unitary executive who can move quickly. And I think part of the understanding of Dodd-Frank that you spoke so complimentarily about earlier was that we needed that type of approach in the consumer financial protection area as well.

What I am referring to is that the Comptroller of the Currency is a unitary executive. And it is also the case, although not well understand, that the Federal Reserve's regulation of bank holding companies is really undertaken at the regional level by regional banks with unitary executives, the President of each Federal Reserve Bank. The Board here in Washington rarely undertakes the kind of market-specific acts that the CFPB does routinely.

There is no question in my mind that the effort to move from a unitary director to a five-person board is motivated by the knowledge that it will always be possible to have a blocking member controlled by the industry on a five-member panel, and that regardless of whether it is a predominantly Republican panel or a predominantly Democratic panel, there will always be that swing vote that the industry themselves controls.

Mr. GREEN. Now, let's talk about the appropriations process with the little time that we have left. Are you absolutely convinced that Congress is going to appropriately appropriate funds for the CFPB, given that the SEC is understaffed, underfunded, and we can't come to terms in terms of what the needs are for the SEC? Mr. Silvers, would you kindly comment?

Mr. SILVERS. Congressman, I think you have hit on the most critical set of facts to appreciate in this debate. We have two kinds of financial regulatory agencies in our government. One kind is subject to an annual appropriation by Congress; the SEC; the Commodity Futures Trading Commission. The other kind are the bank regulators we talked about earlier: the CFPB; the Fed; the FDIC; and the Comptroller of the Currency.

The agencies that are subject to annual appropriation are extremely unhappy with that phenomenon, because they will tell you it is used to yank their chain and to block them from effective enforcement. If you can get them to speak to you candidly, that is what they will tell you; that is what I have been told on numerous occasions. The reason why we don't have bank regulators subject to annual appropriation is because it has been known since the 19th Century that if you do it that way, you will endanger the safety and soundness of the U.S. financial system because you will make the decisions of the bank regulators subject to the political process.

And this is exactly what the realization that consumer financial protection is at the heart of systemic safety and soundness led to in Dodd-Frank, the understanding that if we don't insulate consumer financial protection from the back and forth of day-to-day politics in Washington, we will endanger the health of the U.S. economy, as we just did in the financial crisis of 2008.

Mr. GREEN. Thank you very much, Mr. Silvers.

And thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. Bachus for 5 minutes.

Mr. BACHUS. Thank you.

Mr. Silvers, the other three panelists have indicated pretty strongly that they believe in a bipartisan commission for the CFPB. Has the AFL-CIO taken any formal position on a single director as opposed to a bipartisan commission?

Mr. SILVERS. Yes, Congressman. I am here representing the AFL-CIO. It is our position that it should remain a single director.

Mr. BACHUS. They have taken that formal position?

Mr. SILVERS. That is a position the AFL-CIO has stated formally, yes, sir.

Mr. BACHUS. Okay, thank you.

Just looking at your experience as their legal counsel, can you think of any agencies that have issued regulations which have negatively affected your members and their livelihood?

Mr. SILVERS. Congressman, I am sure you know at various times in an institution as old as ours, I am sure we have had that view of pretty much everybody at one time or another.

Mr. BACHUS. Yes, just over maybe the past 2 or 3 years, can you think of any that really have been criticized by some of the labor unions?

Mr. SILVERS. Congressman, I think that in the past 2 or 3 years, we have seen a variety of decisions by a variety of agencies. I am not quite sure which one—you are referring to somebody in particular, I gather, but I am not sure which—

Mr. BACHUS. One comes to my mind, and that is the EPA, particularly in the coal industry. Do many of your members believe that some of their decisions as they relate to coal have been adverse to your interest?

Mr. SILVERS. Congressman, I can say there is a wide range of opinion on that subject within the AFL-CIO. Currently, we are in—

Mr. BACHUS. What is your opinion?

Mr. SILVERS. Currently, the AFL-CIO is in dialogue with the EPA on coal rules, and we have not come out with a final opinion about their current coal rules.

Mr. BACHUS. All right. The EPA and the CFPB are the only two with single directors.

Mr. SILVERS. Congressman, that is not the case. As my earlier testimony indicated, the Comptroller of the Currency, which is far more relevant to this conversation than the EPA, is a single-director agency.

Mr. BACHUS. The Comptroller of the Currency can be recalled at any time. So he almost instantaneously can be replaced, and he is under supervision by the Secretary of the Treasury, who is appointed by the President.

Mr. SILVERS. It is rarely done.

Mr. BACHUS. They are under the appropriation process.

Mr. SILVERS. As a matter of custom, as I said, it is rarely done.

Mr. BACHUS. It can be done.

Let me ask you this. In your testimony, you start out talking about the financial crisis of 2008. You cited those figures we have all heard, which we agree with, that the cost to the economy was devastating, and to jobs. Do you recall what companies were failing then?

Mr. SILVERS. All too well, Congressman.

Mr. BACHUS. AIG probably was the biggest failure, as well as Bear Stearns, Lehman, Washington Mutual, Wachovia.

Mr. SILVERS. Congressman, if you want my opinion, I would add Citigroup, Bank of America, and potentially more.

Mr. BACHUS. Absolutely. They were shaky. They were in trouble.

Mr. SILVERS. I would suggest that 2 years ago, Citigroup was bankrupt if not for the Federal Government.

Mr. BACHUS. I think a lot of people share that opinion. What do all of those have in common? They are not your mom-and-pop or your Main Street bank or credit union, are they?

Mr. SILVERS. Congressman, what those banks have in common is that they totally dominate the markets the CFPB regulates.

Mr. BACHUS. That is right. They absolutely. They are a dominant position, they control over 70 percent of the assets of all financial institutions.

What do you think about the proposals by NAFCU and others to raise that $10 billion threshold on direct examinations? If you raised it to 25, it would still cover 75 percent of the banking assets. Do you all have an opinion on whether the smaller institutions ought to be exempted not from the jurisdiction, but simply from the direct examinations?

Mr. SILVERS. Congressman, I have thought about this question a lot. I think you pose a very thoughtful question. I think one of the lessons of the financial crisis is that it is possible for large institutions to act through smaller institutions. If you go back and look at the situation in the private label mortgage market during the bubble, most of those mortgages were actually originated, the consumer interface was through very small institutions, storefronts.

The import here is that if you are trying do consumer financial protection, it may be the case that the markets in fact are dominated by large institutions, but they essentially subcontract. So that if you exempt at too small a level, which you tried to do initially—

Mr. BACHUS. AIG didn't do that.

Mr. SILVERS. —you will miss the problem.

Chairwoman CAPITO. The gentlemen's time—

Mr. BACHUS. Bear Stearns, Lehman didn't, Washington Mutual didn't.

Chairwoman CAPITO. The gentlemen's time has expired.

Mr. BACHUS. All right. Thanks. Could I ask him, you don't believe that we ought to exempt some of the smaller institutions from some of these regulatory burdens?

Mr. SILVERS. You asked about the AFL-CIO. We have not taken a formal position on this question that I know of.

Mr. BACHUS. For or against?

Mr. SILVERS. But my view as policy director is that the $10 billion number is about right.

Chairwoman CAPITO. I am going to go to the next questioner, Mr. Lynch, for 5 minutes.

Mr. BACHUS. The others have already stated in their policies that they believe it ought to be raised.

Ms. SMITH. Absolutely. We think all credit unions should be exempt, regardless of the asset size.

Chairwoman CAPITO. All right. Thank you.

Mr. Lynch?

Mr. LYNCH. Thank you, Madam Chairwoman.

Let's see. I do want to go back to the point that in looking at all the bank regulators prior to the collapse of the financial system in 2008, the SEC, the OCC, the CFTC, the FDIC, the Fed, those are all institutionally focused bank regulators. So after Congress voted to give $787 billion to the big banks—I voted against it, by the way—our thinking in the course of Dodd-Frank was that we need to have somebody out there looking out for the consumer. That is what the CFPB was established to do, to be the dog in the fight for the consumer, not looking out for banks or credit unions or institutions. And so, that is why we set it up.

And since it has been established, there has been a relentless effort by my colleagues to varying degrees on the other side of the aisle to do away with the CFPB. We have bills sponsored by my colleagues on the other side of the aisle that would just flat out repeal Dodd-Frank, it would repeal section 10. And so, you see, even though people say they are in favor of consumer protection, their actions really lead you to another conclusion.

I just want to point out a couple of things. One is, as has been pointed out previously, the FDIC, the Fed, and the OCC are self-funded, they do their own thing, they don't have to rely on congressional appropriations. The two bank regulators that have to rely on us, the SEC and the CFTC, are grossly underfunded. And every time we have a debate in this hearing room over funding for the SEC or the CFTC, there have been relentless efforts to cut their funding so that they can't do their job. And I believe that the reason the folks want the CFPB, the Consumer Financial Protection Bureau, to be subject to appropriation is so you can kill it, so you can kill it like you try to kill funding for the SEC, like you try to kill funding for the CFTC, so that they can't carry out their obligations under Dodd-Frank either. That is just the way it is.

And the issue of data, this is like a circular firing squad. Okay, on the issue of data there is a requirement in the bill that was advocated by my colleagues on the other side of the aisle, that was accepted, which said that the CFPB has to do a cost-benefit analysis and has to back up their policy decisions based on data. So they asked the banks give us the data that you are relying upon, let's say, for instance, in marketing credit cards to folks who shouldn't have credit cards, people who don't have the income for it. The only way we can actually have the CFPB verify whether they are gouging the consumer is to get the data from the banks so we can see whether they are red-lining certain consumers and taking advantage of them. So it has to be data-driven. But you are saying there are now major concerns and you don't want the CFPB to have the data that is already in the possession of the banks that are sending out the credit cards which are taking advantage of consumers.

So you are setting up a system that is completely unworkable. The CFPB has to have the data that the bank uses to make their policy decisions. The CFPB needs to have the data so that they can protect consumers. Everybody is wringing their hands about what the one agency that is responsible for protecting consumers might do, God forbid, but yet we allow these banks to grow bigger and bigger and bigger.

A week doesn't go by without another scandal either at Bank of America or JPMorgan Chase with billions and billions of dollars in penalties because they took advantage of Fannie Mae and Freddie Mac and average people who were trying to get mortgages. And yet, we have all this handwringing about this one agency, the only agency that we have in the government today that is really looking specifically at the interests of consumers. I think that it is disingenuous to suggest that this one agency is the root of our problems. This agency, if run properly, may be the salvation of the economy; it may finally protect American consumers.

And I see my time has expired. I will yield back the balance of my time. Thank you, Madam Chairwoman.

Chairwoman CAPITO. The gentleman yields back.

Mr. Luetkemeyer?

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Mr. Sharp, thank you for being here today. In reading your testimony, one of the reforms that you suggest is support for the bipartisan five-member commission. And I would like to ask you a question with regards to the fact that data from the Federal Reserve shows that the finance companies, which fill an important lending niche and account for nearly a quarter of the Nation's $3 trillion of consumer credit, are important assets to our lending services. These companies will lend their own capital, not that of depositors, so that they are able to make loans to families with impaired or no credit. These companies have a very different business model and likely receive a lot of attention from the CFPB. Yet, the Bureau staff has limited experience overseeing these companies.

Do you believe that the CFPB would benefit from a commission structure like what you are suggesting that would have at least one member having experience regulating consumer credit at the State level?

Mr. SHARP. The short answer is, I do.

Mr. LUETKEMEYER. What other changes would you suggest or what other recommendations would you make with regards to people on that commission?

Mr. SHARP. I think it makes sense to have someone from the banking regulatory community on the board, either from the FDIC or even from the OCC. Again, I think the goal of a commission is to a have a broad range of views represented, political views and sort of industry views, consumer views as well. So I guess I would be happy to get back to you to give you sort of a specific list of maybe how we would see a five-member commission constituted. But our view is have as many points of view assembled there as possible.

Mr. LUETKEMEYER. It would seem that one of the arguments that has been made, that some of the discussion we are having here is that a lot of other commissions they say don't work, yet in the financial regulatory area you have the FDIC, which has a commission. So I am not sure where they are going to go with that. It seems to work pretty well.

One of the concerns that I have is with regards to the effectiveness of the rulemaking that goes on with the CFPB. And, Mr. Sharp, I would like to relate to you a little bit of a story that I had, a situation that I had come up in my office recently.

I met with a group of bankers with regards to the Qualified Mortgage rule, and they had just been to the CFPB and had discussed with them the Qualified Mortgage rule that is being proposed. And the CFPB response was, from the official they talked to, that you are the 41st group to bring this to our attention, but we still aren't convinced that this is an actual problem.

That is unbelievable, that they have 41 different groups that have brought to their attention this problem with the Qualified Mortgage, explaining the unintended consequences of what is going to happen when this thing comes out in January, and they are ignoring it. And then today in The Hill, Richard Cordray, the Director of the CFPB, says that, in addressing a group of lenders recently here in D.C., indicates that we are all in this together, our oversight of new mortgage rules in the early months will be sensitive to the progress made by those lenders and servicers who have been squarely focused on making good-faith efforts to come into substantial compliance on time. A little bit contradictory, isn't it?

Mr. SHARP. Yes.

Mr. LUETKEMEYER. Where do we go?

Mr. SHARP. I think this is a good example of why a commission makes sense. As it is now, you have one person to go make your case to. And if it doesn't work, if they are not convinced, then you are out of luck. With a commission, obviously, particularly a commission that would have members of different backgrounds and different expertise, there is a better chance that you are going to be able to make your case effectively to someone within the agency and find some sort of constituency there that understands your problem of your particular industry. So, I agree.

Mr. LUETKEMEYER. Mr. Tissue, would you like to comment on that? You are the banker on the panel today. I am sure you have some concerns with the QM rule and probably have already expressed to your local West Virginia Bankers Association your concerns. Here we have an agency that seems to be ignoring the problems, have a Director who says, well, we are going to work on it, hand in glove, we are not fitting here. What is your opinion?

Mr. TISSUE. Thank you, Congressman. I am representing the West Virginia bankers. My particular institution is under $2 billion. As I stated earlier, the small lender exception or the small lender Qualified Mortgage standard, our biggest issues in my particular institution was the prescribed DTI of 43 percent as well as using certain of the Appendix Q standards. That, as you are aware, under the small lender QM, is not applicable to banks that are under $2 billion.

That said, in West Virginia there are, in the West Virginia bankers, there is a large institution that is approaching 10 billion. In fact, it will soon be going. And I talked to their CFO recently, and they are in the process of moving from the 9 billion so to be over 11 billion. They indicated to me they have added 24 additional compliance staff people who were virtually prescribed to them by the regulatory authorities. Now, I don't know if that was particularly by the CFPB, but to meet those standards that they will have to now. And it is a variety, they are not just the QM rules. But it seems to me what is developing, and I think it is important, what I am seeing developing is there are two banking standards now. There are those that are under 10 billion and over 10 billion.

Chairwoman CAPITO. The gentleman's time has expired.

Mr. LUETKEMEYER. I appreciate your perspective.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Mr. Rothfus?

Mr. ROTHFUS. Thank you, Madam Chairwoman.

We are hearing a good bit of debate today on the issue of having a commission as opposed to a single director. And we know that our other Federal financial regulators are indeed governed by a commission, the FDIC, the Fed, the CFTC, and the SEC, which includes as part of its mission the protection of investors. That fact alone demonstrates that these aren't just "institution-focused entities." And of course, we have on the consumer side the FTC and the Consumer Product Safety Commission that are looking at consumer protection.

Mr. Luetkemeyer raised the issue of the composition of what a commission might look like. Mr. Sharp, data shows that finance companies account for nearly a quarter of the Nation's consumer credit. Because these companies lend on capital, they are able to make loans to families with impaired credit or no credit history at all.

From what I understand, though, the CFPB has limited experience overseeing this nonbank segment of the consumer credit marketplace. In an effort to maintain this important avenue of credit to these individuals, would the CFPB benefit from employing a multimember commission structure with at least one individual having experience regulating consumer credit at the State level, similar to how the FDIC board is structured?

Mr. SHARP. Yes, I think that is a good idea. In some ways being lost here in this discussion is that the CFPB isn't just a bank regulator. They have domain over a large chunk of the financial services market that is not pure bank companies. And so, I do think that experience would be useful on a commission.

Mr. ROTHFUS. Would you suggest that Congress would legislate that by statute, that a member of that part of the industry would be on the commission?

Mr. SHARP. I think that would probably make sense.

Mr. ROTHFUS. Mr. Tissue and Ms. Smith, I would like to direct this to you. On July 9th, the subcommittee held a hearing on the CFPB's data collection practices, and members on both sides of the aisle expressed concern regarding the CFPB's ability to maintain the confidentiality and security of personally identifiable information the Bureau collects about American consumers. In response, CFPB Deputy Director Atonakes testified that we have no reason to believe that there has been a breach. However, in response to questions for the record submitted to the CFPB by Members following the hearing, Mr. Atonakes later admitted to us that there have been no less than three privacy breaches involving the loss or compromise of an individual consumer's personally identifiable information held in the CFPB's Consumer Complaint Database. Given these breaches, how can your members be confident that the CFPB will safeguard sensitive information contained in the complaints that consumers submit to the Bureau?

Mr. TISSUE. Congressman, as stated earlier, banks hold very precious our reputation; it is really our lifeblood. And part of that is expected, the expectation of our customers or our consumers that we serve is to protect the utmost their privacy. And I would just say that we would be very troubled if that reputation is at risk in any way, because it would reflect not only on the CFPB, but on us as well, we believe.

Mr. ROTHFUS. Ms. Smith?

Ms. SMITH. Yes. I do agree with Mr. Tissue that there would be reputation risks if our members' information was compromised due to flaws within the CFPB.

Mr. ROTHFUS. In the context of our discussion today about the structure of the CFPB, what can be done to better protect your members or clients from the privacy risks posed by the CFPB?

Mr. TISSUE. I think that one of the bills we were discussing today is a disclosure, similar to that where the consumer has the right to inquire of the CFPB what information may or may not be held by them. I think our consumers would be very interested in that. Just as we are under the GLB privacy portion of the Privacy Act, we are required to inform our consumers or our customers annually what we are doing with the information that we are holding on their behalf.

Mr. ROTHFUS. Mr. Sharp, do you see any reason why the CFPB should be treated differently from other consumer protection agencies, like the Consumer Product Safety Commission or the FTC or the SEC, that are subject to the congressional appropriations process?

Mr. SHARP. No. Again, we think it makes all the sense in the world to have the CFPB subject to regular appropriations. We think, particularly as I laid out in my testimony, the combination of no appropriations, a single director who is unremovable except for cause, is not the way to set up an agency and a situation that is likely to lead to a place where every time we have a new director there is substantial change in the attitude and outlook and practices of the agency. So, yes, we don't think they should be treated differently.

Chairwoman CAPITO. The gentleman's time has expired.

Mr. Barr?

Mr. BARR. Thank you, Madam Chairwoman.

Mr. Sharp, you alluded earlier to the CFPB's guidance on dealer-assisted auto financing. I want to ask you a couple of questions about that. To your knowledge, did the CFPB take into account any input from auto dealers?

Mr. SHARP. Not that I am aware of.

Mr. BARR. What about consumers, are you aware whether or not they took into account any input from consumers?

Mr. SHARP. Certainly nothing was taken into account on the record from anybody as far as I know.

Mr. BARR. Were they required to?

Mr. SHARP. I think that is a good question. I think they would certainly say that they are not required to.

Mr. BARR. And obviously, as you testified, no notice and comment rulemaking occurred because it was guidance, informal guidance.

Mr. SHARP. Right.

Mr. BARR. Did the CFPB hear from Congress on this issue, to your knowledge?

Mr. SHARP. Not to my knowledge. Not prior to.

Mr. BARR. Did the CFPB disclose in any formal or informal way, to your knowledge, the analysis, the studies, the methodology that they used to justify their particular guidance?

Mr. SHARP. No, not to my knowledge.

Mr. BARR. Did the CFPB do anything at all that would indicate that it is a responsive, accountable, transparent agency in issuing this guidance?

Mr. SHARP. Not as far as I can tell.

Mr. BARR. Could the fact that this is a single director, non-commission agency, not subject to appropriations from Congress, have anything to do with the fact that this agency is not taking into account the regulated entities' input or even the consumers' input on this issue?

Mr. SHARP. Yes, I think that, as I said in my testimony, I think the structure absolutely enables the agency to sort of skip steps wherever they feel like they can and should for the sake of expediency. I am not saying it is bad faith. I know they are trying to get to quick results. But in doing so I think they are leaving on the table a huge opportunity to hear from those who will be affected and to come to sort of a more reasonable outcome.

Mr. BARR. Mr. Tissue and Ms. Smith, a quick question: Earlier this year, the CFPB published a final rule creating an additional category of QM, one for mortgages with balloon payments that are originated by small creditors in rural or underserved areas. But there is significant evidence that the CFPB's categorization of rural and nonrural areas for purposes of this QM category is flawed. For example, in my congressional district there is a place called Bath County, Kentucky, which is manifestly rural, there is nothing urban about it whatsoever, and yet the CFPB has classified Bath County, Kentucky, as nonrural.

Is there anything about the CFPB's unaccountable structure, the fact that it is so completely out of touch with the counties that it is designating as rural or nonrural, that is contributing to the flaws in these rural and nonrural designations?

Mr. TISSUE. Congressman, I would point out that in our State as well, in the chairman's district is Clay County, West Virginia. This is identical, I believe, to the situation you refer to in Kentucky. I can't understand how areas like that would be deemed not to be rural. Perhaps if you had a commission and you had back-and-forth discussion by those that would point out the fact that just because a county borders a SMA, that it doesn't necessarily have to be—it is not a bedroom community of that SMA.

Mr. BARR. And, Ms. Smith, I beg your pardon, I am going to move on to a final question, my time is expiring.

Ms. SMITH. Oh, okay.

Mr. BARR. So to Mr Silvers, if I could, I do want to ask you a question. One of your arguments for shielding the CFPB from congressional appropriations in the budget process is that the agency needs extra-competitive salary structure to recruit people in the banking sector. Do you know how many employees are at the CFPB?

Mr. SILVERS. Congressman, I do not. I assume it is a large number.

Mr. BARR. Do you know how many actually have a banking background?

Mr. SILVERS. Most of the individuals that I have dealt with on a relatively senior level in the CFPB have a banking background.

Mr. BARR. You don't know the ratio of whether or not—

Mr. SILVERS. I do not.

Mr. BARR. And is the fact that maybe that agency is not transparent that you don't know how many actually have a banking background which you say is the justification for not subjecting this agency to congressional appropriations?

Mr. SILVERS. Congressman, since my experience is that the senior people that I have dealt with at the agency typically have a banking background, it never occurred to me to ask what the ratio was.

Mr. BARR. So the people on the ground, the regulators themselves, not senior, you don't know how many of them actually do have a banking background, and yet they are subject to this extra-competitive salary structure. Is that correct?

Mr. SILVERS. Congressman, all the bank regulators have this ability. It is impossible to be an effective bank regulator without the ability to hire competitively in the banking sector.

Mr. BARR. Mr. Silvers, final question, do you think the Securities and Exchange Commission went easy on JPMorgan Chase in recent activities and the recent enforcement actions? Did they go easy on them because they were a commission?

Mr. SILVERS. Congressman, I serve in a pro bono capacity to the Attorney General of New York in this matter. I can't really comment on it.

Chairwoman CAPITO. The gentleman's time has expired.

Mr. BARR. I yield back.

Chairwoman CAPITO. Mr. Stutzman?

Mr. STUTZMAN. Thank you, Madam Chairwoman.

And thank you to the panelists for being here today. I appreciate your testimony and your comments. I would like to talk a little bit about just the regulatory experience that you all have had in the past. I have been reading through some of the testimony. I actually had a couple of questions for Mr. Tissue first.

You say in your testimony that recent rulemakings on remittances and mortgage financing and servicing will benefit consumers, providers in the market as a whole. The Bureau's willingness to respond flexibly rather than dogmatically has enabled these win-win outcomes. But then you say responsiveness is not of course a substitute for accountability. Could you follow up a little bit more on that, and what do you mean by that?

Mr. TISSUE. What I mean by that is that just having good intentions is not good enough, would be my response to that, that because we have a—circumstances can change and gets back to the idea of having the commission versus a single director, is that you have the continuity of administration of the agency. And I want to be clear here, the banking industry is not in favor of dismantling the CFPB. I think it has been asserted by some of the other members, and that is not our intent. It is in my testimony, when I say we support effective consumer regulation protection. And it troubles me as a banker that it would be questioned.

Mr. STUTZMAN. Soon after that you talk about how there is more that the Bureau can do immediately, and you touch on Qualified Mortgages. And then towards the end of that paragraph you say, "In order to do this, we need to extend the existing deadlines, as well as address outstanding issues to ensure that all creditworthy borrowers have access to credit." Can you give us a little bit more detail on the timelines that you are dealing with now?

Mr. TISSUE. Yes, Congressman. The QM/ATR rule goes into effect, I believe, on January 14th. We have to, as you know, train people. We have to put in place the systems, the processes, and have them up and running to a standard that is acceptable to them. We, unlike perhaps the healthcare folks, are held accountable and we will have to have that in place because we will be reviewed and there will be repercussions if we do not.

Here again, we are fully in favor of moving forward. We think there are improvements that could be made. But we are interested in successfully implementing it, it is just that we have asked for a bit more time. There has continued to be changes to that. They say that they have given us a year. That was a year from the final, but there has been two or three finals since the final.

Mr. STUTZMAN. Ms. Smith, would you like to comment on that?

Ms. SMITH. Yes. Oh, absolutely, I would like to comment on the Qualified Mortgage rule that will come into place next year. I am concerned about it. Over the last 3 years, since the inception of the CFPB, I have had to increase my compliance costs. My $100,000 is now going to be $250,000 next year. That is a lot, that is significant. And credit unions over the last several years have really had to struggle just to maintain a positive return on asset. And so, that has been a constant struggle for us.

We were not the problem. If you look at the reports that I have, on pages 2 and 4, you will see that in delinquency ratios, we far outperformed the banks. We were still lending and my credit union still continues to lend, offer first mortgages on down.

Mr. STUTZMAN. You don't have the large armies of lawyers that you mentioned that large Wall Street banks have to keep up with the pace of regulations. Can you give us a typical, average size credit union, how do they handle this? Are they hiring shared firms, are they sharing a firm, or how do they handle this?

Ms. SMITH. Yes, we do have an organization that assists us in underwriting our mortgage loans. We do review them, but we have someone to help us in that regard. And what we are seeing from them is because they are assisting with some of the underwriting, they are going to then increase their mortgage origination costs and pass that cost on down to my members. So, that is what I am seeing.

Mr. STUTZMAN. Okay. Thank you very much. I will yield back.

Chairwoman CAPITO. All right. The gentleman yields back. I think that concludes the hearing. No more questioners are here.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

I want to thank all of our witnesses for being so forthright in your opinions, and I appreciate you taking time out of your day. And travel safe home back to West Virginia, Mr. Tissue. Thank you very much. This hearing is adjourned.

[Whereupon, at 4:41 p.m., the hearing was adjourned.]

APPENDIX

October 29, 2013

Statement of the U.S. Chamber of Commerce

ON: "Legislative Proposals to Reform the Consumer Financial Protection Bureau"

TO: The House Subcommittee on Financial Institutions and Consumer Credit

BY: Jess Sharp

DATE: October 29, 2013

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

My name is Jess Sharp and I am managing director for the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. Thank you for the opportunity to testify before the Subcommittee today on behalf of the hundreds of thousands of businesses that the Chamber represents.

The Chamber firmly supports sound consumer protection regulation that deters and punishes financial fraud and predation and ensures that consumers receive clear, concise, and accurate disclosures about financial products. Legitimate businesses, as well as consumers, benefit from a marketplace free of fraud and other deceptive and predatory practices.

But consumer protection, like every other government function, must be carried out in a fair, transparent manner consistent with the principles embodied in the Constitution. And consumer protection goals can be achieved only if an agency's organizational structure promotes rather than frustrates a consistent, effective approach to regulatory and enforcement issues.

The Consumer Financial Protection Bureau fails these basic tests. The CFPB's structure differs fundamentally from every other federal agency that regulates private individuals and businesses. It lacks the accountability and checks and balances that are at the core of our democracy, as well as the mechanisms long recognized as essential for effective regulation.

The CFPB's structural problems are not simply fodder for a debate among constitutional scholars. The Bureau's structural isolation is creating, and will continue to create, adverse consequences for the business community and its customers.

Structural reforms, such as those specified in the bills now before the Subcommittee, are urgently needed to align the Bureau's structure with long-settled basic concepts reflected in every other federal regulatory agency and eliminate the significant adverse consequences being visited upon consumers, businesses, Congress, and the American people. The CFPB can only further its important consumer protection goals if the Bureau's structure is changed to incorporate the controls and oversight that apply to other federal regulatory agencies.

NEED FOR ACCOUNTABILITY AND CHECKS AND BALANCES

Our federal government rests on two fundamental principles: accountability to the people—either directly through elections or indirectly through accountability to the people's elected representatives—and checks and balances—sharing of authority and oversight of those exercising authority in order to prevent abuse of that authority.

Moreover, rulemaking and enforcement, in order to be effective and consistent with a sound economy, must be well-considered, evidence-based, and carefully calibrated. Agencies, even those established with the best of intentions, can over time abandon sound regulatory principles if structural protections against politicization and regulatory "tunnel-vision" are not put in place.

Aware of this inherent risk, Congress has historically subjected all federal agencies, including independent regulators, to a system of checks and balances that ensures their accountability and fidelity to law. The need for these traditional constraints is particularly acute in an area as fundamental to the health of the American economy as consumer finance. Americans can ill-afford government action that imposes unjustified regulatory costs on lending institutions and, perhaps even more importantly, prevents businesses from obtaining the credit to expand and to create the new jobs that our economy so desperately needs.

THE CFPB'S UNIQUE CURRENT STRUCTURE AND EXTREMELY BROAD AUTHORITY

The CFPB's structure is unprecedented:

- Independent regulatory agencies typically are headed by a multi-member bipartisan commission whose members serve for fixed terms. That is the structure of the Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Communications Commission, and numerous other agencies.

  The Bureau, by contrast, is headed by a single director with tenure protection and a five-year fixed term. Although located formally within the Federal Reserve, the Bureau is completely insulated from the Federal Reserve's supervision and control.

  In addition, because the Bureau's Director serves for a fixed term and can be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office" (Dodd-Frank, Section 1011(c)(3)), and because the Bureau's rulemaking process is insulated from review by the Office of Management and Budget, the President cannot exercise any control over the Bureau's decisions. This is especially problematic because the Director's five-year term necessarily will exceed the term of the President who appointed him, and could in many cases extend into the term of a new President with very different policy views, but there is nothing at all that the President can do to affect the actions of the CFPB.

- The Bureau also is exempt from the congressional budget process. It is funded by a transfer of money from the Federal Reserve to be spent as the Director decides in his sole discretion—these decisions are not subject to reversal or alteration in any way by the Congress, the Office of Management and Budget, or the President—subject only to a statutory cap. That cap, which is indexed for inflation, is approximately $597 million for FY 2013 and $608 million for FY 2014. (By comparison, the Federal Trade Commission is *seeking* an appropriation of approximately $300 million in FY 2014, a *decline* of more than $10 million from its FY 2013 request.)

There is no other government official who serves for a fixed term, exercises sole authority over an agency, and has sole power to spend hundreds of millions of dollars outside the congressional appropriation process. To be sure, some regulators—for example, the Office of the Comptroller of the Currency and the Federal Housing Finance Agency—have single directors. And members of the commissions heading independent regulatory agencies generally serve for fixed terms. And a very few agencies are funded outside the appropriations process. But there is no other entity in the federal government that combines all of these features.

Some have pointed to the OCC, the Federal Reserve, and the FDIC as precedents for the Bureau's structure, but the significant contrast between those entities and the Bureau in fact shows how radically the Bureau's structure deviates from established practice. The OCC is part of the Treasury Department, and the Comptroller serves at the pleasure of the President. He is thus politically accountable in a way that the Director of the Bureau simply is not. And while banking regulators such as the Federal Reserve and the Federal Deposit Insurance Corporation are outside the budget process, they have bipartisan, multi-member leadership, and thus are subject to the protection provided by collective decision making, a protection that simply is not present when a single director makes the decisions.

The combination of these features—producing a single Director with essentially complete independence with respect to substantive decision making as well as budgeting and spending—renders the Bureau virtually immune from the checks and balances that normally guide and constrain agency action.

Moreover, the regulatory and enforcement authority exercised by the Director is extraordinarily broad. The Bureau's reach is not limited to banks and other financial service businesses. It has the power to regulate a number of products and services that are common sources of financing for Main Street businesses and in some cases to regulate the service providers to those companies. And it has a very broad standard to enforce—the prevention of "unfair, deceptive, or abusive acts or practices" in the market for consumer financial products. While unfair and deceptive practices have been proscribed for years with decades of case law to guide compliance and enforcement, the new "abusive" standard gives the opportunity to try to expand its power much more broadly.

While it is true that a two-thirds majority of the ten-member Financial Stability Oversight Council will be able to overturn CFPB regulations in certain circumstances, there are a number of reasons why that review is unlikely to meaningfully constrain the Bureau's authority. First, the FSOC veto applies only to rules, not enforcement actions, and the CFPB has made it clear it prefers to operate outside the rulemaking process. Second, the standard for exercising the veto is very restrictive—a rule must threaten the safety and soundness of the entire U.S. banking system or the stability of the U.S. financial system. Third, two-thirds of the FSOC must agree to a veto, meaning that even a unanimous vote of the five prudential regulators—the Federal Reserve, FDIC, OCC, National Credit Union Administration, and Federal Housing Finance Agency—would not suffice. Yet these are the entities responsible for ensuring the safety and soundness of the U.S. banking system. Finally, it should be remembered that the Bureau's Director is one of the FSOC's ten members, rendering it even harder to obtain the necessary two-thirds majority when the Bureau's own rules are at issue.

In sum, the Bureau's current structure places more unreviewable power in the hands of a single unelected official than any other federal regulatory law.

CONSEQUENCES OF THE DIRECTOR'S BROAD, UNREVIEWABLE AUTHORITY

Now that the Bureau has become fully operational, the adverse consequences of this unprecedented structure are no longer theoretical—they are all too real, reflected in a variety of actions taken by the CFPB. For example:

- Lack of Transparency

  Defenders of the Bureau's current structure frequently argue that the Bureau is subject to "unprecedented" oversight, pointing to appearances of Bureau personnel at congressional hearings, the Bureau's semi-annual report, and the Bureau's budget justification, among other things. But the number of hearing appearances and reports is irrelevant if little or no information is conveyed in the testimony and documents. That unfortunately is the case with the CFPB:

- One example is the Bureau's response to the recent inquiries about its credit card data collection program. As the Subcommittee is well aware, the CFPB's testimony in this area has been confusing and even contradictory. Sometimes the program is justified as a research and regulatory tool, and other times it is characterized as a supervisory tool. The distinction is important because different transparency and other standards apply depending on the authority used, but either way, the law requires much more transparency than we've seen from the Bureau.

  To this day, despite multiple congressional appearances, the Bureau has never publicly explained the legal justification for the collection; identified the information being collected, the number of companies targeted, and the reasons for singling out particular companies for this burden (and whether similarly-situated companies are being treated similarly); discussed the reasons why the collection is necessary; responded to concerns about the security of the data; or addressed whether it plans to collect similar data regarding other types of consumer financial products or services. And the Bureau certainly has not explained why it believes that the benefits of collecting the data outweigh the costs being imposed on the affected companies.

- The Bureau's discussion of its budget and expenditures has been similarly opaque. Thus, the budget information released by the Bureau has been cursory—for example, just three pages for FY 2013 (the remainder of the "Budget Justification" document consists of a discussion of the CFPB's purpose and performance plan).[1] Agencies subject to the appropriations process typically provide much more detailed information to the public and an even greater level of detail to the relevant congressional appropriations subcommittees.
  Moreover, even the information in these "justifications" is not binding on the CFPB. The FY 2014 Budget Justification includes a new item for FY 2013—$95 million for improvements to the Bureau's Washington headquarters building. Here is the complete description for this large expenditure:

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[1] *See* CFPB, *Budget Justification FY 2013*, available at http://files.consumerfinance.gov/f/2012/02/-budget-justification.pdf.

"As the headquarters building has not undergone significant renovation since it was constructed in 1976, the CFPB has initiated a capital improvement plan designed to meet workplace and energy-efficiency goals, including upgrades to the building infrastructure; replacement of aging mechanical and electrical systems, which have reached the end of their lifecycle; installation of energy-efficient lighting and structures; and repair of the parking garage decks, sidewalks and public spaces.

"The stages prior to actual construction include completing the final design phase; initiating the procurement and selection of a construction firm; determining the phasing of construction and the associated interim moves required; and developing detailed drawings."[2]

Agencies subject to the congressional appropriations process are required to provide appropriations subcommittees with much more information regarding capital expenditures of this sort.[3]

- Failure to Create Clear Rules of the Road that are Essential for Effective Compliance Programs

  Businesses want to comply with applicable government regulations, but they need the government to set clear rules, so that they can be incorporated into compliance programs.

  However, rather than following the notice and comment rulemaking process (except when explicitly required to do so by Congress) the CFPB prefers to set standards through enforcement actions and brief guidance memos, which provide businesses with little ability to implement effective compliance programs.

[2] CFPB, *The CFPB Strategic Plan, Budget, and Performance Plan and Report* 12-13 (April 2013), available at http://files.consumerfinance.gov/f/strategic-plan-budget-and-performance-plan-and-report.pdf. The FY 2013 estimate also includes another $9 million in expenditures compared to the amount set forth in the original FY 2013 budget justification.

[3] Placing the entire $95 million expenditure in FY 2013 creates the impression that the Bureau's FY 2014 budget contains a significant reduction in expenditures. But with the building project excluded, FY 2014 expenditures are 9% higher than those projected for FY 2013. *Id.*

For example, the Bureau issued a bulletin regarding the relationships between consumer financial services companies subject to supervision by the CFPB and businesses that are service providers to such companies. The guidance stated that when a service provider violates an applicable law or regulation "[d]epending on the circumstances, legal responsibility may lie with the supervised [entity] as well as with the supervised service provider."[4] The Bureau stated that it expected consumer financial services companies "to have an effective process for managing the risks of service provider relationships," but provided only extremely general guidance regarding the elements of such a process (and specified that the required process "should include, but [is] not limited to" the general standards set out in the guidance).[5] This vague language provides no real information to companies wishing to exercise appropriate oversight of service providers and is already leading companies to limit the number of vendors they work with. The Bureau has declined to provide any additional information.

Similarly, the Bureau issued guidance regarding possible unfair, deceptive, or abusive practices in connection with debt collection. The guidance document included descriptions and examples of conduct that the Bureau deemed unfair and deceptive, but provided no guidance regarding the meaning of "abusive" other than simply reciting the statutory definition.[6] How can a company create a compliance program to prevent abusive conduct if the Bureau refuses to provide any guidance regarding the actions that meet that standard? If ever a term required a public notice-and-comment rulemaking process to establish a workable, transparent standard, it is "abusive," but the CFPB expects companies to do for themselves what the Bureau cannot itself do – define the term.

Finally, two separate letters from both Republican and Democrat members of the House Financial Services Committee have raised questions about the CFPB's actions with regard to indirect auto lending and compliance with the Equal Credit Opportunity Act. Members have asked for more information about the CFPB's methodology and the Bureau's apparent choice to create new legal standards that will fundamentally alter the economics of the market

[4] *CFPB Bulletin 2012-03* (Apr. 13, 2012), available at http://files.consumerfinance.gov/f/-201204_cfpb_bulletin_service-providers.pdf.

[5] *Id.*

[6] *CFPB Bulletin 2013-07* (July 10, 2013), available at http://files.consumerfinance.gov/f/-201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

through enforcement rather than through notice-and-comment rulemaking. Thus far, the Bureau has done nothing to clarify its approach.

URGENT NEED FOR REFORM

These serious adverse consequences are products of the concentration of unreviewable authority in the single Director. Transparency is essential when the support of others—most importantly Congress through the appropriations process—is needed to allow the exercise of government authority.

Moreover, the long-established model for federal regulatory agencies rests on the inescapable truth that decisions are more likely to be sound if they are the product of collaborative deliberation among individuals with diverse views, expertise, and backgrounds. Through discussion and compromise, the decision making of multi-member agencies tends toward intellectual rigor, impartiality, and moderation. Unsound regulatory determinations—such as decisions to regulate by creating uncertainty—are much more likely when one person makes all of the decisions and has no need even to consult, let alone forge a compromise with, others with whom he shares power that may differing views.

Action by Congress is needed to revise the CFPB's structure and thereby eliminate these adverse consequences:

- *First*, replace the single Director with a five-member bipartisan commission. That is the standard structure for independent federal agencies since the creation of the Interstate Commerce Commission in 1887. Today, almost all independent agencies follow that model, although some have three commissioners rather than five. And it would implement the basic provision regarding CFPB structure in the House-passed version of the Dodd-Frank legislation.

- *Second*, subject the Bureau's spending authority to the congressional appropriations process. The Bureau's lack of transparency in general and particular lack of responsiveness to Congress's inquiries—including the inquiries of members of this Subcommittee—is a direct result of the fact that the Bureau is free to spend more than $600 million dollars without congressional authorization.

CONCLUSION

Thank you again for the opportunity to testify before the Subcommittee today. The Chamber looks forward to working with Congress as these legislative proposals move forward. I am happy to answer any questions you may have.

Testimony of Damon A. Silvers

Policy Director and Special Counsel

American Federation of Labor and Congress of Industrial Organizations

Before the House Subcommittee on Financial Institutions and Consumer Credit

Hearing on Legislative Proposals to Reform the Consumer Financial Protection Bureau

October 29, 2013

Good morning, Chairman Capito and Ranking Member Meeks. My name is Damon Silvers, I am the Policy Director of and Special Counsel to the American Federation of Labor and Congress of Industrial Organizations. In addition, my testimony today is given on behalf of the Americans for Financial Reform, a coalition of more than 250 national, state and local organizations whose membership in total is close to 50 million people. On behalf of the AFL-CIO and AFR, I want to express my appreciation for being invited to testify today before the Subcommittee.

Today's hearing addresses the structure and funding of the Consumer Financial Protection Bureau ("CFPB"). Congress created the CFPB as part of the Dodd-Frank Act, a comprehensive set of reforms designed to address the causes of the financial crisis of 2008, which cost the world economy in excess of $60 trillion according to the Bank of England.

The origins of the CFPB lie in extensive efforts to understand how it was possible that consumer lending by the nation's largest banks, directly, and through a variety of business fronts, went essentially unregulated during the period from 2003-2008, particularly in the area of home mortgages, the world's largest single financial market. This question was addressed in numerous hearings in both houses of Congress, by the Congressional Oversight Panel for TARP as part of its mandate from Congress to make recommendations for regulatory reform, by the Congressionally mandated Financial Crisis Inquiry Commission, and in numerous academic and think tank studies.

A clear consensus emerged from this body of work that consumer protection regulation was fragmented and essentially a stepchild within the various bank regulatory agencies that had jurisdiction over it. In addition, there was a general consensus that there was not a level regulatory playing field as between banks and non-bank providers of consumer financial services, which both endangered consumers and created regulatory loop holes that threatened the safety and soundness of the financial system.

In particular, a great deal of attention was focused after the fact on the failure of the Board of Governors of the Federal Reserve System to listen to the warnings of then-Governor Ned Gramlich that the sub-prime mortgage market was a threat both to homeowners and to the financial system, and that the Federal Reserve should use the powers it had to regulate that market. The Federal Reserve did not do so because of the belief of its then Chairman, Alan Greenspan, that financial markets were efficient in the sense economists mean by that term, and that nothing could go wrong in that best of all possible worlds. Chairman Greenspan later acknowledged he had made a mistake.

Chairman Greenspan's mistake was really the product of not one, but two mistaken beliefs. The first was the belief that financial markets were efficient. The second was the belief that bank regulators could be successful at their jobs by focusing solely on safety and soundness, and not on consumer protection. It turned out that the lack of interest on the part of bank regulators in consumer protection not only led to more than ten million families losing their homes, it led to the virtual collapse of the U.S. financial system in the fall of 2008.

In response to these events, and the conclusions of those who examined them on behalf of Congress, Congress created the Consumer Financial Protection Bureau. The Bureau was designed to unify the consumer protection work of the federal government in one government body, and to clearly define that body as part of the overall bank regulatory system. It was also designed to create a single standard of consumer protection for both banks and non-bank providers of consumer financial services.

The CFPB's key structural features evidence Congress' intent. The Bureau is located within the Federal Reserve System, one of the three federal bank regulators. The Bureau, like the other bank regulators and the FHFA, has a budget that is not set through the Congressional appropriations process. The CFPB, like the other bank regulators, is able to hire at salaries above the General Schedule for Federal Employees, in recognition of the need to offer salaries that are at least somewhat competitive to people with experience in the banking sector. Finally, the CFPB, like the Comptroller of the Currency and regional Federal Reserve Banks, is headed up by a unitary executive, who is appointed by the President and may be removed by him.

These features of the CFPB were put in place by-Congress in the Dodd-Frank Act to ensure that consumer protection would no longer be the stepchild of financial regulation. This was done both to protect consumers and to protect the financial system and the global economy from another catastrophe driven by selling consumers harmful financial products.

At the same time, in response to some of the concerns that appear to motivate this hearing, Congress placed a number of unique constraints on the CFPB. The CFPB is the only financial regulatory agency whose rules may be overturned by a vote of the Financial Stability Oversight Council, or FSOC. The CFPB must consult with other bank regulators when engaging in rulemaking, and there is no requirement for reciprocity. The other bank regulators have access to CFPB inspection reports, the CFPB is subject to mandatory cost-benefit analysis in doing rulemaking, with a particular requirement to assess the effect of its rules on small banks, credit unions and rural consumers. Compared to other bank regulators, the CPFB is substantially more accountable to Congress and to its fellow regulators.

Since its establishment, the CFPB has succeeded in making a clear place for itself as an effective financial regulator. The CFPB has succeeded in returning over $700 million dollars to consumers in improperly assessed fees and charges to consumers, including over $300 million dollars from JP Morgan Chase alone. The CFPB has also established standards of conduct leading to greater transparency and more consumer friendly financial markets, including in the critical mortgage market. These rules have been hailed by industry leaders, such as David Stevens, President and CEO of the Mortgage Bankers Association, who said of the mortgage rule that it accomplished Congress and the CFBP's goal of eliminating "the risky products and features that once plagued our industry."

The CFPB has been particularly effective in counteracting a fundamental imbalance in the consumer financial markets. Large financial institutions have access to large data sets that enable them to model and effectively predict consumer behavior. As a result, they can offer products with fees that they know will be incurred by unwary consumers at levels that will add to bank profitability while providing nothing of value to consumers. No individual consumer, nor even most consumer advocates, has the data or the analytic capacity to counteract the banks' information edge. However, the CFPB, with its resources, its mandate to examine specific financial products, and its ability to look at the same data the banks use, is in a position to act as the consumer's advocate.

Today, this Subcommittee takes up a series of measures – I believe nine bills – each of which is designed to weaken the CFPB, to deprive the CFPB of its status as a genuine bank regulator, and to effectively subordinate the CFPB to the too big to fail banks that dominate the markets the CFPB regulates.

Since the bills under consideration today are substantially duplicative, I will address the ideas under consideration today as the Subcommittee staff requested, ordered conceptually rather than by bill number.

I. Changing the Leadership Structure of the CFPB, e.g. replacing the director with a five member Commission, and/or reducing the majority of the FSOC needed to overturn a CFPB rule from a two-thirds majority to a simple majority.

Both these measures are designed to weaken the CFPB.

While there are financial regulators with five member boards, there is no evidence I am aware of that these agencies are more effective than those led by directors. To the contrary, people as diverse as Senator Tom Coburn, JP Morgan Chase CEO Jamie Dimon, and Richard Hunt, President and CEO of the Consumer Bankers Association, have commended CFPB Director Richard Cordray on the way he has managed the Bureau.

The predominant form for bank regulators is single director or CEO, if one takes into account that bank regulation in the Federal Reserve System largely takes place at the regional bank level. Five member boards tend much more toward gridlock, as, regardless of which party is in power, the regulated entities tend to be able to muster the political power to exercise a veto over the agencies' functioning. This is true even in contexts of a strong Chairman, as has recently been shown in the difficulties the CFTC has had in approving cross border derivatives regulation in the face of too-big-to-fail bank opposition.

As noted above, the CFPB is the only financial regulator whose rules are potentially subject to override by the FSOC. The existing provision is mistaken, strengthening it would have the effect of further subordinating consumer protection to safety and soundness, the very mistake that led to the creation of the CFPB in the first place as a corrective measure.

II. Changing the Funding Mechanism of the CFPB, including moving CFPB employees to the General Schedule for Federal Employees.

Bank regulators—the Federal Reserve, the OCC, and the FDIC-- are generally not subject to the regular appropriation process. Subjecting the CFPB to the regular appropriations process would essentially deprive it of its independence and its status as a bank regulator. Such a move would profoundly weaken the CFPB, making it significantly less able to fulfill its mission of protecting consumers and the financial system.

Bank regulators have always been independent of the regular appropriation system for reasons related to the danger of political pressures being brought to bear on bank regulators to look the other way on a variety of issues relating to safety and soundness. The events of the last decade showed the same dangers are present with the same possible larger consequences in the area of consumer protection.

Other agencies involved in protecting the public in financial markets—the SEC and the CFTC, have long sought independent funding. The history of those agencies strongly suggests that in the absence of independent funding, federal bodies designed to protect the public in financial markets will be underfunded except in the immediate aftermath of crises.

The proposals to require the CFPB to operate within the General Schedule for Federal Employees are, like the other proposals we are discussing today, designed to both prevent the CFPB from functioning like a bank regulator and to cripple the CFPB's capacity to hire knowledgeable and experienced people. All of the other bank regulators are able to offer more competitive compensation packages than those provided under the General Schedule in appropriate circumstances. Ironically, among those who would be harmed by this idea are the companies the CFPB regulates, who have benefited from being able to deal with CFPB staff who are knowledgeable about market dynamics. For example, Camden Fine, the CEO of the Independent Community Bankers Association said, "It's refreshing that the CFPB seems to understand that when you are dealing with certain products those products are high risk and therefore the bank needs to be compensated."

III. Addressing Concerns about the CFPB's efforts to collect consumer data

These measures remind one of the definition of the Jewish term chutzpah—the man who murders his parents and then seeks mercy from the court as an orphan. The banking industry is using consumers' private data, which they have access to in all cases, to design products which will cause consumers to overpay for financial services. The only way to protect consumers from this power imbalance is for the CFPB to look at the same data. But the banks, which are already looking at the data with an eye toward exploiting their customers, complain the CFPB might violate their customers' privacy. The reality is that the banks want to be free to exploit the public by violating their customers' privacy, and are seeking to enlist Congress to help them. Congress should decline to do so.

In conclusion, each of the bills before this Subcommittee has no merit. The AFL-CIO and AFR strongly oppose all nine of these bills. Each is an effort to weaken the CFPB, and each will make America's consumers more vulnerable, will benefit too big to fail banks at the expense of the public interest, and will make our financial system more vulnerable to systemic crises.

I appreciate being invited to testify today, and I look forward to your questions.

NAFCU

Testimony of

Lynette Smith

President/CEO of Washington Gas Light Federal Credit Union

On behalf of

The National Association of Federal Credit Unions

"Examining Legislative Proposals to Reform the Consumer Financial Protection Bureau"

Before the

United States House Committee on Financial Services
Financial Institutions and Consumer Credit Subcommittee

United States House of Representatives

October 29, 2013

Introduction

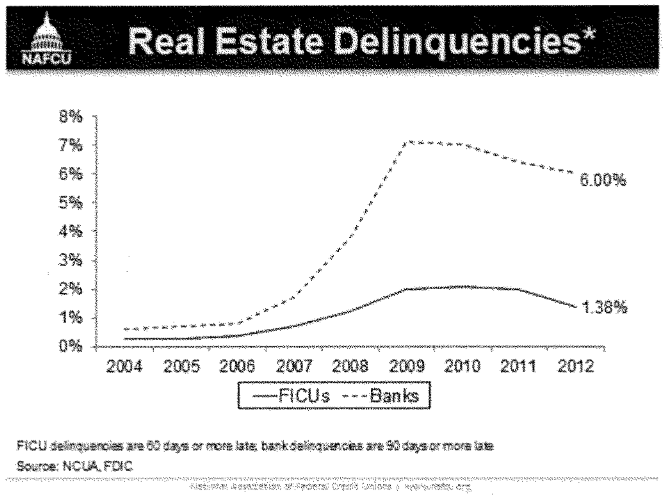
Good afternoon Chairman Capito, Ranking Member Meeks and Members of the Subcommittee. My name is Lynette Smith and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia. Washington Gas Light FCU has more than 6,700 members with assets over $89 million.

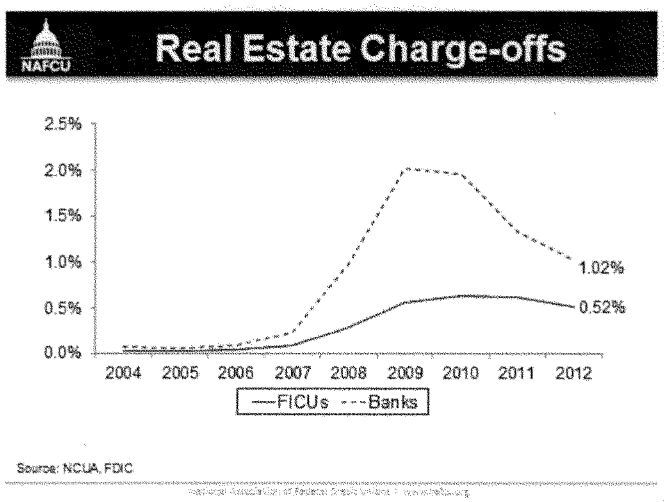
At Washington Gas Light our mission is to "Bring our Members Financial Dreams to Light." We oftentimes find ourselves as a lender of last resort for members with challenging credit histories. We pride ourselves in educating our members, by offering a series of seminars providing financial literacy education tools that empower them to manage their personal goals from buying a home to retirement planning. We also help them take advantage of the free automated services we provide such as bill pay and home banking.

NAFCU is the only national organization exclusively representing the interests of the nation's federally-chartered credit unions. NAFCU-member credit unions collectively account for approximately 68 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to participate in today's hearing regarding legislative proposals to reform the Consumer Financial Protection Bureau (CFPB).

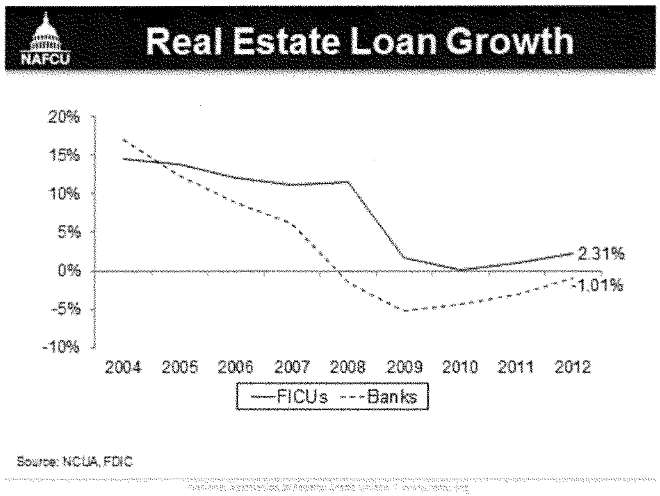
Credit Unions and the Financial Crisis

As widely recognized by Members of Congress on both sides of the aisle, credit unions were not the cause of the financial crisis. Examination of lending data during the crisis clearly indicates that credit union mortgage lending outperformed bank mortgage lending. This is due in part to the fact that credit unions were not the cause of the proliferation of sub-prime loans, instead focusing on placing their members in solid products they could afford. The graphs below highlight how credit unions have fared better than their bank counterparts with respect to real estate delinquencies and real estate charge-offs.





The final graph below highlights how credit union real estate loan growth outpaced banks' at the height of the financial crisis and beyond. In short, not only did credit unions act as responsible lenders during the financial crisis, they actually helped blunt the crisis by continuing to lend to credit worthy members during difficult times.



In evaluating the regulatory environment credit unions faced before the financial crisis and the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L.111-203], it is important to understand credit unions have always faced restrictions on who they can serve and on their ability to raise capital. There are many consumer protections already built into the *Federal Credit Union Act*, such as the only federal usury ceiling on financial institutions and the prohibition on pre-payment penalties, that other institutions are not subject to and have often used to trap consumers in high cost products.

Credit Unions and the Consumer Financial Protection Bureau

NAFCU has long recognized the need for additional consumer protection in the financial services arena, and from the moment the Obama Administration released its "white paper" in June 2009 calling for the creation of a CFPB-like entity, NAFCU supported additional regulation for bad actors and the unregulated. As Congress contemplated legislative action and whether or not a CFPB- like entity should be put into place, NAFCU consistently supported a consumer financial protection regime structured in such a way that it would regulate the bad actors and unregulated entities that pose the biggest threat to consumers while maintaining the regulatory regime that had worked for credit unions. Because consumer protection provisions already existed in the *Federal Credit Union Act* that laws governing other institutions did not have, NAFCU was the only financial services trade association to oppose credit unions of any size being placed under the CFPB's direct regulatory authority. Despite the fact that credit unions are already heavily regulated and did not contribute to the financial crisis, credit unions of all sizes are still subject to the rulemaking authority of the CFPB. While some may argue that the CFPB is "leveling the playing field" for community-based financial institutions, the reality could not be further from the truth, as smaller community-based financial institutions do not have the armies of lawyers that large Wall Street banks have to keep up with the pace of regulations coming out of the CFPB. In a September 2013 survey of NAFCU-member credit unions, only 4% of respondents said that the CFPB regulating previously unregulated entities has had a positive impact on their credit union.

I cannot emphasize enough how burdensome and costly the unnecessary and duplicative compliance costs are to credit unions. A survey of NAFCU members from late last year found that 94% have seen their regulatory burden increase since enactment of the *Dodd-Frank Act* in 2010. With thousands of pages of CFPB rules and proposals to interpret and ultimately comply with, the regulatory onslaught continues for credit unions. As the Subcommittee is aware, credit unions, many of which have very small compliance departments, and in some cases a single compliance officer, must comply with the same rules and regulations as our nation's largest financial institutions that employ countless numbers of lawyers and compliance staff. The impact of increased regulatory burden is also evident as the number of credit unions continues to decline. There are 700 fewer credit unions today than there were before passage of the *Dodd-Frank Act*.

While NAFCU member credit unions continue to weigh in on various CFPB proposals and work with CFPB staff to help educate them on the unique nature of credit unions, NAFCU believes some fundamental structural changes at the CFPB could be helpful. We believe changes could improve the CFPB's operations, give it the proper oversight and result in better understanding between the Bureau and entities it regulates.

CFPB Governance

Among these improvements, NAFCU supports the concept of creating a five person board or commission to govern the CFPB. The CFPB has been given an extremely broad authority to regulate any financial product across the financial services industry. Given the enormity of the authority entrusted to the CFPB, NAFCU believes a five person board has benefits over a single director. No matter how qualified and competent a single individual is, a commission setup would allow for multiple consumer perspectives to be brought to the table in the CFPB decision making process. This would allow a healthy debate on new proposals before they are issued and not subject the agency to the agenda of a single director. If the board were to have staggered terms, such a set-up would help ensure a degree of continuity in the Bureau's leadership and serve as a stabilizing force.

Financial Services Chairman Emeritus Spencer Bachus and the Financial Institutions and Consumer Credit Subcommittee Vice Chairman Sean Duffy have been particularly active in introducing legislation on this topic and NAFCU thanks them for their leadership.

Financial Stability Oversight Council

While NAFCU was pleased to see the Financial Stability Oversight Council (FSOC) granted some "veto" authority over some proposed rules if they are found to create safety and soundness concerns, we believe the current veto authority does not go far enough. NAFCU supports and urges adoption of legislation that would modify the threshold needed for the FSOC to veto a proposed rule, and that clarifies the standard of what can be considered. We believe the requirement that a majority of the FSOC (minus the CFPB Director) could veto a CFPB rule is a positive step that ensures safety and soundness concerns do not take a back seat in today's heavy regulatory environment.

It is also worth mentioning that NAFCU has been on the forefront encouraging the FSOC regulators to fulfill their Dodd-Frank mandated duty to facilitate rule coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure and promoting a safer and more stable system. I cannot emphasize enough how important it is to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. We urge Congress to exercise oversight in this regard and consider putting into statute parameters that would encourage the FSOC to fulfill this duty in a thorough and timely manner.

CFPB Data Collection

As you know, the CFPB has broad authority to collect information from credit unions from a variety of sources including exam reports and consumer complaints. As the CFPB works to exercise this authority, NAFCU has consistently cautioned that data collection efforts must include layers of protection to ensure sensitive personal information is not compromised. Specifically, NAFCU has expressed concern about the response intake fields on the CFPB's consumer complaint form and has asked that the Bureau outline implementing procedures to ensure that employees handle this information with care. In an effort to minimize the potential for problems, NAFCU believes the CFPB should start by simply minimizing the breadth and scope of the personal information requested. NAFCU has also expressed similar concerns to the Treasury Department as it creates a records system for the CFPB. Unfortunately, the CFPB has not done enough to wane our concerns. In fact, the Federal Reserve's inspector general recently found "weaknesses" in the agency's security program and the Government Accountability Office has similarly expressed concerns about data security.

Accordingly, NAFCU supports legislative efforts to help ensure that the government, including the CFPB, does everything possible to take great care in handling this information. With a constantly shifting regulatory environment driven by an inordinate amount of new rule writing, the last thing credit unions should have to worry about is the personal information of their member-owners being lost or stolen at the hands of the government. Credit unions have strict privacy procedures they must follow and the CFPB should also be held to stringent standards. We also believe the CFPB should consider risks associated with credit unions' well-earned reputation as entities that protect their members' interests.

CFPB Funding Mechanism

NAFCU believes that Congress should change the funding mechanism for the CFPB to require annual Congressional appropriations. We believe that subjecting the Bureau to the traditional appropriations process would allow for better oversight of this powerful agency. One aspect to consider in this approach could be to require that a majority of CFPB resources are focused on regulating the previously unregulated and not just used as more money spent to regulate those that are regulated by their own functional regulators. Given that the CFPB is in its infancy, NAFCU believes Congress should retain every oversight tool possible to ensure such a balance is being met and that the Bureau remains responsive to Congress.

Additional Suggestions for Improving the CFPB

In the wake of the financial crisis, and as the *Dodd-Frank Act* is implemented, it's clear that credit unions face more regulatory compliance burden than ever before. A survey of NAFCU member credit unions from earlier this year found that 88% said compliance costs have increased. Half of the same respondents said that, if not for the regulatory burden and compliance costs associated with Dodd-Frank, they would be able to offer their members lower loan rates, lower fees, and additional or enhanced member services.

Given the extreme regulatory landscape credit unions face, NAFCU has been active in reaching out to member credit unions to identify those areas where regulatory relief is essential. In February of this year, NAFCU unveiled and shared with a Congress a five-point plan that would greatly assist our nation's credit unions and their 96 million member owners. There are provisions in this plan, parts of which are contained in House Financial Services Committee Vice Chairman Gary Miller's the *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572), aimed at enhancing the ability of the CFPB to work with credit unions in a mutually conducive and productive way.

For example, H.R. 2572 would authorize the National Credit Union Administration (NCUA) to step in where appropriate to modify or delay application of a CFPB rule affecting credit unions as long as the goal of the rule is still met. Since the modified rule would be substantially similar to the original rule, and achieve the same goal, the argument that this would undermine the CFPB's intentions is not valid. An example of where this is necessary is the new remittance rule. As part of regulatory relief in 2006 (P.L. 109-351), Congress explicitly granted all credit unions the ability to offer remittance services to anyone in their field of membership in an effort to draw the unbanked and under-banked into the system by familiarizing them with credit unions. The CFPB's new rule, since it can't tailor it specifically to credit unions, will likely drive many credit unions out of the remittance business altogether. A recent NAFCU survey found that 25% of respondents currently making remittances transfers will stop offering this service when the new rule takes effect. If NCUA had greater flexibility, this issue may be able to be addressed. NCUA already has had this type of authority in the past in conjunction with other regulators, and has this authority now with tailoring *Truth in Savings* to the unique nature of credit unions.

H.R. 2572 would also require that the NCUA and the CFPB revisit cost/benefit analyses of rules after three years so they have a true sense of the compliance costs for credit unions. Many credit unions find that the time estimated by a regulator to comply with a new proposal is often vastly understated, making it hard to allocate staff and resources for compliance. Currently, regulators rarely revisit compliance estimates after they are made meaning the true compliance burden of new rules is often unrecognized or underestimated by the regulator. A requirement that the CFPB and NCUA look-back on cost-benefit analysis after three years will provide incentive for the estimates to be well thought out and succinct from the onset. The goal of this provision is to create a truth-in-compliance burden estimation not only so credit unions are able to properly plan in allocating staff hours and resources, but also to foster a better understanding between credit unions and their regulators in terms of how various rules and regulations are implemented in practice. Enacting this provision would encourage regulators to make a *true* cost-benefit analysis of a new rule. The regulators would be required to revisit and modify any rule for which the cost of compliance was underestimated by more than 20%. This gives the regulator room to work while ensuring credit unions are treated fairly throughout the process.

While many of the remaining provisions fall outside the scope of today's hearing, NAFCU would like to draw your attention to other important provisions in the *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572). In addition to the provisions outlined above, the bill would:

- establish a risk-based capital system for credit unions;
- allow the NCUA to grant federal credit unions a waiver to follow a state rule instead of a federal one in certain situations;
- require the NCUA to conduct a study of the Central Liquidity Facility and make legislative recommendations for its modernization;
- give credit unions better control over their investment decisions and portfolio risk; and
- provide credit unions parity with FDIC-insured institutions when it comes to deposit insurance coverage on Interest on Lawyers Trust Accounts (IOLTAs).

Conclusion

In conclusion, I want to thank the subcommittee for holding this important hearing today. While we believe that the CFPB can fill an important role in regulating the previously unregulated bad actors that operate in the financial services marketplace, credit unions remain at a loss as to why they were placed under a new regulatory regime to begin with as it has meant an overwhelming increase in regulatory burden. Given the fact that the CFPB is here to stay, we think it is important that Congress examine ways to improve the Bureau and we applaud the Subcommittee for having this discussion. We welcome the opportunity to have an ongoing dialogue with Congress on ways to improve the structure, governance and authorities of the CFPB.

Thank you for the opportunity to appear before you today. I welcome any questions you may have.

October 29, 2013

Testimony of

Robert S. Tissue

On behalf of

Summit Financial Group, Inc. and
West Virginia Bankers Association

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

United States House of Representatives

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Chairman Capito, Ranking Member Meeks, and members of the Subcommittee, my name is Rob Tissue. I am the Chief Financial Officer of Summit Financial Group (Summit). Summit is a financial holding company headquartered in Moorefield, West Virginia, and provides banking and insurance services to the communities located in the eastern panhandle and south-central regions of West Virginia and in the Shenandoah Valley and northern regions of Virginia. I appreciate the opportunity to present my views on legislation that would improve the accountability of the Bureau of Consumer Financial Protection (Bureau).

Summit's bank was founded in 1883, and it has survived many economic ups and downs over the past 130 years. My bank's focus, and those of my fellow community bankers in West Virginia, Virginia and throughout the country, is on developing and maintaining long-term relationships with our customers. No bank can be successful without such a long-term philosophy and without treating customers fairly. We plan to be here for a very long time, and that requires us to provide the financial service that will keep our communities strong and growing. The success of Summit is inextricably linked to the success of the communities that we serve, and we are very proud of our relationships with them.

Our long tradition of service is not unique among banks. In fact, there are 2,742 banks—39 percent of the banking industry—that have been in business for more than a century; 4,669 banks—67 percent—have served their local communities for more than half a century. These numbers tell a dramatic story about banks' commitment to the communities they serve. It is a testament to the close attention to customer service.

Let me begin by first emphasizing that ***the banking industry fully supports effective consumer protection.*** We believe that Americans are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently. My bank's philosophy—shared by banks everywhere—has always been to treat our customers right and do whatever we can to make sure that they understand the terms of the loans they are taking on and their obligations to us. Traditional FDIC-insured banks—more than any other financial institution class—are dedicated to delivering consumer financial services right the first time. Not only do we have the compliance programs and top-down culture to prove it, banks are required to have the financial wherewithal—in terms of capital, liquidity and asset quality—to be there when our customers need us.

Fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. It is for this reason I and my fellow bankers, from banks small to large and everywhere in between, have common cause to advocate for improvements to assure this new Bureau is accountable to the fundamentals of safe and sound operation, to the gaps in regulating non-banks that motivated financial reform, and to the principles of consistent regulatory standards consistently applied.

There are several features of the Bureau that make improved accountability imperative. In addition to the weakening of any connection between the Bureau's mission and safety and soundness concerns, Dodd-Frank gave the Bureau expansive new quasi-legislative powers and discretion to re-write the rules of the consumer financial services industry based on its own initiative and conclusions about the needs of consumers. The prerogative of Congress to decide the direction and parameters of the consumer financial product market has essentially been delegated to the Bureau. The resulting practically boundless grant of agency discretion is exacerbated by giving the head of the Bureau ***sole authority*** to make decisions that could fundamentally alter the financial choices available to customers.

Not only has the Bureau been given these extraordinary powers, but it also lacks the accountability that comes with budget oversight. Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. This lack of oversight means that the Bureau is free to direct its nearly $600 million budget towards any issue it sees fit, without input from Congress.

The Dodd-Frank Act has certainly changed the landscape for banking regulation and consumer protection across all financial institution participants, including non-banks. The Bureau of Consumer Financial Protection will play a pivotal role in setting new rules that will affect access, availability, and cost of credit to individuals across the country. Therefore, measures must be taken to ensure that the Bureau is held accountable for the consequences of its actions which includes the availability or lack thereof of credit and financial services to deserving people.

There are several specific measures that members of Congress have proposed that will ensure consumers understand the financial decisions that confront them and will not limit the choices and availability of credit to them. A number of the bills introduced by Reps. Spencer Bachus (R-AL) and Sean Duffy (R-WI) begin to address the issue of the structure of the Bureau. In addition, the bills from Reps. Bill Posey (R-FL) and Duffy address what the oversight and source of funding should be. These bills are a few of many options to address concerns about the role of the Bureau and its exercise of power. An important principle that underlies these and other bills is that there needs to be an effective check and balance on the Bureau's authority. I strongly support this principle of accountability and balance, and applaud Congressional efforts to assure an effective mechanism is in place to achieve it for the Bureau.

For all these reasons and others, it is critical to improve the accountability of the Bureau and the Dodd-Frank framework around it. In the remainder of my testimony, I would like to offer several suggestions that I and the banking industry believe are needed to restore the necessary accountability of the Bureau:

- *Strengthen accountability by making meaningful structural changes;*
- *Assure the Bureau's funds are used effectively and disclosed fully; and*
- *Improve oversight of the Bureau to assure results are consistent with the Bureau's mission.*

Before I discuss each of these, I would like to say that the Bureau has been responsive to industry comments to improve the mortgage reform implementation. For example, recent rule-makings on remittances and mortgage financing and servicing will benefit consumers, providers and the market as a whole. The Bureau's willingness to respond flexibly rather than dogmatically has enabled these win-win outcomes. Responsiveness is not, of course, a substitute for accountability. In fact, formal accountability would work hand-in-glove with thoughtful consideration by the Bureau of stakeholder concerns to make improvements that serve both consumers and the financial institutions that serve them.

There is clearly more that the Bureau can do immediately. In particular, we remain deeply concerned about the consequences of implementing the Qualified Mortgage (QM) rules in January 2014. The rulemaking has left banks little time to comply with the QM regulations despite the wide-reaching market implications and tremendous amount of work banks must undertake to comply with these rules. Between now and January, banks must fully review all of the final rules; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online. We must get this right, for the sake of our customers, our banks' reputations, and to promote the nascent recovery of the housing market. For some institutions, stopping any mortgage lending is the answer to this unreasonable deadline because the consequences are too great if the implementation is not done correctly. In order to do this, we need to extend the existing deadlines as well as address outstanding issues to ensure that all creditworthy borrowers have access to credit. Congressional support for such action would be welcomed as it affects many community banks and the local communities that they serve.

I. Strengthen Accountability By Making Meaningful Structural Changes

Our industry has long advocated the use of a board or commission structure is appropriate to address the unfettered authority of the Bureau's director to impose new rules. It would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and would provide needed balance and appropriate checks in the exercise of the Bureau's authority. It will facilitate continuity of the organization and enhance predictability about rulemaking over time.

As the law is currently written, the Bureau's director has sole authority to decide the direction and parameters of the consumer financial product market. This vests too much power in one person to fundamentally alter the financial choices available to customers. A board or commission would broaden the perspective on any rulemaking and enforcement activity of the Bureau, facilitate continuity of the organization and enhance predictability about rulemaking over time, and provide the appropriate checks in the exercise of the Bureau's authority.

I believe that the board or commission should include members with consumer finance business experience and direct safety and soundness regulatory expertise. Such expertise provides an important and necessary perspective as standards are set and enforcement activities undertaken. Such an important feature will also improve accountability and help redress the separation between consumer protection and sound financial management.

I would also urge Congress to consider requiring one of the five seats in the proposed Commission be filled with the recently created, statutorily-mandated position of the Vice-Chairman for Supervision of the Federal Reserve Board. We believe that the inclusion of the Vice-Chair for Supervision provides necessary and current safety and soundness experience that directly addresses a pivotal deficiency of the existing structure. The Vice-Chair for Supervision is a unique official who has oversight responsibility both for large financial holding companies (which include the nation's biggest banks and credit card issuers) and state chartered community banks that are Federal Reserve members. This broad responsibility and expertise would be invaluable to achieving the missing accountability for safety and soundness that the current structure lacks.

Both H.R. 2402 (introduced by Rep. Duffy) and H.R. 2446 (introduced by Rep. Bachus) address the structure of the Bureau, and would replace the director with a bipartisan five-member commission. This is a step that would be critical to strengthening the Bureau's accountability. H.R. 2402 goes one step farther and ensures that one of the members of the committee is the Vice Chairman for Supervision of the Federal Reserve System.

II. Assure Bureau's Funds Are Used Effectively and Disclosed Fully

On funding, the Bureau should be accountable to Congress to show how it is using its resources and to demonstrate that it is taking a balanced approach to its rulemaking and enforcement. The Bureau has been given unprecedented powers to shape financial markets, but it lacks accountability that comes with budget oversight.

Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. This lack of oversight means that the Bureau is free to direct its nearly $600 million budget towards any issue it sees fit, without input from Congress. Oversight by Congress would allow the very consumers that the Bureau was designed to protect to hold it accountable through their elected officials.

For example, the financial crisis pointed to an enormous gap in the regulation and supervision of non-bank financial providers. The system failed to enforce laws—already on the books—against predatory practices by many of those non-banks. Therefore, the Bureau should be held accountable for directing its resources to the most glaring gap in regulatory oversight—a failure to supervise and pursue available enforcement remedies against non-bank lenders committing predatory practices or other consumer protection violations.

Traditional banks will be examined year-in and year-out for compliance with all of the pre-crisis consumer protection laws—and any new rules forthcoming from the Bureau. Non-bank lenders have no such oversight and will once again escape supervision and melt back into the forest just as they did as the financial crisis unfolded. By focusing resources disproportionally on the banking industry where strong regulations and consumer protections already exists will inevitably shift consumers to less regulated entities that were the key offenders leading up to the crisis

Unlike non-banks, the banking industry already has a compliance culture and financial wherewithal to assure compliance with consumer regulations. Thus, there needs to be great transparency regarding the Bureau's funding to assure that the focus is on closing the gaps on non-banks, including a break-out of Bureau expenditures attributable to bank versus non-bank regulation and supervision. Mandated transparency on the Bureau's non-bank expenditures will better enable Congress to fulfill its own oversight function.

III. Improve Oversight of the Bureau to Assure Results are Consistent with Its Mission

Improving accountability will allow Congress to better guide the Bureau to accomplish its mission. There are a number of areas where improved oversight would result in improved outcomes for both consumers and businesses. There are several areas where there are insufficient consumer protections that deserve enhanced oversight by Congress. Just as important as address the gaps in regulation is not over-regulating in areas where consumers are already protected. Over-regulation risks limiting credit availability, which does as much of a disservice to consumers as failing to protect them in the first place.

Ensure that non-banks receive equal regulation

Even the strongest proponents of the Bureau acknowledge the fact that traditional banks were not the cause of the financial crisis. Rather, unsupervised non-bank lenders and unregulated packagers of collateralized mortgage obligations (CMOs) were allowed to take excessive risks in spite of existing laws that could have stemmed the tide of corrosive market conduct by non-depositories. The system failed to enforce laws—already on the books—against predatory practices by many of those firms and it failed to bring market discipline to bear on underwriting standards against which bankers were hard pressed to compete.

Yet here we are, the surviving bankers, facing a new bureaucracy charged with making sense of the often conflicting, never intuitive and always burdensome compliance obligations. Traditional bankers will be examined year-in and year-out for compliance with all of the pre-crisis consumer protection laws—and any new rules forthcoming from the Bureau—while non-bank lenders may once again escape.

Therefore, the Bureau should be held accountable for directing its resources to the most glaring gap in regulatory oversight: a failure to supervise and pursue available enforcement remedies against non-bank lenders committing predatory practices or other consumer protection violations.

I would note a recent effort by the Bureau to enlist the prudential regulators to expand the statutory authority to compel reports of conditions from banks to include market research data on deposit fee and remittance fee revenues. By only collecting information from the banking sector of this service market and not from credit unions or non-bank competitors who provide these same services to consumers, the agencies are aiding and abetting the Bureau's inconsistent exercise of authority toward an end that will not comprehensively capture the market they claim to want to study. This lopsided data collection should be stopped.

Address shortcomings and challenges associated with new mortgage rules

The mortgage market comprises a substantial portion of the GDP in our economy and touches the lives of nearly every American household. The Bureau's new Ability to Repay (ATR) and Qualified Mortgage (QM) rule represent a fundamental change in the housing-finance market. It is critical that these rules make sense and do not end up hurting creditworthy Americans that want to own a home.

Unfortunately, the Ability to Repay/QM rule, however well intentioned, will end up restricting mortgage credit making it more difficult to serve a diverse and creditworthy population. There are several problems associated with the rule. The general non-QM segment is very unclear and compliance is uncertain. More pointedly, the heightened penalties and liabilities applicable in the Ability to Repay rule are tremendously burdensome. Given the legal and reputational risks imposed by this regulation, banks will be hesitant to venture outside the bounds of the QM safe harbors. The new rules create a narrowly defined box that consumers must fit in to qualify for a QM-covered loan. Since banks will make few loans that do not meet QM standards, many American families across the country that are creditworthy but do not fit inside the QM "box" will be denied access to credit. In practice, this also likely means that less affluent communities may not be given the support they need to thrive. These rules may leave many communities largely underserved in the mortgage space.

Further heightening concerns with the rule is the fact that the rulemaking process has left banks little time to comply with the QM regulations despite the wide-reaching market implications and tremendous amount of work banks must undertake to comply with these rules. While the CFPB has attempted to address industry concerns by revising and clarifying aspects of the rule since it was finalized, the planned implementation date in January 2014 leaves banks little time to bring systems on line, train staff and ensure that software vendors compliance products are fully functional. CFPB needs to extend the existing implementation deadlines to provide for a transition period before requiring compliance to ensure that all creditworthy borrowers continue to have access to credit. This must be done in a formal fashion to ensure that the prudential regulators, as well as state attorneys general and private citizens all recognize the same transition period for enforcement of the new rules.

Rethink the role of enforcement staff in the supervisory process

Supervision should be a value-added proposition and not be conducted as an enforcement exercise. The presence of enforcement staff in the supervisory process hurts the entire process. Supervisory authority represents an extra-ordinary combination of visitorial rights and broad business record access without normal investigatory due process in exchange for a strong confidentiality privilege for the purpose of constructively criticizing and improving risk management without undermining the institution's market viability. This trade-off is at the heart of successful supervision and what distinguishes it from the enforcement paradigm. The presence of enforcement counsel converts supervision to a form of pre-complaint discovery with none of the protections every other American business enjoys in its dealing with government agencies. A firm wall should be erected between enforcement and the Bureau's examination process.

Conclusion

The banking industry fully supports effective consumer protection. Traditional FDIC-insured banks have a long history of delivering consumer financial services right the first time and banks have the compliance and top-down culture to prove it.

It is an inescapable fact that fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. It is for this reason that Congress should act to enhance the accountability of the Bureau by dealing with the problems brought about by the extensive new powers of the agency, the unfettered authority of the Director to impose new rules, the separation of consumer protection from financial institution safety and soundness, the gaps in regulating non-banks, and the expanded and unaccountable enforcement authority of prudential regulators and state attorneys general.

My bank's philosophy—shared by banks all across this country—has always been to treat our customers' right and do whatever we can to make sure that they understand the terms of the loans they are taking on and their obligations to us. We will continue to do this, but now there will be many new hurdles that we will have to jump to serve our customers' most basic needs that will inevitably add cost, time, and hassle for my customers.

Thus, it is critically important that Congress be vigilant in overseeing the regulatory actions of the Bureau to assure they do not restrict access to responsive financial products by responsible American families.

CUNA
Credit Union National Association

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October 28, 2013

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Gregory Meeks
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Capito and Ranking Member Meeks:

On behalf of the Credit Union National Association (CUNA), I am writing regarding tomorrow's hearing on legislative proposals to reform the Consumer Financial Protection Bureau (CFPB). CUNA is the largest credit union advocacy organization in the United States, and the only credit union organization that represents the views of America's state and federally chartered credit unions. Partnering with our state credit union leagues, CUNA represents America's credit unions and their 97 million members. We appreciate the opportunity to submit our views on some of the legislation subject to tomorrow's hearing.

Legislation Related to the Structure of the Bureau of Consumer Financial Protection

Representatives Duffy and Bachus have introduced legislation (H.R. 2402 / H.R. 2446) to replace the Director of the CFPB and establish a five person commission. When the CFPB was initially proposed by the Administration in June 2009, the legislation provided for a five person board to govern what was then called the Consumer Financial Protection Agency (CFPA). The administration's proposal further designated that one of the five seats would be designated for a national banking regulator. In response to that proposal, CUNA stated that the:

> CFPA Board needs to be larger than what has been proposed, and there should be seats on the board statutorily designated for industry representatives, a state or federal credit union regulator, and consistent with our statement above, possibly a state consumer agency representative.[1]

Our concern here was that, under the Administration's proposal, there was no guarantee that the CFPA Board would include someone who had experience running a financial

[1] CUNA Letter to House Financial Services Committee Chairman Barney Frank. July 14, 2009. 5. http://www.cuna.org/Grassroots-And-Political-Action/DownLoads/congress_letter_071409/

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institution, specifically a credit union, and that without such experience, there would not be an appreciation for the totality of regulatory burdens facing credit unions. If Congress decides to replace the CFPB Director with a Commission, we would encourage Congress to expand the size of the Commission beyond what has been proposed by the Duffy and Bachus bills and to include appropriate industry and regulator representation, including a seat specifically for a person with experience related to credit unions. Expanding the scope of experience in this manner would enhance the quality of regulations promulgated by the CFPB by ensuring both the consumer perspective as well as the industry perspective is represented in the decision-making process.

Legislation Related to the Powers of the Financial Stability Oversight Council

We understand that Representative Duffy may reintroduce legislation that he sponsored in the 112th Congress to authorize the Financial Stability Oversight Council (FSOC) to stay or set aside any regulation of the CFPB upon a determination by a majority of its members that the regulation is inconsistent with safe and sound operations of financial institutions, and to require the CFPB to take into consideration the impact of its rules on insured depository institutions.

CUNA supports this legislation. The current threshold to prevent harmful regulation from going into effect is a two-thirds vote of the financial regulators; we believe this is too high given the importance of maintaining a safe and sound financial system. Reducing the threshold would help balance consumer protection with safety and soundness concerns.

In addition, we encourage Congress to consider legislation to expand the conditions that must be met in order for the FSOC to override a regulation if the FSOC determines a new rule would be unreasonably burdensome for financial institutions; or if the FSOC determines that the burden to financial institutions outweighs the benefit to consumers.

Legislation Related to the Use of Consumer Information

Representative Duffy has introduced legislation (H.R. 2571) to prohibit the CFPB from requesting, accessing, collecting, using, retaining or disclosing nonpublic personal information about a consumer unless it has clearly disclosed to the consumer what information will be requested, access, collected, used, retained or disclosed, and the consumer has indicated that the information may be requested, accessed, collected, used, retained or disclosed. The legislation would also eliminate the CFPB's exemption from the Right to Consumer Privacy Act of 1978. CUNA supports this legislation. Consumers should have knowledge of their personal information being transmitted to or acquired by the CFPB.

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Representative Westmoreland has introduced legislation (H.R. 3183) that would require the CFPB to provide at a consumer's request one free annual report disclosing all of the information about the consumer held by the CFPB, the sources of that information and the identity of any person or agency to which the CFPB has disclosed such information. H.R. 3183 would provide an important consumer protection by allowing consumers to know what information the Bureau has about them and how the Bureau may be using it. CUNA supports this legislation.

Indexing Dodd-Frank Thresholds for Inflation

In addition to the reforms contemplated by the legislation under consideration at this hearing, we encourage Congress to consider indexing various thresholds in the Dodd-Frank for inflation. The Dodd-Frank Act exempts credit unions and community banks with $10 billion or less in total assets from examination by the CFPB; examination for compliance with consumer protection laws for these institutions would be conducted by the federal prudential regulator which is the National Credit Union Administration, in the case of credit unions. Indexing this threshold (and its companion threshold in Section 1025) for inflation is critical to the intent of Congress in providing the exemption because without indexing these thresholds, significant erosion of the exemptions will occur in a relatively short amount of time. For example, if inflation were 3% per year, the initial $10 billion level would fall to the equivalent of $8 billion after just over 7 years. In addition to the thresholds under Section 1025 and 1026, the Committee should consider adjusting all similar thresholds in other areas of the legislation, including Section 1075 related to debit interchange regulation.

Compliance with Upcoming Mortgage Rules' Effective Dates

In January 2014, seven detailed and cumbersome mortgage rules will take effect for mortgage lending credit unions and others covered by the regulations. With the compliance deadlines looming, a number of our members have turned to us in desperation because they have indicated they are simply overwhelmed by the multitude and scope of the changes.

Many credit unions rely on third parties and vendors to provide forms, software, programming, training, and numerous other services that will allow credit unions to meet their compliance responsibilities. Based on numerous discussions with our members, it appears that many of their vendors will not be able to make the range of changes necessary to support full compliance in January.

In light of our members' concerns, we have raised this matter with Congress and the CFPB on several occasions. The CFPB has indicated that it is talking with prudential regulators about delaying the citation of institutions for noncompliance for several months after January.

Despite the CFPB's efforts to mitigate examination issues and to make certain changes in the rules, we feel the time has come for this Subcommittee to coordinate with the CFPB to either provide additional time for compliance for consumer and community based institutions, such as credit unions, or to extend the effective date for legal liability under these rules, or both.

Our approach, to allow certain institutions such as credit unions and community banks that did not contribute to the financial crisis and are already heavily burdened with regulations to have an additional few months, until July 2014, to comply and be subject to legal liability, is reasonable and would facilitate more complete compliance with the rules. In essence, our approach separates the mandatory compliance date from the effective date for certain institutions, such as credit unions. It would not mean changing the January effective dates set by the CFPB, which would remain in place but compliance for credit unions and community banks only would be delayed.

There is precedent for establishing a mandatory compliance date that is later than an effective date. For example, when the Federal Reserve Board implemented Regulation Z, Truth-in-Lending, it utilized an April-October cycle, under which rules took effect in April but compliance was not required until October of that same year.

The consequences of ignoring legitimate concerns about compliance with the mortgages rules may include subjecting consumer and community based institutions to needless risk of litigation and legal action if compliance with the January dates is not possible. Additionally, due to the potential litigation and legal actions that could ensue, some consumer and community based institutions have indicated they may cease providing mortgage credit products to consumers until full compliance can be achieved, which may further disrupt credit availability to consumers in the marketplace.

To facilitate compliance, we would support provisions that allow the CFPB to set benchmarks toward July compliance and that would shield those institutions that are afforded additional time from litigation and legal action until compliance is actually required. We urge the Subcommittee to work with the CFPB in an expeditious manner to allow more time for certain institutions to comply with the mortgage rules.

On a related issue, we are very concerned that the qualified mortgage (QM) under the Ability-to- Repay rule may indeed result in disparate impact, given the 43% debt to income ratio requirement. While the CFPB was careful not to require institutions to issue any or only QM's, already our members are telling us that examiners say they will expect

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credit unions to provide justification when a non-QM is issued. There are also concerns that the secondary market will focus on QMs. The statement issued recently on this subject by the regulators was well-intended but will not protect institutions in court if they are challenged on this issue. We urge the Subcommittee to look into this with the agencies and shield institutions that act in accordance with the rule from disparate impact allegations and litigation.

Exemptions for Credit Unions

It is a tragic irony of the Dodd-Frank Act that institutions such as credit unions, which have contributed to the economic recovery and not to the financial crisis, are overburdened by rules necessitated by institutions that caused the crisis. Regulatory requirements and compliance obligations, particularly those of the magnitude of the mortgage rules, impose heavy costs. In the case of credit unions, those costs must be borne by the members through higher fees or foregone services. It is simply unfair, unwarranted, and superfluous to impose rules intended for abusers in the financial marketplace on credit unions.

Under current law, the CFPB has authority to exempt any class of covered entities or products from its rules.[2] The CFPB has made a number of changes in its rules to address concerns that credit unions have raised but the Bureau has not been willing to execute more meaningful exemptions to which credit unions should be entitled given their overall record of member service and consumer protection. It is certainly within the CFPB's authority to exempt entities with a history of consumer-friendly activity from new regulations that would otherwise serve to make the service more expensive for the credit union and its members, or to reduce the availability of service. We urge the Subcommittee to review the issue of exemptions for all community and consumer based institutions and coordinate with the CFPB, including through oversight, to achieve greater use of the agency's exemption authority.

Conclusion

Credit unions remain among the most highly regulated entities in the financial services sector. While the CFPB has taken several steps to solicit feedback regarding the impact of its regulations on credit unions, the fact remains that regulatory burden has continued to increase in the two years since the Bureau stood up. To make matters worse, one needs to look no further than the remittance rule and the mortgage rules to understand that there is little hope for this trend to change. Credit unions continue to face a crisis of creeping complexity with respect to regulatory burden and they look to Congress for

[2] Section 1022(b)(3)

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assistance. Congress has an important role to play in ensuring that the CFPB's rules do not adversely affect credit unions and their members by impeding or increasing the cost of providing the high quality member service that credit union members expect and deserve. It is appropriate to consider these structural reforms and we look forward to working with you in this regard.

On behalf of America's credit unions and their 97 million members, thank you for your consideration of our views.

Best regards,

Bill Cheney
President & CEO

FINANCIAL
SERVICES
ROUNDTABLE

October 29, 2013

The Honorable Shelley Moore Capito
Chairman, House Financial Services Committee,
Subcommittee on Financial Institutions
U.S. House of Representatives
Washington, D.C. 20515

Re: Enhancements to the CFPB's Structure and Operations

Dear Madam Chair:

As you may know, the Financial Services Roundtable ("FSR") supported the confirmation of Richard Cordray to be the first Director of the Consumer Financial Protection Bureau ("CFPB"). However, we have also continuously supported needed changes to CFPB's structure and operations. Our members strongly believe the CFPB should operate under a more democratic structure with a bipartisan board to work with a Director. FSR urges your Subcommittee and Congress to take swift action on injecting checks and balances into the CFPB's structure.

FSR supports efforts to ensure that the CFPB is accountable to Congress and to taxpayers. Financial service companies and regulators share the goal of serving and protecting consumers, while ensuring financial products are available and affordable in a vibrant marketplace. The CFPB plays a key role in achieving that goal. We believe common sense changes to the agency will improve the agency's focus and help to provide stability of the financial system. Accordingly, we will continue to urge your colleagues to support these enhancements to the CFPB.

Best Regards,

Scott E. Talbot

Scott Talbot
Senior Vice President for Public Policy
Financial Services Roundtable

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

October 29, 2013

Reforms Needed to Create a More Inclusive and Accountable CFPB

On behalf of the nearly 7,000 community bankers represented by the ICBA, thank you for convening this hearing on "Examining Legislative Proposals to Reform the Consumer Financial Protection Bureau." Regulatory relief for community banks and the customers and communities they serve is a top priority for ICBA in the 113th Congress, and reform of the structure, governance, and rulemaking of the CFPB will result in effective regulatory relief. We are pleased to have the opportunity to submit this statement for the record.

ICBA strongly opposed provisions in the Dodd-Frank Act that excluded the prudential banking regulators from the CFPB rule-writing process. Bank regulators have long expertise in balancing the safety and soundness of banking operations with the need to protect consumers from unfair and harmful practices and provide them with the information they need to make informed financial decisions. ICBA supports legislative efforts to give prudential regulators a stronger, more meaningful role in CFPB rule writing.

ICBA's Plan for Prosperity: A Regulatory Relief Agenda to Empower Local Communities (the "PFP") calls for two reforms to the CFPB. First, the governance structure of the CFBP should be changed from a single Director to a five-member commission. Commissioners would be confirmed by the Senate to staggered five-year terms with no more than three commissioners affiliated with any one political party. This change will strengthen accountability and bring a diversity of views and professional backgrounds to decision-making at the CFPB.

The second change to the CFPB would strengthen the Financial Services Oversight Council's (FSOC's) review of CFPB rules by changing the vote required to veto a rule from an unreasonably high two-thirds vote to a simple majority, excluding the CFPB Director.

ICBA is very pleased that these PFP provisions are embodied in legislation being considered in this hearing today. The Financial Protection Commission Act of 2013 (H.R. 2401), sponsored by Rep. Sean Duffy (R-WI), and the Responsible Consumer Financial Protection Regulations Act of 2013 (H.R. 2446), sponsored by Rep. Spencer Bachus (R-AL), would both make the governance change noted above. H.R. 2401 would specify that one of the commissioners is Vice Chairman for Supervision of the Federal Reserve System. The Consumer Financial Protection Safety and Soundness Improvement Act of 2013, also sponsored by Rep. Duffy, authorizes FSOC to stay or set aside any CFPB rule if a majority of Council, excluding the Director of the CFPB, finds that it is "inconsistent with the safe and sound operations" of U.S. financial institutions. This is a much more realistic standard than under current law. In addition, the Consumer Financial Protection Safety and Soundness Improvement Act requires the CFPB to consider the impact of any rule on the financial safety or soundness of an insured depository institution. Combined, these changes would better protect the safety and soundness of the financial system, and provide reasonable measures to insulate community banks from additional regulatory burden. ICBA thanks this committee and the House for passing these provisions in the 112th Congress.

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The CFPB reforms noted above will significantly improve the rulemaking of that agency. ICBA is committed to working with you to advance these reforms in the 113th Congress. But additional regulatory relief is needed. ICBA is grateful to the members of this committee who have introduced legislation that reflects provisions of the PFP. In particular, the Financial Institutions Examination Fairness and Reform Act (H.R. 1553), introduced by Chairman Capito and Representative Maloney, would significantly improve the oppressive bank examination environment by creating a workable appeals process and consistent, commonsense standards for classifying loans. The CLEAR Relief Act (H.R. 1750), sponsored by Rep. Blaine Luetkemeyer, contains eight PFP provisions including reform of CFPB mortgage rules that will restrict access to credit and relief from costly Sarbanes-Oxley 404(b) internal control assessment mandates and from unnecessary annual privacy notice requirements when a bank has not changed its privacy policies. ICBA strongly encourages this committee to consider these important bills in additional to the CFPB reform bills before the committee today.

Thank you again for the opportunity to submit this statement for the record.

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Question (Rep. Posey):

Finance Companies comprise 25% of the nation's $3 trillion consumer credit market. These companies use their own capital to make loans to families with impaired or no credit, receive no federal subsidy and have no depositors to underwrite their loans. They also fall under the jurisdiction of state banking agencies, of which Florida serves as a national model for regulating the industry.

Because the CFPB has limited experience overseeing companies, would the CFPB benefit from a commission structure with at least one member having experience regulating state level consumer credit -- akin to the way the FDIC board is structured? Should Congress require this by statute?

Answer (Ms. Lynette Smith):

Thank you for the question, Representative Posey.

As you know, Members of Congress on both sides of the aisle have acknowledged that credit unions were not the cause of the financial crisis. While NAFCU has long recognized the need for additional consumer protection in the financial services arena to avoid such a crisis from ever happening again, it was the only credit union trade association to oppose CFPB authority over credit unions given their stellar record of member service and the existing regulations credit unions are subject to via the Federal Credit Union Act.

While NAFCU maintains that the CFPB should not have authority over credit unions, it has become clear through the rule writing and the examination processes that credit unions are firmly within reach of the new regulatory body. Accordingly, credit unions, including Washington Gas Light, have a vested interest in ensuring the operating structure at the CFPB is fair and transparent.

Among potential improvements, NAFCU supports the concept of creating a five person board or commission to govern the CFPB. Given the broad authority and awesome responsibility the CFPB has, a five person commission has distinct benefits over a single director. No matter how qualified one person may be, a commission type setup would allow multiple perspectives to be heard in the decision making process.

Response to Rep. Bill Posey's Question from Damon A. Silvers:

As my written testimony addresses in some detail, banking regulation is generally done by agencies with a single executive. The FDIC Board is an exception. The effort by the banking industry to change the CFPB to having a board structure is clearly designed to weaken the CFPB and to particularly weaken it vis a vis other bank regulators that have a unitary executive. In relation to your observations about finance companies, the fundamental purpose of the CFPB is to regulate all of consumer financial services from a consumer protection perspective, regardless of the corporate structure of the financial service provider. The CFPB is a new agency, has limited experience with all the companies it regulates, although that has been substantially mitigated by the CFPB drawing upon the consumer protection staffs of preexisting regulators. The fact that the CFPB is new is not a justification for weakening its governance structure. Consequently, Congress should not change the CFPB to a commission structure, regardless of what composition that structure might be.