Statement of

Richard Hunt

On Behalf of the

Consumer Bankers Association

Before the

House of Representatives

Committee on Financial Services
Financial Institutions and Consumer Credit Subcommittee

Regarding

Legislative Proposals to Improve the Structure of the

Consumer Financial Protection Bureau

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Madam Chairman, Ranking Member Maloney, members of the subcommittee, my name is Richard Hunt, and I am President of the Consumer Bankers Association ("CBA"). CBA is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. Founded in 1919, CBA provides leadership, education and federal representation on retail banking issues. The nation's largest financial institutions and regional banks are CBA corporate members, collectively holding two-thirds of the industry's total assets.

It is my pleasure to appear before you today to share our concerns and discuss our perspectives on legislation to improve the structure of the Consumer Financial Protection Bureau ("Bureau").

As the trade association for retail banks of all sizes, we are particularly focused on the role of the Bureau, the agency which will now be regulating the retail products and services of CBA members. As such, we have met often with the personnel who are standing up the Consumer Financial Protection Bureau in order to assist our members preparing for the new agency.

CBA has a long history of supporting improved consumer protection, but it is no secret we opposed the creation of the Bureau in Title X of the Dodd-Frank Act during the legislative process. We believed, and still believe, the benefits that might follow from consolidating rulemaking and enforcement in a single agency are outweighed by the problems that arise from separating that agency from the prudential banking regulators, who are responsible for ensuring the safety and soundness of depository institutions. Nevertheless, we recognize the importance to our members of maintaining an ongoing relationship with the Bureau. Among the benefits we would hope could arise from the Bureau are the following:

- The Bureau levels the playing field by providing the first opportunity for comprehensive federal oversight of the tens of thousands of nondepository financial service providers which have been essentially unregulated or

underregulated to the detriment of consumers. Among these are companies that were able to fly beneath the radar for many years.

- The Bureau is required to simplify and merge the Truth in Lending Act (TILA) mortgage disclosures and the Real Estate Settlement Procedures Act (RESPA) disclosures to eliminate the cost and confusion arising from the need to comply simultaneously with these different laws which impose similar requirements.

- The Bureau is required to exercise its authority to identify and address outdated, unnecessary, or unduly burdensome regulations to reduce regulatory burdens.

We look forward to working with the Bureau to make those things happen. In the mean time, we appreciate the opportunity to make several comments and suggestions today in the hope they may assist Congress and the Bureau during this transitional period.

If there is a theme to our comments, it is uncertainty. Uncertainty creates risks, limits innovation, does not promote competition, and in the end hurts consumers and businesses. This current transition period, with the absence of a confirmed director, and the power of this new Bureau, has created a time of great uncertainty for retail banking.

We applaud the subcommittee's efforts to examine the CFPB's structure and its relationship to the safety and soundness of the banking system. My comments will focus on the key issues that have been proposed.

Leadership by Commission

By isolating consumer financial protection in a separate agency without prudential banking supervisory responsibility, we run the risk of allowing rules to be created without regard for the business of banking—the safety and soundness of the bank, the interests of shareholders, the impact on product innovation and development, and other important factors. Though the Bureau is required to coordinate with other agencies to "promote

consistent regulatory treatment," the concept is ill-defined. The Bureau is also required to consult with prudential regulators during the rulemaking process regarding consistency with prudential, market or systemic objectives; but if another agency objects for any reason, the Bureau is only charged with noting the objection in its final issuance, along with a response, if any. No other action is required.

In short, nothing in Dodd-Frank requires the Director of the Bureau to defer to the views of the prudential regulator; and there is nothing to stop rules from being enacted that might cause serious harm to banks or banking, or even to small businesses or consumers who do business with those banks.

Therefore, we support a commission-led model, instead of a single Director, to minimize concern a single powerful director might adopt rules with harmful unintended consequences. A commission or board has been effectively used in various forms by a large number of federal agencies including: the Federal Reserve Board, the Federal Trade Commission, the Federal Deposit Insurance Corporation, and the Securities Exchange Commission. *Even the Consumer Product Safety Commission*, which was a model for the creation of the Bureau, is headed by a commission. The benefit a commission or board provides is the opportunity for different perspectives to be brought to bear on an issue so that more than one side can be discussed. The opportunity for different perspectives is enhanced if no more than three of the five commissioners appointed by the President and confirmed by the Senate are of the same political party, as is the case with the Federal Deposit Insurance Corporation and other agencies.

It is worth noting the House-passed version of the bill which became Title X of the Dodd-Frank Act included a commission as part of the leadership of the consumer protection agency that was the precursor to the Bureau. This is a better model for leadership of a newly formed agency with such unprecedented power and resources.

Authority of FSOC to Overturn Rules

It has been said the unique authority of the Bureau is checked by the "veto authority" of a number of other agencies. This so-called veto is more of a catastrophic insurance policy to protect only against a Bureau rule that would put at risk either the safety and soundness of the U.S. banking system or the stability of the U.S. financial system; however, it ignores the more likely situations where rules by the Bureau might create safety and soundness risks for financial institutions.

The Act gives the Financial Stability Oversight Council (FSOC) the authority to overturn a rule of the Bureau in certain limited situations. While it is beneficial to have such a back-stop, it would come into play in only the most extreme situations.

Under Dodd-Frank, the FSOC may stay the effectiveness of, or permanently set aside, a regulation of the Bureau only if two-thirds of the FSOC members then serving determine that it will put at risk either (a) the safety and soundness of the U.S. banking system; or (b) the stability of the U.S. financial system. The FSOC is composed of 10 voting and 5 nonvoting members. The 10 voting members include the Treasury Secretary, (who will chair the FSOC), the Chairman of the Federal Reserve Board, the Comptroller of the Currency, the Director of the Bureau, the Chair of the Securities and Exchange Commission, the Chair of the FDIC, the Chair of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chair of the National Credit Union Association Board, and an independent member appointed by the President and confirmed by the Senate, having insurance expertise.

Since there are ten voting members, a two-thirds requirement calls for seven out of ten to vote for a stay. *Since one of the ten members is the director of the Consumer Financial Protection Bureau,* which will not vote against itself, seven out of the remaining nine would have to vote for a stay in order to set aside a rule. That is a nearly impossible hurdle.

The Act calls for the members of the commission to hold hearings of their respective agencies prior to making a determination. Imagine if you will the Commodity Futures Trading Commission, with no background or expertise in consumer banking regulation, voting to overturn a rule addressing retail deposit products. Picture the SEC or the Federal Housing Finance Agency challenging a credit card regulation. How is the independent, presidentially appointed insurance expert expected to become an instant expert in retail banking products and services?

In addition, these seven agencies would have to determine that a regulation of the Bureau would put the safety and soundness of the banking system or the stability of the financial system at risk. Even a rule threatening the safety and soundness of individual financial institutions would not necessarily put the safety and soundness of the *entire* banking system or the stability of the *entire* financial system at risk, and could not be overturned. The standard should be broadened to include a substantial impact on individual financial institutions, which would be less than a threat to the entire system.

Reducing the number of members who would have to make this finding from a super-majority to a simple majority would also make it more practical. Since the Bureau Director is one of the ten commissioners and should not be voting on a Bureau regulation, a simple majority should be five of the remaining nine members. Though still an extraordinarily high bar, it would be a somewhat more realistic approach to protecting against excesses of the Bureau.

Designated Transfer Date

We support a change that would only transfer authority to the Bureau after the designated transfer date and upon confirmation of a director. The Act calls for the Treasury Secretary to determine the "designated transfer date," which is when much of the legal authority currently held by the other regulatory and enforcement agencies transfers to the Bureau. It can be up to one year from enactment, with the option of an extension for an

additional six months. The Secretary has established July 21, 2011 as the designated transfer date. However, the Act provides the Bureau with this transferred authority even if no director is confirmed by the Senate at that time. We would support a change that would resolve this problem.

The authority to supervise large financial institutions and to issue regulations, interpretations, and guidance under the enumerated statutes, such as the Truth in Lending Act, the Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act, should not be transferred to the Bureau until such time as a director has been nominated and confirmed by the Senate. Otherwise, for an indeterminate period, the Bureau will be operating without a confirmed leader. The Treasury Secretary, acting on behalf of the administration, would be the head of the agency, despite having been appointed by the administration and confirmed by the Senate for an entirely different responsibility. The Bureau would be carrying out the policies of the administration rather than acting as the independent agency envisioned in the statute.

Transitional Examination Authority

We are also concerned regarding the role the Bureau is taking to accompany consumer compliance examiners during this transitional period. We recommend the Act be amended to eliminate any "ride along" authority until full examination authority has been established. At present, it is not clear the authority of the Bureau's personnel or what legal role they may have in the exam process. Since the Bureau has no examination authority during the transition, personnel should not be participating in compliance exams.

Appointment of a Director

As we have stated, the absence of an appointed director, confirmed by the Senate, is a major concern to our members. Given the director's vast, unconstrained authority to issue rules that will have a major impact on the business of financial services, it is critical

the administration appoint a qualified individual as soon as possible. As we have stated, we prefer to see the Bureau run by a commission; however, in the absence of a change in the leadership of the Bureau, we urge the appointment and confirmation of someone with a comprehensive understanding of the banking industry and consumer financial services regulation, as well as the management skills and experience needed to lead a $500 million federal agency. Until a director is confirmed, the Bureau will not have supervisory authority over nondepository institutions, indefinitely perpetuating the unlevel playing field that exists today.

Abusive practices

The industry is also troubled by the new, untested provision in the Act prohibiting so-called "abusive" practices. The long history of rulemaking and enforcement of unfair or deceptive practices has established a clear understanding of the meaning of both "unfair" and "deceptive." By adding a new concept of "abusive," the Act introduces a level of uncertainty and confusion that runs the risk of stifling innovation and product development. We are particularly concerned the Bureau may attempt to enforce this provision without first undertaking a rulemaking in which the products or services that are considered abusive can be clearly identified. We are also concerned as to the applicability for any existing products or services that may later be deemed "abusive" and the extent that this determination would apply retroactively.

We look forward to continuing to work closely with the Bureau as it gets up and running, and we are grateful for this opportunity to present our views here today. I would be happy to answer any questions you may have.

United States House of Representatives
Committee on Financial Services

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Richard Hunt	Consumer Bankers Assoc.

3. Business Address and telephone number:

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4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☒ No	☐ Yes ☒ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

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