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TESTIMONY OF HILARY O. SHELTON

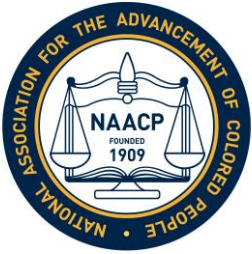
*Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy*

**Before the Committee on Financial Services of the
U.S. House of Representatives
Subcommittee on Financial Institutions and
Consumer Credit**

On

**“Improving Transparency and
Accountability at the Bureau of Financial
Consumer Protection”**

Wednesday, June 6, 2018



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Good morning, Chairman Luetkemeyer, Ranking Member Clay, and esteemed members of this subcommittee. Thank you so much for inviting me here today to testify on this important topic and for requesting the input of the NAACP.

Founded more than 109 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states as well as units on overseas military bases. In addition to our regular adult units, we also have youth and college units in any number of communities and schools across the country as well as units in prisons.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have served as the Director of the NAACP Washington Bureau, our Association's federal legislative and national public policy arm, for over 20 years.

Financial empowerment and the economic security of the communities served and represented by the NAACP has, since our inception, been a cornerstone of our agenda. "Economic Sustainability" continues to be a priority for the NAACP in that it is one of the "game changers" (along with criminal justice, education, health, civic participation / voting rights, and activating, educating, and promoting our youth) outlined in the most recent NAACP strategic plan, designed to carry us through our second century in fighting against racial bias and racial and

ethnic inequality. To that end, we have been and continue to be active in advocating on issues of economic importance to the people we serve and represent, as well as all Americans, from supporting an increase in the federal minimum wage towards a living wage to opposing predatory lending of all sorts in our communities.

Introduction

It is therefore with great appreciation that I was honored to receive your invitation to testify today. The sad truth is that rampant discrimination still exists in the world of financial services. The extent to which you are accepted into the world of mainstream financial transactions, from who gets financing and on what terms on almost every issue imaginable, including mortgages, owning or leasing a car, is still based largely on what you look like and / or where you live. How much you pay depends largely on who you are: your race or ethnicity, your age, gender, station in life, or zip code. We as a society, led by a government that is charged with ensuring that all people are allowed to pursue life, liberty, and happiness can and must do better.

We, the people, the average consumer, need more transparency and accountability from the financial sector. We need to know when there may be discrimination and we need a strong voice in stopping the devastating impact. We need to know that the government is working for and with us, not to our demise or on behalf of corporations and billionaires who want to make even more profit, regardless of the cost to others.

In short, we need a strong, robust, and vibrant Consumer Financial Protection Bureau (“CFPB” or “Bureau”) which operates as it was intended. Americans need facts from which they can make informed decisions and we need protection from unscrupulous predatory individuals and companies.

I should hasten to add here that not all financial servicers are bad. In my tenure as an advocate for racial and ethnic minorities as well as low- and moderate-income Americans, I have witnessed financial institutions of all types and sizes go to great pains to help the communities served and represented by the NAACP. Unfortunately, I have also witnessed instances – too many cases – in which entire communities are not able to build wealth or establish a nest egg for their children because they do not have access to fair or equal credit.

The Consumer Financial Protection Bureau from inception through today

It is because of the bad actors in the financial landscape – an often confusing and bewildering world in which we must all operate – that the NAACP was instrumental in and therefore pleased with the creation of the CFPB by *the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”)*. Finally, there is a federal agency whose sole purpose is to “seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair,

transparent, and competitive¹.” Furthermore, one of the six prime objectives of the newly formed bureau is to ensure that “consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination².” In other words, a strong CFPB would help bring about the fairness and equity in financial products that the NAACP and so many other consumer protection groups have been working for.

Under the first confirmed Director of the CFPB, Rich Cordray, the Bureau started off strong. Between mid-2011 and the end of 2017, the CFPB’s rulemaking process has been inclusive, transparent, evidence-based and comprehensive. The Bureau tackled issues including, in conjunction with the US Department of Education, the creation of a financial aid shopping sheet for potential student loan borrowers which is currently being used by more than 3,270 colleges, to strong mortgage rules for home buyers, to saving our hard working military families from potential debt traps created by unscrupulous pay-day lenders.

Furthermore, since its establishment, the CFPB’s supervision and enforcement actions alone resulted in nearly \$12 billion in ordered relief for more than 29 million consumers victimized by unlawful activity³. Working with the financial services industry, civil rights organizations, consumer groups, individual consumers and other interested parties, the CFPB created rules, regulations, procedures, and guidances, that were well informed, balanced, and which protects all Americans. The CFPB also engages in creating countless factsheets and helpful tip sheets on navigating the often complicated world of finances. The CFPB helps finance markets work by making rules more effective, consistent, and fair and by empowering consumers to better understand and take more control over their economic lives.

Recommendations for the future

The CFPB, and the federal government, must continue to provide more information and more transparency to advocacy groups, industry, researchers, and consumers. It is the role of the government to continue to pass laws and issue strong rules, regulations, and guidances to protect all of its citizens from unscrupulous financial servicers which may target particular groups or communities with higher terms or the outright rejection of products simply because of what they look like or where they live.

As such, we recommend that the CFPB stay on its current trajectory which is built on its current successes. This includes a strong commitment to issuing even-handed rules and regulations to protect American consumers. To date, the CFPB has embraced an inclusive approach to public

¹ P.L. 111-203, Subtitle B, Section 1021

² *ibid*

³ Consumer Financial Protection Bureau, *Factsheet: By the Numbers* (July 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_by-the-numbers.pdf; Zixta Q. Martinez, *Six Years Serving You*, CFPB (July 21, 2017).<https://www.consumerfinance.gov/about-us/blog/six-years-serving-you/>.

outreach from the financial services industry, advocacy organizations, and consumers to provide additional opportunities for input from all sides in its rulemaking processes. The CFPB should continue its efforts to hear from consumers and other stakeholders as much as possible to inform its rulemaking at all stages of the process.

It is in this vein that I offer the following recommendations for a strong, vibrant and robust CFPB which continues to work with all interested parties to protect and inform Americans everywhere. As such:

1. **Do not subject the CFPB to the Congressional appropriations process:** it would be a serious mistake for Congress to undo the CFPB's current independent funding. Like the other bank regulatory agencies, the CFPB is currently funded in a way that insulates it from the pressures Wall Street and other financial sectors can too easily manipulate. Making this change would leave the CFPB more vulnerable than the Federal Reserve, the OCC, and the FDIC to industry influence, once again treating consumer financial protection as a less important matter. It would give Wall Street and the worst elements of the financial services industry endless lobbying opportunities to deny the CFPB the funding to do its job if and when the regulator takes an action that a sector of the industry did not like.
2. **Promulgate the "Short Term Loan" rule as it was originally drafted:** Americans, particularly Americans of color, need relief from high-interest short term loans, such as pay-day and car title loans, which charge an average of 400% in interest and fees for a 2 to 3 week loan. Released in October of last year, the rule was scheduled to go into effect in the summer of 2019, 21 months after being published in the federal register. At the heart of the rule, which took years of strenuous research and input from stakeholders on all sides to develop, is the common-sense ability-to-repay principle based on a borrower's income and expenses. This means that lenders will be required to determine whether a loan is affordable to the borrower before making it. An affordable loan is one a borrower can reasonably be expected to pay back without re-borrowing or going without the basic necessities of life like food or rent money. Re-opening the rule, as was proposed by Director Mick Mulvaney of the Office of Management and Budget (OMB) in January of this year, would needlessly send more Americans into a debt trap. Furthermore, given that payday and car title lenders tend to concentrate their operations in low-income and communities of color, the NAACP stresses a sense of urgency in stopping this loss of wealth building.
3. **Reassert the enforcement powers of the Office of Fair Lending:** The January decision to move the Office of Fair Lending and Equal Opportunity, which was previously an equal division alongside supervision and enforcement, and which is now part of the office that handles internal agency concerns about employees sends a clear signal to

unscrupulous lenders that it is okay to discriminate. Stripping the office of its enforcement abilities appears contrary to one of the central components of the creation of the CFPB in *Dodd Frank*, which explicitly states that one of the responsibilities of the Bureau was "oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the bureau."⁴ By moving the Office of Fair Lending, the CFPB is leaving neighborhoods and consumers across the country more vulnerable to bias. It is demonstrably weakening CFPB's efforts to fight discrimination in the consumer financial marketplace even as the agency returned \$400 million from discriminatory financial institutions to American families who had been overcharged or denied credit.

4. **Do not require explicit Congressional approval of any proposed regulation, major or otherwise, in order for the rule to take effect:** Legislation currently before Congress would require explicit Congressional approval of any proposed "major" regulation in order for the rule to take effect⁵. While the bills would affect the full range of Federal regulations, including rules that ensure consumer products are safe for children, rules that protect worker safety in coal mines, environmental rules that protect the safety of our air and water, financial regulations, and many more. It has also been suggested that a more narrowly tailored provision be considered only for rules that safeguard the financial system and financial consumers. In other words, significant rules governing the financial sector will not go into effect unless both Houses of Congress vote again to approve each individual rule and the President once again approves the rule – even though the laws authorizing these rules have already been passed by Congress and the President. The implementation of administrative rules are necessary to give laws actual effect. This massive presumption against actually putting rules in place will be an enormous barrier to agency actions that protect the public from irresponsible or exploitative behavior by financial institutions. In short, this requirement would create crippling barriers to administrative actions necessary to protect the public and implement the law.

5. **Do not revise the bulk of the CFPB's public reporting practices:** *Dodd Frank* considers "collecting, investigating, and responding to consumer complaints⁶" such vital tasks that it is specifically enumerated as one of the six statutory "primary functions" of the CFPB. The resulting public complaint database is a tool that empowers individuals to inform and protect themselves in the marketplace. It helps consumers evaluate a company's practices as they decide where to take their business and creates incentives for companies to treat their customers fairly. It helps both consumers and businesses

⁴ P.L. 111-203, Subtitle B, Section 1021

⁵ HR 26, / S. 21, the "Regulations from the Executive In Need of Scrutiny Act of 2017," also known as the REINS Act

⁶ Dodd-Frank 5511(c)2

resolve problems when they arise and helps the market reward good products and services by providing consumers with the ability to publicly share their experiences. The complaint database also allows companies to identify and correct problems on their own without the impetus of a new rule or enforcement action. The database can also provide consumers, advocates and the CFPB with the substance required to prompt a review of business behavior that can detect and challenge abusive and discriminatory practices.

The CFPB's process facilitates responses to individual complaints, which helps to hold companies accountable. The fact that the complaint database is available to the public is the deterrent some that companies need to address complaints they would otherwise ignore, and the impetus for other firms to resolve complaints, where possible. We therefore urge the Bureau to maintain public access to the complaint database and to include additional detailed data in its statutory reports to provide the most meaningful information possible for consumers to make responsible financial decisions.

6. **Retain the Office for Students and Young Consumers:** In the six short years of its existence, the CFPB Office for Students and Young Consumers has spurred actions that returned \$750 million to student borrowers, and helped demand answers on over 50,000 complaints about student loans, making it a crucial contributor to fulfilling the Bureau's consumer protection mission. In May, OMB Director Mulvaney announced that he was disassembling the office and folding its duties into the CFPB Office of Financial Education, thereby dismantling the only unit in the federal government solely dedicated to protecting student loan borrowers from predatory actors in the financial sector. This is an ill-advised move, given that roughly 42 million Americans owe more than \$1.5 trillion in student loans. To close this office is an incredibly short-sighted move, with far-reaching consequences which will harm millions of students who are already struggling with debt or those who are seeking an affordable education.
7. **Increase – do not decrease – the amount of information and number of mortgage lenders required to make public their loans under the Home Mortgage Disclosure Act (HMDA):** The NAACP is a firm believer in the old adage that “to truly manage a problem, we must first accurately and fully measure it.” If we as a nation learned anything from the 2008 financial crisis, it is that American consumers need more information, regulation, and protection – not less. The stark disparities in access to mortgage credit and the continued struggle for economic recovery in the communities hit hardest by the financial crisis of 2008 that still exist, call for a strengthening of our nation's fair lending laws, specifically HMDA, not a weakening of them.

For this reason, the NAACP was extremely dismayed with enactment of S. 2155⁷. Specifically, we were adamantly opposed to section 104 of the legislation which exempted roughly 5,400 (or almost 85%) of depositories from submitting updated reporting on their mortgages. The higher threshold which has been newly established will sacrifice key data about lending in underserved communities that would help to ensure the flow of credit to qualified borrowers, stimulate the economy, and prevent future mortgage crises. Without this crucial data regulators and others like the NAACP are once again left without the full information we need to determine patterns in loan terms and loan amounts that could increase costs and risk of foreclosure for borrowers.

8. **Retain a single director of the CFPB as opposed to a commission:** Making a single director responsible for the agency's functioning facilitates effective decision-making and ensures a clear point of responsibility for the CFPB's actions and performance. In this instance, the NAACP agrees with the wisdom of the federal appellate court in its decision of January 31, 2018, when it decided in favor of the current CFPB governing structure in the case of *PHH Mortgage Corp. v. CFPB*. Writing for the majority, Judge Cornelia Pillard said "Congress designed an agency with a single Director, rather than a multi-member body, to imbue the agency with the requisite initiative and decisiveness to do the job of monitoring and restraining abusive or excessively risky practices in the fast-changing world of consumer finance... A single Director would also help the new agency become operational promptly, as it might have taken many years to confirm a full quorum of a multi-member body." "By providing the Director with a fixed term and for-cause protection, Congress sought to promote stability and confidence in the country's financial system."⁸ Several Bureaus and Agencies within the U.S. government, from the Office of the Comptroller of the Currency, to the U.S. Environmental Protection Agency, to the Department of the Treasury all utilize a single Director with great efficiency and effectiveness.

9. **Do not create a situation in which the Director of the CFPB must be responsive to the whims of the President. Retain his or her independence:** The U.S. Supreme Court has held that whether the Constitution requires the president to enjoy unfettered authority to remove the head of an agency "depend[s] upon the character of the office."⁹ The CFPB is characteristic of the administrative agencies for which the Supreme Court has upheld for-cause removal. In upholding such removal protections restrictions for the FTC, the Supreme Court explained that "[i]n administering the [prohibition] of 'unfair methods of competition' — that is to say in filling in and administering the details embodied by that general standard — the [FTC] acts in part quasi-legislatively and in

⁷ Public Law 115-174

⁸ *PHH Corporation, et al. v. Consumer Financial Protection Bureau*, 15-1177, pp.12-13

⁹ *Humphrey's Executor*, 295 U.S. at 631; *accord Wiener*, 357 U.S. at 353 ("the most reliable factor for drawing an inference regarding the president's power of removal . . . is the nature of the function that Congress vested").

part quasi-judicially.” The CFPB has the same quasi-legislative and quasi-judicial responsibilities to define and enforce the prohibition of “unfair, deceptive, or abusive act[s] or practice[s]” in consumer finance, as well as to make rules and enforce for the consumer finance statutes.¹⁰

10. Reject efforts to establish an independent inspector general (IG) for the CFPB:

Congress is currently considering legislation to establish a separate IG for the CFPB¹¹. This legislation is unnecessary because the CFPB already has an IG, shared with the Federal Reserve, within which the CFPB is housed. Since the CFPB sits administratively inside the Federal Reserve, it is illogical not to have it under a single shared IG with the board, a system that has worked well. *Dodd Frank* establishes that the Federal Reserve’s Office of Inspector General presently has oversight authority for Bureau, conducting audits, investigations, and other necessary reviews.

The current Inspector General’s detailed work plan for CFPB oversight lays out the fact that the IG has completed, is conducting, and is planning a variety of CFPB oversight functions. In fact, in 2015 alone, the IG has issued 10 reports on CFPB operations. The current IG has repeatedly stated in letters to Congress and to the Bipartisan Policy Center, that it has the authority, resources, and independence to conduct oversight activities of the CFPB. There is no evidence that the existing structure is inadequate.

Conclusion

In closing, I would just like to reemphasize the need for the CFPB to stay on course, to remain a strong, transparent, and robust tool for protecting all consumers in the often-confusing and too-often predatory world of financial services. To that end, I would be remiss if I did not voice my objections to the multitude of Requests for Information (RFIs) that the CFPB has issued as of late. Not only does this signal a change in course for the bureau, but the amount of time and attention required to adequately address these RFIs on a wide variety of subjects in a very short amount of time has diverted valuable consumer advocacy and third party resources to respond to these requests. The very structure of these RFIs, the nature of many of the questions, gives us grave concerns about any attempts to weaken consumer protection through this process.

Dodd Frank was enacted, and the CFPB was created, in response to the economic crisis of 2008. As of late, we appear to be going backwards to a pre-*Dodd Frank* deregulation, much to the chagrin and dismay of the NAACP. Many of the people and communities we serve and represent are still hurting from that recession; many will never own a home again or have a nest egg to pass on to future generations as a result.

¹⁰ 12 U.S.C. §§ 5481(12), 5531.

¹¹ H.R.3625, the CFPB-IG Act of 2017

We shall never forget. We were targeted by unscrupulous, nefarious lenders and others who had no concern for the economically destructive impact that their costly wares would have on the lives of individuals, families, and entire neighborhoods and communities. One result of the devastation was our clear and strong support for *Dodd Frank* and the CFPB. They gave our pain some salve, and they worked to ensure that future generations would not suffer our fate. I thus urge you, in the strongest terms possible, to continue to work for a CFPB that is strong, transparent, and willing and able to stand up to anyone who tries to make money by targeting others with too-high interest rates or confusing language.

Thank you again for inviting me here today and for requesting the thoughts and concerns of the NAACP. I welcome your comments or questions.