**Testimony of**
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**Before the**
**U.S. House of Representatives Financial Services Committee**
**Subcommittee on Financial Institutions & Consumer Protection**
**Hearing Titled, "Improving Transparency and Accountability at the Bureau of Consumer Financial Protection"**

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## Introduction

Chairman Luetkemeyer, Ranking Member Clay, members of the committee, my name is Richard Hunt and I am the President and CEO of the Consumer Bankers association. Thank you for the opportunity to testify in front of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit's hearing titled, "Improving Transparency and Accountability at the Bureau of Consumer Financial Protection."

CBA preserves and promotes the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business. As the voice of the retail banking industry, CBA represents nearly 70 members whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets. Additionally, our members operate nearly half of all the bank branches in the country, and employ over 1.6 million Americans. CBA members serve their communities by extending over $3 trillion in consumer loans and $275 billion in small business loans.

Today's hearing examines an important topic in the retail banking space as the Bureau of Consumer Financial Protection (BCFP or the Bureau) has vast jurisdiction over a multi-trillion dollar financial services industry, including over 11,000 depository and countless non-depository institutions, regulating more entities than all other federal financial regulators combined. To put it into perspective, the Office of the Comptroller of the Currency has jurisdiction over just 1,600 institutions.[1] In addition to supervisory authority over each depository institution with assets over $10 billion, the BCFP has supervisory authority over all those in the business of origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; private education loans; and short term liquidity products. Additionally, the agency has the ability to define, by rulemaking, its own scope of

[1] The BCFP supervises compliance with consumer protection laws; the OCC's supervisory authority includes prudential supervision, CRA, and consumer protection for national banks with assets of $10 billion or less.

supervisory authority, which it has so far defined to include authority over larger consumer reporting agencies, debt collectors, nonbank student loan servicers, and international money transmitters. Overall, the Bureau's vast jurisdiction includes an entire sector of American finance from banks and credit unions, to innumerable financial services companies of all sizes, including larger participants in the American financial system.

But the Bureau's authority does not end there. It also has the authority to write the consumer financial services regulations that apply to virtually all consumer financial service providers, whether or not they are supervised by the Bureau. These include rules applying to almost all of the consumer laws transferred to the Bureau when it was created, and any new rule it creates under its Dodd-Frank statutory authority to regulate "unfair, deceptive or abusive acts or practices." In short, it has an unprecedented scope of authority over almost the entire universe of consumer financial service providers, ultimately touching almost all Americans.

Pursuant to the Dodd-Frank Act, the Bureau is led by a sole director, who enjoys unprecedented authority with very little oversight and accountability. We applaud Acting Director Mick Mulvaney and his leadership at the BCFP in seeking to make the Bureau more accountable, identify rules that are outdated or burdensome, improve the efficacy of rules, and enforce federal consumer financial protection law. However, the Bureau continues to be too politicized, unaccountable, and lacking in transparency. It is crucial that Congress legislate to bring greater bipartisanship, transparency, and credibility to an agency that has such an important mission and broad jurisdiction. CBA has provided the below recommendations to Congress that would bring long-lasting and meaningful reforms to the Bureau, improve transparency and accountability, and increase consumer and small business access to credit.

## **Bringing Greater Transparency and Accountability to the Bureau**

Despite the Bureau's vast jurisdiction, it is subject to very little Congressional or presidential oversight. Unlike most independent regulatory agencies, the BCFP is led by a sole director rather than a multi-member, bipartisan commission. The unchecked power and decision making authority vested in one person hyper politicizes every decision it makes. The sole director has budgetary authority to request funding for the Bureau from the Federal Reserve without Congressional approval. The sole director has the ability to steer rulemaking in one direction or another without regard to stakeholder input. The sole director enjoys great autonomy over enforcement actions having the unilateral authority to start and cease actions at will. The sole director can regulate through enforcement, providing very little clarity to financial institutions that want to comply, which results in stifling product development and limiting consumer access to credit. Moreover, the sole director adjudicates appeals of their own enforcement decisions. As such, the sole director has enormous, autonomous power over an industry that affects a major part of our economy, and therefore, it is critical improvements be made to increase its transparency and accountability.

Included below are a number of suggested reforms that Congress should consider that will increase accountability and transparency at the Bureau.

***Bipartisan Commission at the Bureau of Consumer Financial Protection***
A bipartisan, Senate confirmed commission would increase accountability and transparency at the Bureau. CBA strongly supports H.R. 5266, the "Financial Product Safety Commission Act," which would create a bipartisan, five-member commission to lead the BCFP. H.R. 5266 is a bipartisan bill cosponsored by Reps. Dennis Ross, Kyrsten Sinema, Ann Wagner, David Scott, Blaine Luetkemeyer, Vincente Gonzalez, and Patrick McHenry. We urge the committee to quickly pass this bipartisan legislation to bring much needed stability, accountability, and certainty for consumers and industry stakeholders.

A lack of certainty and long-term consistency in leadership at the Bureau adversely affects consumers, our economy, and the financial services industry. As the past months have indicated, the BCFP's current governance structure is subject to dramatic political shifts with each change in presidential administration, making it difficult for the financial services industry to plan for the future, which ultimately stifles innovation, limits access to credit, and hurts consumers. A bipartisan commission would bring more certainty and stability to the highly regulated financial services marketplace so that banks can properly plan for the future and better serve consumers.

A commission would also bring much-needed transparency to the BCFP as it would provide an open forum for dissenting voices and viewpoints from multiple stakeholders. A sole director can unilaterally make decisions, oftentimes behind closed doors and without public debate. Alternatively, a commission structure would require open debate of opposing ideas, viewpoints, and solutions, encouraging both sides to work together to come to moderated rulemakings that can better stand the test of time.

Furthermore, the concept of a commission has historically shared bipartisan support. Under President Obama, the Department of Treasury issued a report stating, "The CFPA [Consumer Financial Protection Agency] should be structured to promote its independence and accountability. The CFPA will have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences."[2] Under the Trump Administration, Acting Director Mulvaney testified, "…A five person commission could help smooth out some of the variations from one director to another, Mr. Cordray and I are very different people and we plan to run the agency very differently, and a five person commission might bring some stability."[3] Treasury Secretary Steve Mnuchin testified he does "support the concept of a board to oversee [the Bureau]" in a recent House Appropriations Subcommittee hearing.[4]

In Congress, bipartisan legislation establishing a commission has passed the House Financial Services Committee six times and passed the House of Representatives four times, with Democrats and Republicans voting in favor. When Dodd-Frank passed the House in 2009, under the leadership of then-House Financial Services Committee Chairman Barney Frank (D-MA), it included a provision that would establish a five-member commission at the Bureau. And just last

[2] Department of Treasury, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*, p. 58.
[3] Senate Banking Committee, BCFP Semi-Annual Hearing, April 12, 2018.
[4] House Appropriations Subcommittee Hearing, FY19 Budget Hearing, Department of Treasury, March 6, 2018.

Congress, the House Financial Services Committee passed on a bipartisan basis, legislation that would establish a bipartisan, five-member commission at the BCFP.

Importantly, the American people are supportive of a bipartisan commission at the Bureau. A recent *Morning Consult* poll found that by a margin of three to one, registered voters support a bipartisan commission over a sole director, with only 14 percent of those polled stating they prefer to keep the Bureau's current leadership structure.[5] Additionally, two-dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this needed change.

***Single Director, Removable At-Will***

In the Bureau's April 2018 Semi-Annual Report to Congress, Acting Director Mulvaney recommended changing the structure of the Bureau to allow for the President to remove the Director at-will. CBA appreciates the Acting Director's goal to make the Bureau more accountable to the taxpayer, but it is our belief that making the Director removable at-will could increase the overt political nature of the BCFP. Right now, it is possible for a Director from one party serving a five-year term to continue on even under new presidential leadership. If the Director is removable at will, the direction of the Bureau will only ping-pong more frequently, creating greater uncertainty for industry and consumers. CBA therefore believes the only course of action to reduce political volatility is for Congress to pass H.R. 5266, which would foster bipartisanship and increase certainty and stability, so banks and credit unions can properly plan for future investment in technology, innovate new products, all resulting in better service for consumers.

***Independent Inspector General***

In its semi-annual report, the Bureau requested Congress establish an independent Inspector General at the BCFP as opposed to sharing one with the Federal Reserve. CBA agrees this is an appropriate step to providing some independence and oversight at the Bureau. We strongly support H.R. 3625, the CFPB-IG Act of 2017, a bill that would create an independent Inspector General at the BCFP. The adoption of an independent Inspector General is of paramount importance to ensure the operations of the agency are audited by an independent and impartial entity. Most financial services regulatory agencies, and more than 30 other federal agencies, have their own dedicated Inspector General. Having a third-party auditor will bring increased accountability to the Bureau and provide Congress with important information on the internal workings of the BCFP.

***Clarify Guidance***

In addition to the BCFP's four legislative requests outlined in the semi-annual report, CBA believes the Bureau should define and clearly establish procedures for guidance. CBA strongly supports H.R. 5534, the Give Useful Information to Define Effective (GUIDE) Compliance Act, which would provide greater clarity to what constitutes guidance, improve compliance with consumer financial protection laws, and bring predictability to the Bureau's rulemaking.

[5] Morning Consult Poll, May 3, 2017.

The Bureau has been historically slow to issue guidance, which has created an environment of uncertainty in the financial services industry. The bill would require the Bureau to issue guidance necessary or appropriate to comply with consumer protection laws. It would provide for public notice and comment period for the issuance, amendment, or revocation of guidance, with clear timelines for industry. It would provide for protection from liability for acting in good faith in accordance with guidance. The bill would also create a penalty matrix that would require the Bureau to publish penalty guidelines that determine the size of any civil monetary penalties issued by the Bureau based on the severity of the violation of Federal consumer law. By requiring the Bureau to issue clear guidance and rules, the practice of regulation through enforcement could be reduced.

The GUIDE Act would create a more transparent regulatory environment and better achieve the Bureau's goals of compliance with consumer protection laws.

***Subject BCFP to the Congressional Appropriations Process***

CBA strongly believes the BCFP needs greater oversight and accountability. The BCFP's Semi-Annual report called for Congress to put the Bureau under appropriations to achieve these goals. Pursuant to the Dodd-Frank Act, the BCFP currently receives direct funding from the Federal Reserve at the request of the BCFP Director, capped at 12 percent of the Federal Reserve's operating expenses. As long as the budget request falls below this cap, the budget request cannot be denied.

Placing the Bureau on budget and under the Congressional appropriations process will provide greater oversight and accountability. In the absence of a bipartisan commission and other meaningful reforms, CBA supports this recommendation by Acting Director Mulvaney and the passage of H.R.2553, the TABS Act of 2017 that would subject the Bureau to the annual Congressional appropriations process.

It is important to note that putting the BCFP under appropriations would not address industry concerns regarding day-to-day management of personnel, operations, supervision, and enforcement proceedings that require daily transparency and oversight. Only a bipartisan board with dedicated commissioners who are there day in and day out would provide the level of transparency, accountability, and stability needed at such a powerful regulator. Nevertheless, putting the BCFP under Congressional appropriations would make the Bureau more accountable to the American people, and CBA believes the Bureau requires greater transparency and oversight.

***Congressional Approval of Major Rules***

CBA fully respects the role of Congress as the authoritative lawmaking body that utilizes a deliberative and measured approach. Nevertheless, agencies do play an important role in developing and implementing regulations and guidance to clarify expectations of industry. Prolonged delays in approval of rules could slow the introduction of products and services to bank customers.

We understand and appreciate that Congressional approval could bring more accountability to the Bureau; however, we believe more discussion is need to get a better understanding of the unintended effects this could have on financial regulation. Additionally, Congress already has Congressional Review Act authority to overturn rulemakings with which it disagrees. It has been used several times; specifically, it has been used to overturn the arbitration rule and indirect auto guidance issued by the Bureau.

## Requests for Information

As part of its effort to evaluate the agency's prior actions and polices, the Bureau has initiated several requests for information (RFIs) on its functions and past actions. CBA appreciates this opportunity for stakeholders to comment and will continue to submit responses on the RFIs, sharing our members' perspectives as banks regulated and supervised by the BCFP. Some of the comments we will be sharing with the Bureau during this comment period include the following:

***Enforcement and Supervision***

The BCFP has historically used the enforcement process as a regulatory tool. Former Director Richard Cordray stated on numerous occasions that companies should draw their understanding of the compliance and legal requirements of federal law by studying consent orders and other enforcement actions by the BCFP. The result is not in the best interest of either industry or consumers. This policy, which is often called "rulemaking by enforcement," appealed to the BCFP because it was swifter and did not require as much substantiation. The rulemaking process, as mandated by the Administrative Procedures Act and the Dodd-Frank Act, is time consuming for a reason: it demands the BCFP adhere to a strict process that invites those who are affected by a proposal to have a say in the creation of the rule. Enforcement actions do not; and if they are negotiated consent orders, they may not even be a very fair representation of the regulator's compliance expectations of others. In order to attempt to know what the law is and how to comply, one has to hire a team of expensive lawyers to decipher the tea leaves. We believe this is simply bad public policy and leads to nothing more than excess legal cost and a lack of clear guidance.

The absence of regulatory agency coordination is also a concern. CBA member banks are often supervised by multiple federal regulators (not to mention the state regulatory bodies that supervise state chartered banks). A single financial services company can be examined by the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the BCFP. In some cases, more than one agency is examining a bank for similar or related issues, each with a slightly different set of lenses. The same documents can be requested or variations can be sought, and similar inquiries can be made to the same people. Better coordination is needed to minimize the cost and burden to the financial institutions, permitting them to better serve their customers.

In a similar vein, enforcement can be a multiple agency process, with each agency taking on the same issue and imposing its own penalties for related violations. At times this appears to be driven by a desire to demonstrate its regulatory authority and not defer to any other regulatory body, but it is unnecessary to have redundancy, and it is a cost that ultimately reduces the effectiveness of the entire enforcement process. The Treasury Department, in its 2017 report on financial services, recommended a single entity act as a kind of traffic cop or coordinator. CBA would support this approach to increased regulatory coordination.

***Rulemaking***

The BCFP's record regarding discretionary rulemaking has also been concerning. The Bureau's small-dollar rule is a prime example. Here, the Bureau produced an overly restrictive, broadly-applied rule based on little data. Despite industry efforts to develop a workable solution to meet consumers' small-dollar needs, the Bureau instead implemented a rule that will make small-dollar lending impractical and nearly impossible. This drastic approach and implementation of preconceived policy positions will only leave consumers with fewer options. They will now be forced into unregulated and unsupervised markets that offer few, if any, protections or will simply have their needs unmet. Consequences of this type of pre-determined rulemaking could be drastic for consumers, leaving them unable to pay rent, buy gas or groceries or meet an unexpected medical expense.

CBA is strongly supportive of clear and rational regulations that promote the industry's ability to comply and provides consumers with access to credit. We believe these twin objectives would be best served by a robust public comment process, a firm adherence to the formal rulemaking process, and a flexible implementation process following the issuance of a final rule. Indeed, the Dodd-Frank Act's standards for rulemaking require the Bureau to consider, among other things, "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumer to consumer financial products or services resulting from such rule." Under this framework, we would encourage the Bureau to not focus solely on policy-based rulemaking and to base new regulations on real-world data and rigorous economic cost-benefit analysis, as required by the Act.

***Consumer Complaint Database***

CBA supports H.R. 3607, the "Protecting Consumers from Frivolous Claims Act" that will limit the public dissemination of unsubstantiated information submitted through the BCFP complaint portal. The authors of Dodd-Frank did not intend for the Bureau to publicly share complaints. In fact, plain reading of the statute demonstrates that Congress did not specifically call for it to be made public. Under previous leadership, the Bureau went far beyond its statutory authority of establishing the Database, by publishing the data publicly, adding unverified narratives, and proposing a subjective consumer survey on resolution satisfaction that has no proven benefit.

First, the Dodd-Frank Act requires the Bureau to create a public data base. Second, the purpose of the complaint portal is to provide the Bureau with information that permits them to target problem areas, which does not require them to make it public. Third, a public YELP-like data base where comments are shared publicly, sponsored by the Government, and has not been shown to be of any value — indeed can do more harm than good.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. This is why our members have robust complaint management procedures outside of the BCFP's Consumer Complaint Database to ensure they are resolving disputes as quickly as possible.

With the BCPP's database exceeding 1 million complaints, the inclusion of potentially personally identifiable narrative information, and reports of insufficient data security protocols at the Bureau, CBA is strongly concerned about the potential for compromising consumer privacy. In addition, the database erodes consumer privacy by impairing the confidential nature of the exchange between customer and banker. The Database does not protect consumers from re-identification risks and creates consumer harm. The Bureau has in the past claimed privacy is not a serious concern because "modern scrubbing standards" can de-identify nonpublic, personal information to "acceptable levels." However, recent audits of the database have revealed many cases of re-identification.

The Bureau does not currently attempt to verify the legitimacy or accuracy of the information provided by the consumers, except to ensure the consumer is in fact a customer of that company, and the company is a covered financial service provider. While this is stated on the database website, this fact alone does not give consumers adequate information to draw conclusions about the data. If the Bureau is releasing results, consumers can be excused for believing the information is legitimate, notwithstanding any disclaimer to the contrary. The releasing of narrative information on each complaint only makes this worse and does not give enough information for the public to draw any information on the validity of the complaints.

CBA applauds Acting Director Mulvaney's review of whether to publicly release consumer complaint data. We believe this will ensure consumer privacy and prevent the dissemination of misleading information. Congress too has an important role to ensure future releases of consumer data is safeguarded by passing H.R. 3607.

## BCFP Rulemaking and Needed Congressional Action

### *Small-Dollar Bank Lending*

Millions of Americans live paycheck-to-paycheck, and need help making ends meet. Yet, regulators in Washington have chipped away at products and services that provide short-term, small-dollar credit, leaving consumers with limited and more expensive alternatives. CBA strongly supports H.R.4861, the "EQUAL Act of 2018" which would nullify guidance from the federal banking agencies that limit deposit advance products banks can offer customers. In addition, we are encouraged by the Bureau's announcement earlier this year that it will review the small-dollar rule for possible amendment.

Historically, federal banking regulators have encouraged banks to help finance these small-dollar consumer loans, rather than sending their customers to nonbank lenders. This is a preferable scenario: Customers receive the services they want – and need – but remain in the well-regulated and supervised banking system. In response, some banks, working closely with regulators, developed a way to meet short-term lending needs with a tool known as deposit advance products (DAP). These loans were carefully designed to ensure strong safeguards, like an ability to repay analysis that took into account a customer's cash flow patterns and direct deposit history. Additionally, deposit advance products are cheaper than payday loans, offer greater transparency, require substantial disclosures and compliance with federal law, receive positive feedback from borrowers, and have low default rates.

Before the rule was proposed, CBA and many of our member banks worked in good faith with the Bureau to provide insight and counsel on how a rule could be crafted that would allow for banks to serve the small-dollar loan market, providing a well-regulated bank product to compete with payday loans. Unfortunately, the Bureau's final rule on small-dollar lending will only act as a disincentive for banks to enter this important market. Under the Bureau's rule, lenders will be required, among other things, to determine whether consumers have the ability to repay by applying overly complicated underwriting requirements similar to those for a home mortgage, which will make the product costly to consumers and unviable for depositories to offer. While the Bureau did provide for some very specific exceptions that would allow for lenders to make loans that are not subject to the rule, these exceptions offer little in the way of practical application and are so minimal they will fail to meet the incredible demand that exists for small dollar loans, forcing consumers to look to more expensive, less regulated options to fulfill their short term credit needs.

CBA urges Congress to work with prudential regulators and the Bureau to revoke any rule or guidance that would limit consumer access to small dollar bank products and implement a structure that will allow depository institutions to enter the small dollar lending market

***Small Business Lending***

CBA supports H.R. 4452, the "Right to Lend Act" that would repeal Section 1071 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that amends the Equal Credit Opportunity Act to increase data collected on small business loans. In brief, under that section, every financial institution (broadly defined in the section) must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application (location of business, action taken, amount of credit provided, etc.), to the Bureau. The information must be made public on request in a manner to be established by regulation, and will be made public annually by the Bureau. The Bureau is given considerable flexibility to establish the requirements, define the scope, provide for exemptions, and protect the privacy of individuals.

CBA and its member institutions strongly believe that although the Dodd-Frank Act mandates this rule, it will be more difficult than the data reporting efforts undertaken on mortgages and would be of little value in uncovering violations of law. The notion that business lending parallels nicely to residential mortgage lending is misplaced. Small business loans are not commoditized in a way that readily permits comparisons. Increasing reporting for small business lending, although well intentioned, is a tremendously flawed premise. Requiring institutions to collect more data on small business loans goes against the need to streamline the credit process for customers with greater speed and ease. Plus, it could decrease the ability for institutions to provide such loans, while increasing their liability risk. Also, the BCFP and prudential regulators have the authority under the ECOA to supervise for and enforce fair lending in the small business market – a tool currently in use. As a result, CBA recommends that Congress repeal Section 1071.

***Privacy of Information – Home Mortgage Disclosure Act***

Our members are dedicated to responsibly and fairly serving the housing needs of their communities and are committed to the purposes of the HMDA, which are to: "1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[6]

The Dodd-Frank Act mandated the expansion of information collected under Regulation C, HMDA's governing regulation. However, the Bureau's final HMDA rule the Director used his authority to almost triple the number of data fields and greatly increased the complexity of reporting. This is in addition to increased compliance pressures stemming from the Dodd-Frank Act's strengthened enforcement monitoring due to the uncertainty of what are Unfair, Deceptive, and Abusive Acts and Practices (UDAAP), and additional rules and requirements that have inundated the banking industry, including the implementation of the Qualified Mortgage rules and TILA-RESPA Integrated Disclosure. The compliance burden placed on banks requires expenditures of resources that inevitably reflect in the cost and availability of credit for consumers.

CBA has long been concerned about the sensitive nature of the HMDA data and applauds Director Mulvaney's decision to revisit the rule to closely review the data fields that would be collected, stored and ultimately published. The new data fields are even more sensitive than many of those previously collected, with the addition of credit score, debt to income ratio, and property address, among other new fields. Re-identifying the consumer using existing HMDA data can be achieved in over 80 percent of all cases. The addition of the new data fields raises the probability to virtually 100 percent, particularly in rural markets.

In addition, CBA appreciates the introduction of H.R. 4648, the Home Mortgage Reporting Relief Act that will delay the enforcement of and addresses the privacy concerns with the BCFP's final Home Mortgage Disclosure Act (HMDA) rule. H.R. 4648 acknowledges many CBA member banks have already prepared for implementation and does not penalize those institutions that have striven to be compliant while providing those institutions not yet ready with one-year compliance safe harbors for collecting and reporting.

CBA strongly supports Acting Director Mulvaney's commitment to reconsider elements of the rule and pursue a non-punitive approach to the new collection efforts in the meantime. Given the sensitive nature of the expanded HMDA data and the risk of re-identification, CBA strongly believes the new data fields should be limited and not made public unless in aggregate form.

[6] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

***Debt Collection***
CBA recognizes the important role the collection of debt plays in the proper functioning of the consumer credit markets, as it reduces creditors' losses from non-repayment and promotes the availability and affordability of consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing their loan agreements with borrowers. Congress clearly enacted the FDCPA to establish ethical guidelines for the collection of consumer debt by third-party debt collectors, and it never intended nor designed the Act to cover the collection practices of creditors. In that same vein, CBA strongly opposes placing FDCPA-like restrictions and requirements on creditors. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

CBA is also concerned by the overly restrictive communication standards set out in the Bureau's Outline of Proposals issued ahead of its small business panel hearing for third-party debt collections. We believe setting communication barriers too high between collectors and borrowers has the potential to significantly harm consumers. Based on our members' experience, consumers facing financial hardship are best served if they are able to freely communicate with collectors and their creditors. Doing so helps consumers avoid late fees, minimize negative impacts to their credit report, avoid account closures, and allows them to take advantage of loss mitigation or other workout programs. As a result, we firmly believe it is essential that any new rules promote, not inhibit, consumer engagement with collectors and creditors.

We strongly urge Congress and the BCFP to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

***Harmonizing UDAP Authority***
In the 114$^{th}$ Congress, H.R.5112, the "Unfair or Deceptive Acts or Practices Uniformity Act" was introduced that would remove the abusive standard set out in Section 1031 of the Dodd-Frank Act. The Federal Trade Commission Act prohibits Unfair and Deceptive Acts or Practices (UDAP), and this concept has been developed and refined over many decades by regulation and case law. The FTC employs UDAP in its enforcement of consumer financial service providers. The bank regulatory agencies—including the FDIC, OCC and Federal Reserve Board, examine the banks under their authority for compliance with UDAP.

By giving the Bureau the authority to regulate unfair, deceptive and *abusive* acts or practices, the Dodd-Frank Act created an anomaly. And, by not being clear as to why an additional violation needed to be created, it also put all companies under the Bureau's jurisdiction in the position of not knowing what the law is or how to comply. It is unclear how an "abusive" standard will be applied or how it is different from unfair or deceptive. We encourage Congress to pass legislation similar to H.R. 5112 that would provide regulatory harmony between the BCFP and other Federal regulatory agencies.

## **Conclusion**

The retail banking industry is best able to serve its customers when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road. CBA stands ready to provide industry expertise to Congress and the Bureau in the pursuit of legislative changes to the BCFP that will result in reasonable regulatory rules and guidance to improve consumer protection and the financial services marketplace.

Improving the financial lives of our customers is a goal that unites lawmakers, regulators and industry. The best way to ensure that shared outcome for consumers is for Congress to pass legislation that will bring more accountability to the Bureau. It is our belief that true, long-lasting change will not be successful until a governance structure at the Bureau is established that promotes debate and deliberation among leaders with diverse experiences and expertise so rules and regulations are written for the financial betterment of consumers. A bipartisan commission of five, Senate-confirmed commissioners would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress to implement the suggested legislative improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.