



UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE  
ON FINANCIAL SERVICES  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND  
CONSUMER CREDIT

HEARING ON:  
LEGISLATIVE PROPOSALS TO IMPROVE THE STRUCTURE OF  
THE CONSUMER FINANCIAL PROTECTION BUREAU

Wednesday, April 6, 2011

STATEMENT FOR THE RECORD  
SUBMITTED BY  
THE AMERICAN FINANCIAL SERVICES ASSOCIATION

The American Financial Services Association (AFSA) is pleased to file these comments to the Subcommittee on legislative proposals to improve the structure of the Consumer Financial Protection Bureau (the CFPB) and wish to express our appreciation to Chairman Capito and Ranking Member Maloney for holding a hearing on this issue, which is of keen importance to our member companies.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for over 95 years. AFSA's 375 member companies include consumer and commercial finance companies, vehicle finance companies including the captives, credit card issuers, mortgage lenders, industrial banks, and other financial service firms that lend to consumers and small businesses.

AFSA member companies provide approximately 30 percent of all consumer credit and offer many types of credit products, including credit cards, vehicle loans and leases, personal installment loans and mortgages.

While banks play a vital role in the economy and the consumer credit market, Federal Reserve Board statistics show that the majority of non-mortgage consumer credit is provided by finance companies and others who raise funds through securitization. Finance companies have a long history of meeting the credit needs of consumers ó from buying a car to get to work, to paying college costs for a son or daughter. Most of AFSA's member companies are state licensed and regulated and the Consumer Financial Protection Bureau will add a new, complex layer of federal regulation over our members' existing regulatory regime.

AFSA believes that the CFPB's current structure is flawed ó both from a Constitutional perspective and from the lack of meaningful oversight from both Congress and the Federal Reserve Board (FRB) wherein the CFPB is housed.

### An Overview of the Bureau

The CFPB is an executive agency whose mandate is to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws." It has the authority to implement and enforce all consumer-related laws involving finance and credit.

Unique among independent agencies, the Bureau is not governed by a bipartisan board or commission. This has been the model for more than a half century for federal agencies that have consumer protection responsibilities (e.g. the Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Trade Commission, Consumer Product Safety Commission, Securities and Exchange Commission, Commodity Futures Trading Commission). The Bureau has limited authority over the banking sector as it is focused solely on institutions and activities involved in providing consumer financial products and services. The CFPB does not have overall supervisory responsibilities for depository institutions and no statutory duty to protect the safety and soundness of these institutions ó the hallmarks of federal bank supervision.

Unlike other consumer protection agencies that operate as commissions, the Bureau is **headed by a sole Director**. Although nominally housed within the FRB, the FRB cannot direct activities, terminate staff, review or block regulatory or enforcement activities (*See* Section 1012(c) of Dodd-Frank (‘‘Autonomy of the Bureau’’)). Unlike the traditional independent agency model, the CFPB is guaranteed a percentage of the FRB’s budget – hence there is no congressional oversight through the annual appropriations process.

Congress is not alone in having no real oversight over the CFPB. Once a Director is confirmed, the President has no effective control over the position other than termination for cause. In contrast, the norm among independent agencies structured as bipartisan boards or commissions is that a new President may designate a new agency chair.

This lack of Presidential authority has real consequences. The CFPB is not subject to oversight by the Office of Management and Budget and, therefore, is not required to conduct the regulatory review and cost-benefit analyses that are the norm among federal agencies.

The Dodd-Frank Act provides that congressional testimony by the Bureau’s Director must state that it does not necessarily represent the views of the President, and the President is prohibited from reviewing any legislative recommendations or comments the CFPB may submit.

#### AFSA’s View of Pending Legislative Proposals

##### H.R. 1121, the ‘‘Responsible Consumer Financial Protection Regulations Act of 2011’’

This bill replaces the single Director of the CFPB with a bipartisan, five-member commission, bringing the structure more in line with traditional independent federal agencies. It also requires that the commission ‘‘may prescribe such regulations and issue such orders in accordance with this title as the Commission may determine to be necessary’’ – an important check on runaway rulemaking.

While this is a useful step, the CFPB’s greatest and, we believe, most threatening power is that of bringing enforcement actions with no effective supervision. The events of recent weeks, where the CFPB has reportedly been involved with settlement negotiations to resolve mortgage issues is an example of the agency’s broad powers outside of rulemaking authority.

AFSA believes that H.R. 1121 will only be effective if it is amended to require that all of the Bureau’s functions, not just its rulemaking authority, fall under the jurisdiction of the full commission, and are not left to the discretion of a single individual. Thus, for example, the proposed Commission should vote to approve litigation and enforcement actions. This has long been the practice at the Federal Trade Commission and the Securities and Exchange Commission.

Next, we believe that H.R. 1121 should be amended to address the role of the CFPB and state licensed entities. AFSA members, many of which are non-bank finance companies, have worked effectively with state regulators in complying with both state and federal consumer protection laws. These state regulators have a familiarity with local and regional circumstances

and issues faced by lenders. This knowledge, along with their geographic proximity to a given lender and financial market, means that state regulators are often the first to identify emerging issues, practices or products that may need further investigation or may pose additional risk to the financial industry and its customers.

Currently, the CFPB may promulgate regulations impacting these companies without:

- É Finding that existing state law or regulation is inadequate;
- É Determining an estimate of the number of state-licensed or supervised entities to which the proposed rule will apply;
- É Describing the projected reporting, recordkeeping and other compliance requirements of a proposed rule; or
- É Identifying the relevant state statutes, regulations and enforcement proceedings with which the new federal regulation may duplicate, overlap or conflict.

To address these concerns, AFSA recommends that H.R. 1121 mandate that at least one member of the Commission have State bank or consumer credit supervisory experience. A similar approach has worked well at the Federal Deposit Insurance Corporation and, in light of the importance of state-licensed institutions, would be appropriate for the CFPB.

The statute should also be amended to clarify the role of State officials with respect to State-chartered banks. While State officials have the authority to enforce Bureau-promulgated regulations against national banks, their rule with respect to State-chartered depository institutions and nonbanks is broader: State officials are authorized under Dodd-Frank to enforce both Bureau rules *and other provisions of the Act*, including its broad prohibition of unfair, deceptive and abusive practices. This is a huge grant of authority to State officials to interpret and enforce general provisions of the law that are not subject to specific regulatory guidance, and will surely lead to inconsistent interpretations. Such a result is inconsistent with the statutory requirement that Federal consumer financial law should be implemented and enforced consistently (Section 1021(a)).

#### H.R. 557, the "Consumer Financial Protection Oversight Act of 2011"

This bill transfers the CFPB to the Department of the Treasury, but would prohibit the Secretary from interfering with the autonomy granted the CFPB under the Dodd-Frank Act.

While AFSA welcomes the budgetary and congressional oversight that would result from such a transfer, we question whether this would have any real operational impact on the CFPB's regulatory and enforcement activities.

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AFSA welcomes the opportunity to work with the Subcommittee as you address these important issues.