LEGISLATIVE PROPOSALS TO IMPROVE THE STRUCTURE OF 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

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

APRIL 6, 2011

Printed for the use of the Committee on Financial Services

Serial No. 112–24

U.S. GOVERNMENT PRINTING OFFICE

66–862 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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LEGISLATIVE PROPOSALS TO IMPROVE THE STRUCTURE OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Wednesday, April 6, 2011

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 10:25 a.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Royce, Manzullo, McHenry, McCotter, Pearce, Westmoreland, Luetkemeyer, Huizenga, Duffy, Renacci, Dold, Canseco; Maloney, Hinojosa, McCarthy of New York, Miller of North Carolina, Scott, Velazquez, and Carney.

Ex officio present: Representative Bachus.

Also present: Representative Green.

Chairwoman CAPITO. This hearing will come to order. This morning's hearing marks the third hearing that the Financial Institutions and Consumer Credit Subcommittee has held on the oversight of the Consumer Financial Protection Bureau (CFPB). We have before us today two panels who will comment on legislation that members of this subcommittee have been working on for the last month to make structural reforms to the CFPB.

The first measure is H.R. 1121, which changes the leadership of the CFPB from a single director to a five-person commission. In my view, this is a critical change to the structure of the Bureau, and I would like to thank Chairman Bachus for his lead on this legislation of which I am a cosponsor.

This is not unprecedented for a regulatory agency. The Securities and Exchange Commission, the Commodities Future Trading Commission, and the Federal Trade Commission are examples of regulatory agencies led by a commission. Most notably, the Consumer Product Safety Commission, which regulates the safety of thousands of non-consumer products, is led by a five-member commission. The powers of the Bureau are simply too broad for a single director, and the move to put the commission in place I think puts an important check on power.

I would like to commend Mr. Duffy for his leadership on the second bill we will be considering today, H.R. 1315. This legislation makes important improvements to the Financial Stability Oversight Council's ability to overturn a CFPB regulation. Current law creates a situation in which the Financial Stability Oversight Council (FSOC) only has the authority to overturn a CFPB regulation if "the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk." Wow, that is a pretty high standard there, I would say.

Current law also requires a two-thirds majority vote to overturn a CFPB regulation. This simply sets the bar too high. Consumer protection and safety and soundness should go hand-in-hand.

Mr. Duffy is to be commended for his legislation, which makes dramatic improvements by lowering the threshold for a vote by changing it to "regulation which is the subject of the petition is inconsistent with the safe and sound operations of United States financial institutions."

In addition to lowering this threshold, Mr. Duffy's bill changes the FSOC vote from a two-thirds majority to a simple majority and excludes the director of the CFPB from voting on CFPB regulations.

It is my intent for the two discussion drafts to serve as an opportunity to explore two other issues within the structure of the CFPB: the first delays the transfer of consumer protection functions until there is a confirmed director; and the second prevents the CFPB from sending personnel to accompany credentialed regulators on examinations. These are two critical discussions on the current structure of the CFPB before the designated transfer date, and I look forward to hearing from our witnesses.

This is just the beginning of what will be an ongoing dialogue on how to better reform the CFPB. The current structure simply puts too much power into the hands of one individual and does not allow for sufficient oversight of the regulations put forth by this Bureau.

There have been recent statements made about the Bureau being created as "the voice for American families" and the willingness of the Bureau to stand up and stick up for those families. The members of this subcommittee are elected by the American people. It is our responsibility to protect the freedoms and liberties of our constituents. We also have a responsibility to ensure that regulations are in place to properly protect consumers.

Finally, we have a responsibility to ensure that their personal financial decisions are left up to them and not unduly influenced by unelected bureaucrats who seek to limit consumer choice.

I would now like to recognize the ranking minority member, the gentlelady from New York, Mrs. Maloney, for the purpose of making an opening statement.

Mrs. MALONEY. I would like to welcome the witnesses today, and thank you, Madam Chairwoman, for calling this important hearing.

I appreciate the opportunity to consider these legislative proposals, but I take issue with the title of today's hearing, "Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau," because I disagree that these proposals are meant to improve it. These proposals we are considering today come from some of the members who last year voted against the Dodd-Frank Financial Protection and Consumer Protection Act which created the CFPB. Taken together, these proposals will only serve to delay and disrupt the CFPB from being able to fully do its job before it is even opened for business on July 21st.

The Consumer Financial Protection Bureau was created in response to the worst financial crisis since the Great Depression. Any attempt to delay or weaken the CFPB could leave American families, their communities, and the economy as a whole exposed to many of the same risks that brought our financial system to the brink of collapse.

According to the Majority, the four bills we are discussing today are to create and promote greater accountability and transparency at the CFPB, but that is precisely what the CFPB is doing. The CFPB is working on how to make credit and other financial products clearer and easier to understand so that consumers have the information they need to make informed decisions.

These moves, in my opinion, are an attempt to return to the failed policies of the past: the same regulatory indifference; the same blindness to real-world consequences. It is reinstating the same mindset of deregulation that was firmly in place in the prior Administration as the economy headed towards disaster. It is as if all the loss, all the sorrow, all the misery of the "Great Recession" never happened.

If you doubt the benefits of effective consumer protection, then please take a look at what the Center for Responsible Lending had to say about the effects of my Credit Card Bill of Rights that was passed with broad bipartisan support in the last Congress. The study shows that the Credit Card Act of 2009 has reversed much of the unclear pricing on credit cards without leading to higher rates or more difficulty in getting credit. Furthermore, the greater transparency about the real costs of credit makes it less likely that consumers will get in over their heads, something many believe was one of the contributing factors to the great credit crisis. This is all reflected in the fact that consumer complaints about credit card company practices have dropped dramatically since the implementation of my bill.

With the Consumer Financial Protection Bureau, we can begin to do for all financial products what the credit card bill did for consumer credit cards—make the arena more competitive and the products more fair, less deceptive, and more transparent so that consumers can compare costs. These are all traits an efficient free market system needs in order to thrive.

The Bureau is designed to be funded through the Federal Reserve, just as all bank supervisory agencies are independently funded, in order that it might be just that, independent. This is vital in order to avoid the kind of politicizing of its mission.

The claim that the CFPB will not be subject to oversight is simply not based on reality. The CFPB director will testify twice a year to Congress. The Board will report annually to Congress on its budget and operating plan. It will submit quarterly financial reports to the Office of Management and Budget. The Government Accountability Office will do its own audit. The Financial Stability Oversight Council will review all CFPB regulations and can overturn them with a two-thirds vote, an unprecedented power.

The Administrative Procedures Act allows for Federal courts to review agency decisions. And Congress, as the majority party in the House is attempting to do right now, can overturn regulations.

Elizabeth Warren has made it clear that she favors free market solutions, but like the vast majority of Americans she is opposed to the use of deceptive, predatory, or anticompetitive practices. I would like to end by quoting from her recent address to the Consumer Union: "We want to see innovation, lots of innovation, but innovations need to be around real product differences that consumers can see and understand, not around misleading advertising and new tricks buried in the fine print. Our goal is simple. We want the credit markets to work better for consumers, for responsible providers, and for the whole economy."

Thank you, and I reserve my time in the event that others have opening statements.

Chairwoman CAPITO. Thank you.

I would like to recognize the chairman of the full committee, Mr. Bachus, for 1 minute for an opening statement.

Chairman BACHUS. Thank you. What you just heard from the gentlelady from New York is sort of what I think the press has also said. That is their message, and their message is that this is all about politics; we don't like consumer protection.

Nothing could be further from the truth. In fact, my bill is for a commission, which is what this House passed. This is what we passed in Dodd-Frank. It was changed in conference to allow one person to run the agency with total discretion. What we are advancing is not politics, it is the way government has always functioned, and that is not one person with unbridled authority.

And let me say this: Professor Warren has done a great job of really fooling the national media into thinking, oh, this can easily be appealed. Nothing could be further from the truth. Sean Duffy has introduced a bill which is as important as the bill I am introducing, which tells you that you can't even appeal a ruling unless the ruling would bring down the whole financial system of the United States.

Now, how absurd is that? Someone has to file within 10 days of the Consumer Protection Bureau issuing something. Ten days. That is absurd. It is unheard of. And it is a supermajority, not even two-thirds. It is 70 percent.

And I tell you what, no one has gone past this crazy story about how we are just attacking Ms. Warren or that we don't want consumer protection. I think the American people and I know this Congress are too sophisticated to believe that, and if they are able to hoodwink the American people, they pulled a real sham here.

I am advancing the same language that everyone in this House thought was the appropriate solution. It is what has been discussed for years about pulling everything into one agency and it being a commission. But someone in the dead of night decided they could just do whatever they wanted to, whenever they wanted to, and that the press would not tell the American people. This is not about Elizabeth Warren. This is about giving one person total unbridled authority and power.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Scott for 2 minutes.

Mr. SCOTT. Thank you very much, Madam Chairwoman, and welcome, panelists. This is indeed a very timely and a very important hearing. I think there are essentially 2 basic points that we have to explore today and make sure we get our hands on.

One is, how do we adequately put forward the machinery that will effectively do two things: protect the American consumer; and make sure in the process of doing that, that consumer does not lose valuable access to credit. Those are the two things we have to do. And we have to explore, we have to really respond to some of the fears that are out there and make sure that we answer them before we move forward; that this effort does or does not clamp down unfairly on the financial services industry that has to both help consumers, while surely at the same time make sure that access to credit is there. So I want to get some answers to that.

I want to get some answers to these concerns, because we can't do it without the financial services industry and we have to make sure that they are not going to tighten up on credit if such prompt procedures are in place.

And I think in so doing, we will do the American people a great service.

Now, my friend, Chairman Bachus has an interesting bill. Can we do this by committee? Can we do it by commission? If so, what will be the political makeup of that commission? If it is three, and you have two political parties, somebody is not going to have a fairly good chair when the music stops in terms of balance. I think that we have to be very thoughtful as we move forward.

And again, Madam Chairwoman, I know my time is about up, but the major point again I want to impress is what I am after here is making sure we indeed protect the consumer, educate the consumer against predatory practices, against abuses that have caused so much of the problem that we are in today, while, at the same time, ensuring that he does not lose that valuable access to credit.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Royce for an opening statement.

Mr. ROYCE. Thank you, Madam Chairwoman. The July 21st deadline is quickly approaching here. And assuming a director is eventually appointed, we will soon be left with an agency unlike any other, given the way this was written. For the first time, there will be a director who serves a set term, has sole authority over the agency and its actions, and has access to hundreds of millions of dollars outside of the appropriations process. So it is a bad precedent. It would fundamentally weaken our regulatory structure by moving safety and soundness regulation to the back seat.

What I had offered earlier during the markup when this bill became law was something that the prudential regulators wanted. They have seen what happened with the oversight over the GSEs. They thought it was a bad idea to move safety and soundness regulation to the back seat. And frankly, this bill takes a critical step by empowering the safety and soundness regulators to have a greater say in the CFPB by lowering the threshold for a rule to be struck down.

And I would also add, Mr. Scott raised the concerns about access to credit, which I think is something we need to be worried about.

I think beyond that, this worry about tying the hands of the regulators on this is a road we have been down before, where Congress did this with respect to Fannie and Freddie, and we had a very bad consequence out of it. So let us give the prudential regulators a greater say in this process. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Miller for 2 minutes for the purpose of an opening statement.

Mr. MILLER OF NORTH CAROLINA. Thank you, Madam Chairwoman. Yes, the CFPB is an agency unlike any another. It probably has more checks on its authority, more accountability than any other agency of the government. It certainly is not unique in that it is not subject to the usual budget process. Every regulator of the financial industry is funded separately, rather than to have to come back to Congress, hat in hand, to be turned away by the influence of the financial industry to restrict their ability to do their job. In that way, they are certainly not at all different from anybody else, except that they have a cap on theirs that nobody else—none of the other regulators have.

They are certainly not unique in that they have a single director. The OCC, for instance, has a single director, and that has made that a very powerful agency, which has worked greatly to the benefit of the banking interest and greatly to the disadvantage of consumers. So it is certainly not in that respect at all unusual.

When the industry talks about safety and soundness, the need to keep safety and soundness together, Congress did limit the authority of the CFPB. The CFPB cannot require any bank to offer any product. They can only prohibit practices that they determine to be abusive of consumers. So when a bank says they want to consider safety and soundness, what they are saying is, in order to stay in business, they have to do things, they have to do things the CFPB has determined cheat consumers, or the language of the statute, I think, are unfair, deceptive or abusive. They say that they have to be unfair, deceptive, or abusive to stay in business. Maybe that bank needs to go out of business.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. McHenry for 1 minute for the purpose of an opening statement.

Mr. MCHENRY. Thank you, Madam Chairwoman. This legislation today we are looking at, it will go a long way to providing the necessary oversight of the Consumer Financial Protection Bureau in order to ensure that consumer protection rules can be implemented without risking the safety and soundness of our Nation's financial system.

Last November, the voters sent a clear message to Washington. Massive new regulations are creating uncertainty and crippling job creation. With that in mind, I believe the legislation before us today is extremely necessary in order to protect consumers, while also making certain that small businesses and individuals aren't limited from accessing the credit that they need.

While our economy is still fragile, this legislation will remedy a flaw passed in the final Dodd-Frank piece of legislation.

I would say to my colleagues on the other side of the aisle, this idea that they created a very limited regulator, while having 59 votes in the Senate and 60 percent of the House of Representatives and a Democrat President, is absolutely absurd. They were bragging about how powerful this regulator was until after the election. We are trying to fix this problem and go back to a more balanced approach at the CFPB.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Pearce for 1 minute for the purpose of an opening statement.

Mr. PEARCE. Thank you, Madam Chairwoman. I just wanted to address some of the comments coming from our friends on the other side of the aisle that innovations need to be somehow controlled, those dangerous innovations. And I think back to growing up in a family where the innovations, those scary innovations in the phone industry, were stopped for decades, so we grew up with this one black phone, a big heavy thing. As soon as that was deregulated, those scary changes began to come on to the market, and they call them cell phones and now iPods, iPads, whatever.

And so as I think about choking down the financial sector, it is going to do exactly what one of my other friends from the other side said. It is going to limit access to consumers.

For the situations where someone does cheat or take money away from someone, there is a remedy. Stick them in jail. When people cheat somebody else, have an outcome. But we don't need to choke down the entire financial services market in the name of safety. I yield back the balance of my time.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Huizenga for 1 minute for the purpose of an opening statement.

Mr. HUIZENGA. Thank you, Madam Chairwoman. I appreciate you doing this today.

We are here today to discuss legislative proposals that will create more transparency and accountability for what some have labeled an independent agency—some of us would maybe characterize it as a rogue agency—that Congress created last year. And under this, Dodd-Frank, the CFPB, the Consumer Financial Protection Bureau, will have extensive authority to issue all new Federal and financial regulations that affect businesses and individuals, but with very little accountability. To me, that is unacceptable.

If I am doing a bad job, I have to answer to the constituents of the Second District in Michigan. If the President is not effective, he has to go answer to people in an election situation.

Who does the head of the CFPB report to? No one. That is part of the problem.

And as a newly elected Member of this 112th Congress, and a member of this important committee, I am here to work for that change.

Madam Chairwoman, I again appreciate your willingness to hold this hearing on this important issue. So thank you.

Chairwoman CAPITO. Thank you.

I would like to recognize now Mr. Dold for 1 minute for the purpose of giving an opening statement.

Mr. DOLD. Thank you, Madam Chairwoman. And I want to thank the witnesses for your time today.

Both before and after legislation is passed, Congress has an obligation to identify and correct unintended negative consequences that frequently arise from what many would say is well-intended legislation.

What I would like is do is I would like to fast-forward, because what we do today is going to have implications for many years to come. So let us go forward 5 and 10 years. Let us say the Administration is vastly different. We are empowering one individual who has, I would say, an enormous amount of power. What the legislation does today broadens that out. Instead of one, we want to have five. This seems to me to be commonsense legislation. Instead of vesting the power so much in one individual, we are investing it in a board.

And then when it talks about veto authority, it is going to be a simple majority, as opposed to two-thirds, which is a very high standard to jump over.

So I look forward to your comments in terms of trying to convince me on how this is not a good idea, why we need to invest so much power in an individual. Given the consumer credit industry's importance to our economic prosperity, the CFPB broad regulatory mandate should exist within a structural framework that improves transparency and accountability.

I thank you, Madam Chairwoman, for giving me the time.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Canseco for 1 minute for the purpose of giving an opening statement.

Mr. CANSECO. Thank you, Madam Chairwoman.

Out of all the provisions included in the 2,300-page Dodd-Frank bill, perhaps the biggest and most important question surrounds the creation of the Consumer Protection Bureau. For the first time, we have an agency whose primary mission is supposed to be consumer protection, although it is unclear exactly what the distinction is between consumer protection and safety and soundness.

Aside from the agency's puzzling mission, there is a great concern over its structure. Ignoring the precedents for financial regulatory agencies, the Bureau is structured so that it has a single director who will have great influence. This means that one person can essentially determine what types of mortgage products or credit cards Americans can have access to.

In its current state, it is also extremely difficult to overturn a potentially damaging rule proposed by the Bureau. It is also worth noting that the funding of this agency has been carved completely out of the normal appropriations process. The powers given to this agency seem to go out against the traditions of accountability and openness, and it moves us towards creating an American credit czar.

Thank you.

Chairwoman CAPITO. Thank you.

Finally, I would like to recognize Mr. Duffy for 1 minute for the purpose of giving an opening statement.

Mr. DUFFY. Thank you, Madam Chairwoman.

Quickly, I think all of us here on the panel and this committee agree that we want to protect consumers. I just think we have a disagreement that this bill is actually going to accomplish that goal. We have an incredibly high standard to overturn a CFPB rule. Basically, what has to happen here is the CFPB has to create a rule that is going to bring down the whole financial system. And if that is the case, we need to go to FSOC and get three-quarters of the vote, three-quarters of 10 votes on FSOC to overturn it.

The way the rule is written, or the law is written right now, the director of the CFPB sits on FSOC. This is a super, super, supermajority. It makes it incredibly difficult to overturn a rule that comes from the CFPB that is going to be damaging to the financial system.

I think my bill addresses this. It puts some perspective back into oversight of the CFPB and brings some sanity to the legislation.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

That concludes our opening statements. I would like to welcome our witnesses. We have your full written testimony, and you will be given 5 minutes to sort of summarize your testimony. And we have a lot of eager questioners here, so we would like to try to stick to the 5 minutes.

First of all, I would like to welcome Ms. Leslie Andersen, president and chief executive officer of the Bank of Bennington, on behalf of the American Bankers Association, for 5 minutes.

STATEMENT OF LESLIE R. ANDERSEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BANK OF BENNINGTON, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Ms. ANDERSEN. Thank you, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee for the opportunity to testify today. ABA appreciates the chance to share ways to improve the accountability of the new Bureau of Consumer Financial Protection.

The banking industry fully supports effective consumer protection. At the Bank of Bennington, we are proud of our 8 decades of service to our customers. No bank can be successful without a long-term perspective like ours and without treating customers fairly.

The new Bureau will certainly impose new obligations on all banks, large and small, banks that had nothing to do with the financial crisis and already have a long history of serving consumers fairly in a competitive environment.

There are several features of the Bureau that make improved accountability imperative. These include 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 bank safety and soundness, the gaps in regulating non-banks, and the expanded and unaccountable enforcement authority of prudential regulators and State attorneys general.

We believe the bills that are the subject of this hearing today are a start in the right direction, but certainly more needs to be done. We have detailed recommendations to improve the Bureau's accountability in our written testimony, but let me highlight just a few.

ABA supports H.R. 1121, which would create a commission responsible for the Bureau's actions. A board or a commission structure is far better than giving the head of the Bureau sole authority to make decisions that could fundamentally alter the financial choices available for customers. It also provides the needed balance and appropriate checks in the exercise of the Bureau's significant authority.

ABA recommends that the commission include members with consumer finance business experience and direct safety and soundness regulatory expertise. Such expertise would provide an important perspective as standards are set and enforcement activities undertaken.

ABA also supports H.R. 1315, which would require a simple majority vote of the Financial Stability Oversight Council to set aside a Bureau rule. If a majority of the Nation's top regulators believe a Bureau rule will have an adverse impact on the banking system, that rule should not go forward.

Moreover, ABA also believes that a finding of systemic risk is too narrow. The review standards should be recalibrated to account for adverse consequences of Bureau actions that do not rise to the level of systemic risk.

In addition to further accountability, we believe the Bureau should direct its resources to the most glaring gap in regulatory oversight: a failure to supervise and impose enforcement actions on non-bank lenders committing consumer protection violations. One simple suggestion is to mandate transparency on the Bureau's non-bank expenditures.

We also strongly urge the Congress to eliminate the term "abusive" from the Bureau's prohibitions. This is the most effective method of keeping the Bureau focused on the task of reforming the authorities it has inherited from its predecessor regulators. Then, the Bureau can shape those more-than-adequate authorities into simpler, more effective, and less burdensome consumer protections.

Finally, the Dodd-Frank Act gives license to pile on additional State law requirements. It gives additional authority to State attorneys general and prudential regulators to interpret and enforce Bureau statutory authorities and the rules as they see fit. If we are to hold the Bureau accountable, we must also hold accountable all those who derive authority from its existence. To do otherwise, by allowing new rules to be written or applying new interpretations each time a State border is crossed, would completely undermine the reliance of all citizens on the Bureau's rules.

Chairwoman Capito, banks across this country will continue 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. Our task is made more difficult by the many new hurdles that we will have to jump over to serve our customers' most basic financial needs.

With only 22 employees, I worry about how my bank will handle all the new compliance obligations that will flow from the Bureau and from all other Dodd-Frank requirements. More importantly, I worry about the added cost, time, and hassle for my customers that these new rules will inevitably create. Thank you.

[The prepared statement of Ms. Andersen can be found on page 60 of the appendix.]

Chairwoman CAPITO. Thank you very much.

I would like to welcome and introduce our second witness, Ms. Lynette W. Smith, president and chief executive officer of the Washington Gas Light Federal Credit Union, on behalf of the National Association of Federal Credit Unions. Welcome.

STATEMENT OF LYNETTE W. 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. Good morning, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. My name is Lynette Smith and I am testifying this morning on behalf of NAFCU. I serve as the president and CEO of Washington Gas Light Federal Credit Union in Springfield, Virginia.

Washington Gas has more than 6,800 members and over $80 million in assets. NAFCU is the only national organization exclusively representing the interests of our Nation's Federal credit unions, and we appreciate the opportunity to participate in this hearing today concerning proposals to improve the structure of the Consumer Financial Protection Bureau.

Credit unions were not the cause of this financial crisis, and yet we are still substantially affected 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 will create a number of new and unnecessary compliance burdens for small credit unions like mine.

It is with that in mind that NAFCU has long opposed the CFPB's authority over credit unions. We believe that CFPB's singular focus should be on regulating the unregulated entities that contributed to the financial crisis.

Indications are that some of the first areas that the CFPB may tackle include mortgage lending and credit card practices, areas where we have already seen a number of changes in the recent years. Although the debit interchange price cap remains NAFCU's number one concern with the Dodd-Frank Act, I will focus my concerns on the new CFPB.

First, NAFCU will urge the subcommittee to return authority for rulemaking, examination, and enforcement of all credit unions to the National Credit Union Administration.

Second, while we were pleased to see the Financial Stability Oversight Council granted veto authority over some proposed CFPB rules, we believe the current veto authority does not go far enough. NAFCU supports legislation to modify the threshold needed to veto a proposed rule.

Third, NAFCU supports H.R. 1121, legislation introduced by Chairman Bachus and others, which would create a five-person commission to govern the CFPB. We believe a Board has benefits over one single director. At a minimum, NAFCU believes that the CFPB must have a Senate-confirmed director before it becomes an official, stand-alone Federal agency. We would support legislation to delay the transfer date until a director is confirmed.

Fourth, only three credit unions are above the current $10 billion threshold and would be subject to the examination and enforcement authority of the CFPB. We believe it is a waste of taxpayers' dollars for the CFPB to have credit union examination teams for only three institutions, when NCUA has been handling examining these institutions for decades. Congress should transfer that authority back to NCUA.

Finally, there are a number of other areas where the CFPB could be improved, and I have outlined those in my written testimony.

In conclusion, I remain at a loss as to why my credit union has been placed under a new regulatory regime. That being said, we welcome a dialogue with Congress on possible changes to the structure, governance, and authorities of the new CFPB.

I thank you for my opportunity to appear before you today on behalf of NAFCU, and I would welcome any questions that you may have.

[The prepared statement of Ms. Smith can be found on page 106 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is Mr. Jess Sharp, executive director of the Center for Capital Markets Competitiveness, the United States Chamber of Commerce. Welcome.

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

Mr. SHARP. Thank you. Good morning, Chairwoman Capito, Ranking Member Maloney, and distinguished members of the subcommittee. I am Jess Sharp, the executive director for what we call the CCMC—it is kind of a mouthful—at the Chamber of Commerce. Thank you for the opportunity to testify this morning on behalf of the millions of companies and 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.

However, the ability of a regulatory agency to carry out its mission successfully is influenced by, among other things, organizational structure, coordination with other agencies, and the ability to maintain over the long term a consistent, effective approach. The unprecedented structure and authority of the CFPB fails these longstanding commonsense tests.

The proposals that the subcommitee is considering today provide an opportunity to address structural issues essential to the success of the Bureau's mission.

I will start with Chairman Bachus' bill, H.R. 1121, which would restructure the CFPB so that it is governed by a five-member bipartisan commission rather than by a single director.

For four reasons, we strongly support this reform. First, far from singling out the Bureau for special treatment, the Bachus bill would conform the Bureau to other independent Federal agencies, including those responsible for consumer protection, like the FTC, for example. Today, almost all independent agencies follow this model. Moreover, the decision to place a single director in charge of the Bureau, far from being essential to the original conception of this agency, as Chairman Bachus pointed out in his opening statement, actually was made quite late in the legislative game. The President's original draft bill proposing a Consumer Protection Agency included a commission, as did the bill that passed this House in 2009.

Second, the Chamber believes that a commission will ensure better impartial decision-making. We believe that collaborative deliberation among a commission with diverse views, expertise, and backgrounds will lead to better policy outcomes. By contrast, leadership by an individual director is more likely to lead to extreme swings in approach over the years.

The CFPB has a tough balancing act to perform as a substantive matter. More stringent rules and stricter enforcement will protect some credit users from fraud, as has been pointed out, and we certainly agree with that. As has also been pointed out, it could also lead to higher prices and reduced access to credit with potentially significant adverse implications for consumer well-being and economic growth. So smart, evidence-based decision-making in this complex area depends on full consideration of a diversity of inputs and views.

The third point is that we believe that a commission approach would minimize the risk of regulatory capture. In the 2008 Law Review article entitled, "Making Credit Safer" that Professor Warren co-authored, she observed that a major challenge in establishing a unified Federal regulator of consumer credit products is the challenge of minimizing risk of capture. The Chamber agrees and believes, again, that a multi-member commission is the best way to address this risk.

Fourth and finally, on H.R. 1121, we just think that a commission approach will ensure continuity and stability in a way that a single director would not. A multi-member commission, with staggered terms, ensures the continuous presence of a significant number of experienced members at all times and prevents any gaps in agency effectiveness. It would also prevent significant policy shifts based on the political wins.

Moving quickly to Mr. Duffy's bill, the Chamber supports H.R. 1315 because it would enhance the FSOC's ability to serve as the critical check on Bureau rulemaking that threatens the financial system. If every prudential regulator opposed the proposed CFPB regulation, then that regulation shouldn't stand. And a majority requirement based on the vote of nine of FSOC's members, because we are taking the Bureau out of the FSOC for purposes of this provision, would permit that result.

I would like to just quickly also address the discussion drafts that are before the committee before concluding. The discussion drafts would do a couple of things, both in terms of delaying—the first would delay the transfer of consumer protection functions to the Bureau until a director has been confirmed, and would remove the current authorization for prudential regulators to include Bureau examiners in examinations of large financial institutions prior to the transfer date.

With respect to the first proposal, the Chamber agrees that consumer protection functions should remain with their existing agency until the leadership of the Bureau has been confirmed.

As for the second proposal, we also agree that it raises concerns for the Bureau examiners to participate in examinations of large financial institutions prior to the transfer date and, accordingly, we would support legislation along those lines as well.

So thank you again for the opportunity to testify. I am happy to answer any questions you may have.

[The prepared statement of Mr. Sharp can be found on page 90 of the appendix.]

Chairwoman CAPITO. Thank you, Mr. Sharp.

I would like to welcome Mr. Hilary Shelton as our final witness on this panel. He is the director of the NAACP, Washington Bureau, and senior vice president for advocacy and policy. Welcome.

STATEMENT OF HILARY O. SHELTON, DIRECTOR, NAACP WASHINGTON BUREAU, AND SENIOR VICE PRESIDENT FOR ADVOCACY AND POLICY, NAACP

Mr. SHELTON. Thank you very much. And good morning, Chairwoman Capito, Ranking Member Maloney, and so many of my good friends who are here on this subcommittee.

It is a pleasure and an honor to be here to share in your discussion about improving the strength of the Consumer Financial Protection Bureau, the CFPB. We at the NAACP feel very strongly that this nascent agency needs as much support as possible so that it can reach its greatest potential to protect the American public in ways that it has never been protected before.

The NAACP feels strongly that a robust CFPB is not only necessary for our Nation today; it is absolutely crucial. For too long, too many consumers, disproportionately racial and ethnic minority Americans, have been underserved and even targeted by unfair and downright unscrupulous predatory financial services. The result has dramatically diminished opportunities for an ability to build wealth or, in too many cases, to continue to own our homes, or even buy a car.

More than 4 years ago, I testified before the Senate Banking Committee about predatory lending in the home mortgage and refinancing market and the racial disparities that existed. At that time I stated, “Predatory lending is unequivocally a major civil rights issue.” As study after study conclusively demonstrated, predatory lenders target African Americans, Latinos, Asians and Pacific Islanders, Native Americans, the elderly, and women at such a disproportionate rate that the effect is devastating to not only individuals and families, but whole communities as well. Predatory lending stymies families’ attempts at wealth-building and ruins people’s lives.

Sadly, since that time, my words have been reinforced by more studies and, more importantly and more tragically, there have been catastrophic consequences for families, neighborhoods, and whole communities as the foreclosure rate among racial and ethnic minorities has disproportionately skyrocketed.

In almost every other facet of financial services like home mortgages, racial and ethnic minorities are targeted by exploitive and unscrupulous lenders, and we continue to be treated unfairly. My written testimony gives you two more examples of this, payday lenders and credit scoring. But for the sake of brevity, I will not elaborate on them right here and now.

Madam Chairwoman, distinguished members of the subcommittee, I could go on and on with examples and studies which demonstrate undeniably that racial and ethnic minority Americans are still treated disparately in a world of financial services. As a result, racial and ethnic minority Americans are faced with dramatically diminished opportunities to fulfill the American dream and build any sort of wealth for the future. It is because of this continuing disparity in treatment and the blatant targeting of racial and ethnic minority communities by exploitive financial services that the NAACP joined many other national civil rights organizations, among others, in applauding the creation of the CFPB under last year's Dodd-Frank Act. As a matter of fact, many civil rights organizations, including the NAACP, testified before this very committee on the need for a single, robust, independent agency charged with protecting consumers and ensuring that all Americans have the same access to credit.

Under the old system, at least five Federal agencies played a role in monitoring how financial institutions complied with consumer and civil rights laws, while three Federal agencies provided additional enforcement authority. There was not a single entity charged with investigating or charged with ensuring that all consumers were treated equally and fairly.

Under the new and improved system, as mandated by Dodd-Frank for many financial institutions, consumers' financial protection will now be the sole focus of a single agency, the CFPB. Once fully operational, the CFPB will have a broad authority to write rules, supervise a wide variety of financial institutions, and enforce Federal fair lending and consumer protection laws.

Most important to the NAACP, fair lending is explicitly built in the CFPB's mission, structure, and research mandates. Dodd-Frank clearly states that the CFPB is tasked with the responsibilities to "seek to implement and, where applicable, enforce Federal consumer financial protection law consistently for the purposes of ensuring that all consumers have access to markets where consumer financial products and services, and the markets that consumers financial products and services are fair, transparent, and competitive." In short, a robust function of CFPB will work through rulemaking, enforcement, and research to ensure a more fair and equitable financial playing field.

The NAACP is particularly pleased to note that the CFPB will be looking at almost every aspect of financial services, including mortgage lending, credit cards, overdraft fees, and payday loans.

Madam Chairwoman, I recognize that the subject of this hearing is four particular pieces of legislation intended to, as the committee contends, strengthen the CFPB. I am very interested in hearing the analysis of these four bills because I would like to state unequivocally for the record that the NAACP staunchly opposes any rules which may make weaken or undermine the CFPB or otherwise impede it from reaching its full potential.

Any proposals which would weaken the mission of the CFPB would mean fewer protections for American consumers in general, and racial and ethnic minorities in particular, as they attempt to manage the often confusing world of finances, mortgages, and credit. Emasculating the CFPB, before it even gets off the ground, will result in a return to a system of inadequate financial supervision that failed taxpayers, depositors, investors, homeowners, and other consumers. Allowing continued predatory lending to consumers and the targeting of particular groups will once again allow greater risk to our financial system. Thank you so much.

[The prepared statement of Mr. Shelton can be found on page 101 of the appendix.]

Chairwoman CAPITO. Thank you, Mr. Shelton.

I would like to begin the questioning. I have a question for Ms. Smith. We have heard reports that CFPB personnel have already been accompanying prudential regulatory staff on examinations. The issue here for me is, as we know, the statutory date to begin the full implementation of the CFPB is not until July. And I think for institutions' safety and soundness and protection of financial data of their clients and their customers, this could be problematic if you have somebody, personnel accompanying who don't really have any kind of regulatory authority or any enforcement authority. Do you have a comment on that? And are you aware that this is occurring?

Ms. SMITH. Yes, I am aware. And we call it the ride-along examination. So that would be detrimental, in my opinion, to any credit union, regardless of size. The resources of a credit union really need to be better served than doing double examinations. So, for that reason, I feel that it would be a problem. And I can speak for myself and what I experience when a NCUA examines our credit union once a year. It was 18 months. Now, it is once a year.

And also, I have to have a year-end audit examination by a certified public accountant. Both take approximately 30 days to complete, and take a lot of resources away from my credit union, resources that I could use to better serve my members. That needs to be our focus. That has been the credit union's focus all along.

While smaller credit unions are supposed to be exempt from this bill, as it is written in the testimony, we just feel that this would be very problematic to the credit union industry as a whole.

Chairwoman CAPITO. Yes. I think it presents a problem whether it is a ride-along or whether it begins issues of privacy issues with financial data and other issues of that magnitude. And I appreciate the statement that you made that when you get into the heavy regulatory burden, you are really undermining what Mr. Shelton addressed in his statement, which is how you get the consumer products and credits to the folks who most desperately need it and who have been shut out previously from greater access to credit.

Ms. SMITH. And please keep in mind that in the last 2 or 3 years, I have been able to still continue to lend to members. When this financial crisis hit, my doors were open and we were lending every day.

Chairwoman CAPITO. I appreciate that.

I would like to ask Ms. Andersen, the carve-out for community banks, you have 22 employees, I can see from your statement, and it is of great concern to me as well that the carve-out really doesn't exist for a banking institution of any size, whether you are in the larger part that maybe fall under the CFPB. But still, the rules and regulations are going to influence your institution.

You have already talked about the resources. Have you had to hire somebody? Do you anticipate that you are going to have to hire somebody to meet all of the demands that would then take, of course, resources from your bank that could be again more adequately placed in seeking credit and helping your communities? Could you address that issue?

Ms. ANDERSEN. Yes. We have actually hired outside counsel who is helping us look at the issues coming at us to try to be prepared, so that has taken additional resources. We also don't really have any one person in charge of compliance. Being a small institution, with 21 employees, everybody has to wear a compliance hat to serve our customers, and the more time and effort that is expended on new regulations—we already have a boatload—more regulations on top of what we have already takes time away from our consumers and our customers and also our ability to just be active in our communities.

Chairwoman CAPITO. On the issue of a commission as opposed to an individual, to me, this just makes good common sense. Obviously, we passed it in the House. When it was passed in the House—and it was, as Mr. Sharp mentioned in his statement, it was a change made towards the end of the completion of the bill. And I think that we have seen now, with no statutory person in place, no Presidential appointment at this point who has to go through the confirmation procedure, I think it is just problematic if we have no director; what are we going to do, which is the point of one of my pieces of legislation. And so I think we could solve this a lot easier if we would, instead of having a singular person to head and have all the power concentrated in that one person, if we spread it out over a commission.

But my time is up, and I am going to ask the ranking member if she would like to begin questioning.

Mrs. MALONEY. I most certainly would. First of all, I would like to thank the panelists for your thoughtful presentations. And I would like to clarify for the record that the House-passed bill started with the director and only became a commission 2 years after the designated transfer date. The House conferees rejected an amendment that would have restructured the CFPB into a commission.

And I would like to place in the record the debate that was very extensive around supporting the need for a strong consumer protection regulator. Without objection, I will place that in the record.

This is the model that we have now in government for regulators. The Comptroller of the Currency, the head of the Fed, the CFTC, OTC, all of them have a single regulator, not commissions.

I would like to respond really to Ms. Smith's concern about the shadow banking system, and that is what we pulled into the CFPB to be reviewed. The commission would only lead to gridlock, and, in my opinion, inaction that would only make it more difficult to react to the regulatory disparity between banks, credit unions, and the less regulated competitors. And I agree, the regulated credit unions and the regulated banks did not cause the problem. It was these unregulated areas.

And I would like to say that my colleagues on the other side of the aisle say they want to reduce the size of government, yet they want to change a single-director Bureau into a five-member commission. President Obama is having difficulty finding a director that he can get confirmed by the Senate. One Senator can hold up a confirmation. If you had five, you would have more difficulty in moving forward.

But my question, and I would like to begin with you, Mr. Shelton, you stated that predatory lending was, in your opinion, a civil rights issue. And it is believed by many that the old system reacted too slowly during the subprime mortgage boom, and that helped bring the economy to near collapse, which is why the CFPB was included in the overall Dodd-Frank financial reforms.

Too often, consumer concerns were not thought about as a second thought, or a third thought, or they weren't thought about at all. And it is believed by me and others that if we had an agency such as the CFPB, they would have reacted more quickly to the screams and cries for help that were coming in from the communities across America.

So I would like to ask every member of the panel if you think that the subprime mortgage boom that helped bring the economy to near collapse, would the CFPB help to have prevented that? The old system did not work, and we need to move forward in a system that will prevent financial collapse in the future.

So first, Mr. Shelton, and then Mr. Sharp, and all the way down to Ms. Andersen. Thank you.

Mr. SHELTON. Thank you, Congresswoman. You are absolutely correct. I am deeply concerned about a lot of the argument being made here to withstall the implementation of the CFPB. Quite frankly, the NAACP has done reports and testified before this committee as well as the Senate Banking Committee on numerous occasions. We have sat down with the heads of the Comptroller of the Currency, the Fed, sat down with a number of government agencies responsible for this particular oversight.

We did a report in 2007 to show you the slow movement of the existing system and why it is the literal definition of insanity to continue with the existing policy. Quite frankly, we spoke in 2007—and I will leave the names of the very high-ranking officials out of this so as not to embarrass them in this particular case—we went to them and said we were predicting in 2007 that African Americans who received subprime loans in 2005 would go into foreclosure by the end of 2009. And needless to say, we were underestimating the devastation that was created by this lack of oversight and regulatory oversight of our financial services programs. Indeed, more than 52 percent of subprime borrowers who were African American went into foreclosure by the end of 2009. That is outrageous. We need a process and a system that actually provides the kind of protection that consumers need.

What we got at every step of the way is, when we asked them what do you intend on doing, when we asked them to simply do things like a moratorium on foreclosures, we were told that, "We will allow the market to work it out. We have no plans whatsoever, even though we see the concerns you are having are 2 years down the line."

We need a nimble, effective process to provide that kind of oversight and enforcement to protect the consumers first. If you are protecting consumers, then we are not going to have the kind of meltdown we are experiencing.

Mrs. MALONEY. Madam Chairwoman, my time has expired, but I would like to request that everyone place in writing their response on whether or not the CFPB would have helped prevent and protect consumers during the subprime crisis, comparing that to what happened with the old system. Thank you very much, and I yield back.

Chairwoman CAPITO. Thank you. I would like to say in terms of growing government, I would remind the committee that the CFPB will have over 1,000 employees. I would say that is a large growth in government, some of them coming from existing agencies, but many still remaining in their original agencies. And the FDIC has recently announced that they are going to be creating a new compliance division, there again growing government further.

Mr. Royce for 5 minutes.

Mr. ROYCE. Thank you. I think we have gotten it exactly backwards. The bifurcated regulation that we have here with the CFPB is exactly like the bifurcated regulation that we had with respect to the GSEs. So if we had Congress coming in and muscling the market and basically saying with the GSE Act that you could overleverage, and here you had the safety and soundness regulators, the prudential regulators who said no, no, that is a mistake; 100 to one leverage. The goal is forcing people to buy junk like Countrywide and holding that on the books. You are going to do that just so that everybody can own a house, whether they can make a payment or not? You are going to put that kind of leverage into the system? You are going to muscle those kind of goals to create a market for junk like Countrywide out there?

That is the insanity. That is the insanity of duplicating that kind of system and trumping the prudential regulator, yet again, who wanted to regulate the GSEs for systemic risk. So now here we have created, and I will ask this question of Mr. Sharp, we have created a situation where we have made it harder, even harder for the prudential regulator to have the kind of say over safety and soundness they should have had. And here what we have done under the FSOC, is they can only block the CFPB regulations if two-thirds of its membership, which includes the CFPB director, concludes that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

Mr. Sharp, do you think this standard is too broad and the number of required votes needed to overturn too high to effectively protect the financial system from onerous and overreaching activism by the CFPB?

Mr. SHARP. Yes. The Chamber definitely believes the bar is set too high. I think the critical point here is it seems like Congress recognized that there was a potential for a problem here. That is why this provision is in the bill. But the way it was set up, it is a bar that it is not clear that any rule could ever clear. Even if you have all 5 prudential regulators, 5 of the 10 members of the FSOC make a decision that a rule could undermine safety and soundness, that is not enough. You still have to convince everybody else. So if this is a safety and soundness question, it seems like if you have unanimity among the safety and soundness regulators, then that should control.

Mr. ROYCE. And this is the aspect that concerns me, because I have talked to all the prudential regulators and heard their concerns, both during the markup of this bill and during the conference on this legislation. Let me just ask you, how would you improve upon this language, Mr. Sharp, if you might make some suggestions?

Mr. SHARP. Sure. The language in the bill before us today?

Mr. ROYCE. Yes. How would you address this issue; in the way Mr. Duffy addresses it with his bill, or how would you—

Mr. SHARP. Yes, I think the Duffy bill is a very good solution. The only thing I would say, in addition to what is before us here in the legislation, is the authority to review and override CFPB actions, as I understand it, only applies to regulations. We have heard from Professor Warren that her inclination, at least at this point—and she is not obviously the director—but at this point, speaking on behalf of the Bureau, is not to regulate through regulations and to use enforcement actions to sort of push for compliance.

Now, that is fine and that is one way of doing things, and it wouldn't be the first time an agency did that. But if that is the case, if that is the primary means of pushing for compliance and for shaping the landscape, then those types of actions should be, at least some of those actions, could be broad and sweeping enough to have safety and soundness implications, and it is probably a good idea for FSOC to have the authority to review those as well.

Mr. ROYCE. Thank you, Mr. Sharp.

I am going to ask Mr. Wilcox, in your testimony you express support for Mr. Duffy's bill to strengthen the review of CFPB rules, and you mentioned that the ICBA has proposed language to take his bill a step further by allowing the FSOC to veto a bill that would adversely impact a subset of the industry in a disproportionate way. I would just ask you if you would want to elaborate on your concerns there.

Mr. Wilcox is not on this panel, so I will ask that question of Ms. Andersen.

Ms. ANDERSEN. I cannot speak on behalf of the Independent Community Bankers, so I am not quite sure how to answer your question.

Mr. ROYCE. In that case, my time has almost expired, and I will yield back.

Chairwoman CAPITO. Thank you. I would like to recognize Mrs. McCarthy for 5 minutes for questioning.

Mrs. MCCARTHY OF NEW YORK. Thank you. Thank you very much for having this hearing. And I find it very interesting. I keep seeing every week the numbers in foreclosures. I keep seeing the numbers of people losing their homes, many of them becoming homeless. And I know then when we had all these hearings, going back when we were working to see what we could do to protect the consumers in the future, and here is something that we have in place that hasn't really gone into place yet.

And I know there were concerns with the credit unions and some of the banks, but we also know that Elizabeth Warren stated in her testimony in March, and a few other times before that, that the CFPB must consider the impact of proposed rules on community banks and smaller credit unions, as well as consult with Federal banking regulators, consider the written objections raised during the consulting process.

We are forgetting why we are putting this together. Everybody forgot about the consumer. And everybody can blame everybody else, but nobody was there to protect the consumer. No one.

So there are specific—and my question is to everybody. There are specific requirements that the CFPB must adhere to in carrying out their regulatory activities. Shouldn't Congress allow the CFPB to become implemented before we start making changes?

We have done this before. It is called technical changes as we go down the road. Basically, almost every bill that passes this House comes back for technical changes.

And then if there was a commission structure in place, what would have happened if there wasn't agreement on how to respond to a consumer threat or move forward on a proposed rule? Wouldn't the consumer end up being disadvantaged from the gridlock?

And that is what we were trying to prevent in the beginning, gridlock. Because around here, everybody knows it, Republican and Democrat, it takes forever to get something done. And in the case of what happened for consumers across this Nation, they are the ones who paid. They are the ones who paid. They paid by losing their homes. They paid by losing their jobs.

And what are we doing for them? In my opinion, we did something for them, and we are doing nothing now.

Mr. Shelton, why don't you start?

Mr. SHELTON. Thank you so much. And again, I am in full agreement that to delay the implementation of these long-needed protections of the American consumer is something that we have to remember throughout this process.

The CFPB needs to have an opportunity to be fully implemented to become fully operational. We need to move very quickly. The NAACP sent a letter very recently to the President asking for a nominee to serve as director of the CFPB. We think that is extremely important. But slowing down this process again brinks on the terms of insanity.

The revisionist history that we continue to hear, about why it was so important to put this program in place in the beginning, is something we must go back and look at. We testified before and it stands today that we had people being offered products they could not sustain.

The issue for us is twofold: one, the sustainability of access to credit; and two, protecting consumers from the predatory nature of some of these financial services institutions. We need to move very quickly and decisively to make sure both of those particular provisions are in place. We see this as something that has been well debated, well discussed, it has been legislated. The President has signed it into law. Let us now implement this program and let the American people enjoy the protections that the Bureau offers.

Mrs. MCCARTHY OF NEW YORK. Thank you. Anyone else? Ms. Smith?

Ms. SMITH. Thank you very much. We appreciate Elizabeth Warren's statement, and would urge Congress to make sure the concerns of small institutions like credit unions are taken into account as the CFPB goes forward. Compliance burdens would still be inevitable. Credit unions have a board regulator, NCUA, and we are not the cause of the problem. So a board could work.

And if I could just give you a personal testimony of what I have experienced. When the predatory lenders were out there doing 40-year mortgages, interest-only mortgages, my examiners—before the regulation got out on NCUA in black and white—were calling us on the phone and saying, "Don't do it. Don't do it."

I just had another example last week, and it doesn't have to do with lending. But NCUA is a source for our members to complain. I had one member who complained about a $40 withdrawal from an ATM and she did not get the money. She wrote the letter to NCUA and we—before I got the letter from NCUA, I had already resolved it. But then I had to turn around and respond back to NCUA. And this was in less than a week's time. So I think NCUA does a good job at really keeping us on the right track.

Mrs. MCCARTHY OF NEW YORK. Let me just interject. I agree with the credit unions and I also agree with our community bankers. We tried to do whatever we could, many of us, as during the regulation part, to protect them because we know they did nothing wrong. But unfortunately, at times, everybody is pulled in, and that is why we want to try to make sure that we make it right for those who had nothing to do with the economical failure.

Chairwoman CAPITO. Thank you. I would like to recognize Mr. Renacci for 5 minutes for questioning.

Mr. RENACCI. Thank you, Madam Chairwoman.

I thank all of you for your testimony today. One thing I heard consistent with all four of you was that you all support sound and effective consumer protection. You said it in different ways, but you all said that.

My question comes down—and I am going to ask all four of you. The four pieces of legislation that we are talking about, would any of you tell me how that weakens the ability for the CFPB to have effective oversight on sound consumer protection? Because you all talked about how the four pieces of legislation were okay.

I want to know if there is anyone who could tell me how any one of these four pieces of legislation weaken the ability. We can start with—

Ms. ANDERSEN. I don't think they do weaken consumer protection. Consumers and small businesses are the lifeblood of traditional banks. We take care of them. If we don't take care of them, we don't survive. What these changes will do will expand our ability to continue to take care of our customers.

A commission is far better than having one single person have the authority over deciding what products I should be delivering to my customers in Bennington, Nebraska. I have a hard time believing that somebody in Washington, D.C., one person, one single person, understands the needs of my community.

Mr. RENACCI. And again, I understand your—you guys have all indicated your thoughts on how these help. I want to hear if any of you can tell me where it has weakened any one of these pieces of legislation.

Mr. SHELTON. I would certainly argue that it slows the process. One of the things we also experienced were products that were being offered very quickly, and not being able to respond quickly enough to be able to address the damages that were created by many of the predatory lending packages we ended up fighting.

If you end up, quite frankly, with the arguments to be made that having a commissioner, an oversight along those lines, and not allowing one person to actually provide the leadership in this particular case, also understand there are checks and balances for that one person that could very well slow the necessary oversight and enforcement that this agency must be responsible for.

Quite frankly, when you look at these pieces of legislation, all I am seeing are things that will slow down the process and not add value to the process of oversight and protection.

Mr. RENACCI. If it slows it down and it gets it right, we are still in the right place, as long as it protects.

Mr. SHELTON. If you can establish it somehow did it right; but, quite frankly, what we have seen so far does not establish that.

Mr. RENACCI. Ms. Smith, when it comes to credit unions, and I have had a number of credit unions come visit me in my district, credit unions do provide services to low- and moderate-income families and households, correct?

Ms. SMITH. That is correct.

Mr. RENACCI. Do you see a director—one of my concerns about having one director who maybe doesn't like credit unions or maybe doesn't like the way credit unions are going, that it may affect the ability to service low- and moderate-income families.

Ms. SMITH. Absolutely. In answering your first question, we do think that it would strengthen, so we are in favor of it. But in answer to your second question—could you repeat it again, please?

Mr. RENACCI. I said if you had a director, one of the problems with having a single director is they may say that credit unions don't provide service. My biggest concern is that credit unions do provide service to low- and moderate-income families. The question was, if you saw a director who was taking this agency in a direction that would hurt your credit unions, would you be able to provide services to low- and moderate-income families?

Ms. SMITH. No. It would really put a damper on the services that I could provide. So I am very concerned. I don't feel that one person—I am in favor of five. I think you will have a broader array. I think there would be some confusion, too, to having an examination, a dual examination, so to speak. I think there would be confusion at my board of directors level, staff management. We wouldn't know who we really ultimately reported to.

Mr. RENACCI. And, Ms. Andersen, moving on, you had some interesting comments in your testimony about some of the other overreaching things that the States could provide. Could you go into a little more detail on that? You talked about statutory language prohibiting States from imposing additional consumer protection.

I would just like to hear a little more about that.

Ms. ANDERSEN. I think it is imperative that we have common regulation. We can't have different regulation in one State over another, because most all of us do business in more than one State. I am located in Nebraska, relatively close to Iowa. I have farmers that I do business with who own land in both States. We have customers who have vacation homes in Florida, and we need to have one common regulatory guide so we understand the rules of the road clear across the country.

Mr. RENACCI. Thank you. I yield back.

Chairwoman CAPITO. The gentleman's time has expired.

Mr. Miller for 5 minutes for questions.

Mr. MILLER OF NORTH CAROLINA. Thank you.

Critics of the OCC, including me, think that the OCC has been the most captured of the regulators, the most permissive of the regulators, and the OCC's permissiveness to the banks that they regulated contributed greatly to the financial crisis of a few years ago, just 2½ years ago. And a big part of that was their assertion of preemption; that banks that were subject to the OCC, regulated by the OCC, would not be subject to State laws. And there are a lot of States who saw what was going on right under their eyes. State legislators saw it, tried to pass laws prohibiting it, and the OCC kept them from applying their laws, particularly with respect to mortgages and predatory subprime mortgages. The failure of States to be able to act contributed greatly to the subprime crisis and the financial crisis.

Mr. Sharp, should the OCC's assertion of preemption be subject to review by the FSOC, and, if not, why not?

Mr. SHARP. I am not here to testify today about the OCC.

Mr. MILLER OF NORTH CAROLINA. It is obviously parallel. Why not the same rule? If it affects the safety and soundness of the system, why should that not be subject to review by the FSOC?

Mr. SHARP. They are a safety and soundness regulator, whereas the CFPB is not. That is why the concern is greater in the CFPB context, because they exist outside safety and soundness.

Mr. MILLER OF NORTH CAROLINA. How about just subject to the APA, the notice and comment periods for assertions of preemption? If CFPB is going to be subject to the APA, why should OCC not be subject to the APA?

Mr. SHARP. I don't have a good answer for you, but I would be happy to provide one in writing, if you prefer.

Mr. MILLER OF NORTH CAROLINA. The Dodd-Frank Act, the CFPB statute as initially proposed by the Obama Administration, would have required plain vanilla products be offered side-by-side. There was an uproar in the financial sector. It was awful to think that they would be required to sell something they didn't want to sell, and the truth was the consumer advocates didn't love it all that much either, so it got dropped fairly quickly.

To make the point clear, Republicans offered an amendment in committee, and Democrats accepted it, that said clearly the CFPB would not have the authority to require any financial institution to offer any given practice. They could not require, they could only forbid. They could forbid practices that were abusive to consumers or deceptive or unfair. They could not require them to do something that was good for consumers. And further, it is clear that the CFPB does not have any authority to set interest rates, so you can price products however you want to. If they are a greater risk, you can price them accordingly.

Can you give me an example, Ms. Andersen, of a consumer practice that you have to do, that you are afraid that the CFPB might forbid as abusive or deceptive or unfair, that you have to do to stay in business?

Ms. ANDERSEN. To stay in business, I have to serve my community, and in serving my community, I can develop products for the consumers in my community that are helpful. One great example of this is we have a large Burmese refugee community in our area, and we worked with our regulator and developed a product for them that allows them to buy homes. They couldn't qualify—generally speaking, they can't qualify for a traditional secondary market loan because they haven't lived in the United States for 2 years, and don't have 2 years of tax returns, so that kicks them out of traditional secondary market lending.

We developed a program of financial education and a loan program for them to purchase a house, they have downpayment money, and move forward.

Mr. MILLER OF NORTH CAROLINA. Leaving aside the unlikelihood that the CFPB would forbid that, because it sounds very wholesome, do you have to do that to stay in business?

Ms. ANDERSEN. I have to serve my community to stay in business, and I need to serve the needs of my community. And I don't believe that one person in Washington can understand the needs of my community and the services that I need to provide for them.

Mr. MILLER OF NORTH CAROLINA. Mr. Sharp, can you give me an example of a consumer practice that you are afraid the CFPB might strike down as abusive and say you can't do that, but a financial institution would have to do that to stay in business?

Mr. SHARP. I can't give you an instance of a particular product. Again, the uncertainty is what is so concerning. We don't know what "abusive" means. We don't know if unfair, deceptive, and abusive is sort of an escalation, if you can fully disclose the characteristics of a product and still be considered abusive. These are the things—it is a term without much definition, more than was given in the statute, and we don't know what it means, so—

Chairwoman CAPITO. The gentleman's time has expired. Thank you.

Mr. McHenry for 5 minutes.

Mr. MCHENRY. Thank you, Madam Chairwoman.

Now, to Ms. Andersen and Ms. Smith, with the passage of Dodd-Frank and with the CFPB, for instance, do these additional regulatory burdens add to the cost of compliance?

Ms. SMITH. If I could speak first, 2 years ago, because of the unemployment rate, I was able to hire an attorney, a lawyer who just got out of law school, and I started her off at a salary of $40,000 and I had her do policies. But, lo and behold, 2 years later, she is my compliance officer and it takes up a lot of her time; she spends 90 percent of her time just doing compliance for the credit union.

So what has happened now, and I could speak from the heart, is I don't know how long I am going to keep her, because compliance is becoming larger—compliance is becoming such a big deal of importance to the credit union industry and to financial institutions that I can't compete with the larger credit unions in salary. So, yes, I do have financial costs that I have had to incur.

In addition to that, because of the recent credit card changes and the real estate changes, I have had to spend over $10,000 in the last 2 years just to update forms to keep up.

Mr. McHenry. How large is your credit union?

Ms. Smith. $80 million.

Mr. McHenry. Ms. Andersen?

Ms. Andersen. We have had significant increased costs. We have had significant increased costs just over the past few years of changes in regulations totally separate from Dodd-Frank and from the CFPB. Those regulations aren't in place yet, but we are getting ready for them. We see them coming. We know that the costs are going to be there and be a lot more expensive. We have to figure out a way to pay for them, and we are a $60 million bank, much smaller.

Mr. McHenry. Do you think these regulations, to both of you, do you think that these regulations will affect smaller institutions at a greater, I guess, cost basis per dollar that you have in your institution, as opposed to the large institutions?

Ms. Smith. Yes, they will. When I came into the credit union industry over 20 years ago, there were over 12,000 credit unions. Now, there are roughly under 8,000. I think we will see that number go down. I am really concerned about the credit union industry and its survival, because we have always been the lender of last resort. I can speak to that personally on what I am doing at Washington Gas Light Federal Credit Union.

Mr. McHenry. Ms. Andersen?

Ms. Andersen. Yes, I would agree completely. As I said, we don't have one person in charge of compliance. We may be having to move that way, hire yet an additional person, or take more time away from my community, which I really don't want to do.

Mr. McHenry. How many employees do you have, Ms. Andersen?

Ms. Andersen. Twenty-two.

Mr. McHenry. So you are talking about adding a full-time compliance person with what you see coming down the road?

Ms. Andersen. Yes.

Ms. Smith. I have 17, and that does include one compliance person.

Mr. McHenry. Oh, Lord. So if I can just ask a general yes-or-or-no question here—first Ms. Andersen and then you, Ms. Smith—did these regulations increase access to credit and reduce the cost of credit? Yes or no?

Ms. Andersen. No.

Ms. Smith. I would say no.

Mr. McHenry. Mr. Sharp?

Mr. Sharp. I would agree. No.

Mr. McHenry. Mr. Shelton?

Mr. Shelton. I would say yes.

Mr. McHenry. How so? We have two market participants who say no and then—

Mr. SHELTON. I am sorry, Congressman. What I am hearing is an argument over having to comply with these regulations, with having someone who is responsible for making sure the regulations provide the protection the American people need. And, quite frankly, what we saw under the lack of regulation was the American people were left hanging.

Mr. MCHENRY. To reclaim my time, my time is about to expire, this idea that there is a lack of regulation is absolutely absurd. These financial institutions—Ms. Andersen, did you lack regulations 5 years ago?

Ms. ANDERSEN. No, sir.

Mr. MCHENRY. Ms. Smith?

Ms. SMITH. No, sir.

Mr. MCHENRY. Interesting. Because the argument here—if I may finish—the argument here is that somehow there were no regulations, right?

Ms. Andersen, so did you cause the crisis that we just faced?

Ms. ANDERSEN. No, sir, I did not.

Mr. MCHENRY. Wow, that is interesting. You are a regulated entity. How many regulators do you have as a small financial institution?

Ms. ANDERSEN. I am regulated by the State of Nebraska and the Federal Reserve.

Mr. MCHENRY. In addition to what you see coming down the line in Washington, you will see further regulations. Okay.

Ms. ANDERSEN. Yes.

Mr. MCHENRY. Thank you for your testimony. I certainly appreciate your making the point that this drives up the cost of lending and reduces access to credit. Thank you.

Chairwoman CAPITO. Mr. Scott for 5 minutes for questioning.

Mr. SCOTT. Yes, thank you very much, Madam Chairwoman.

Let me start with you, Ms. Andersen, and Ms. Smith. Can you give me some examples of how the Consumer Financial Protection Bureau and its function will dry up access to credit? This is a major concern that many of you in the financial services industry have raised, that if we do this, it will dry up credit. Could you tell us how?

Ms. ANDERSEN. I believe that it will stifle innovation and it will make banks concerned about how they are going to deal with their consumers and go forward, and that it will dry up credit.

Ms. SMITH. I will have to put more resources into compliance, and if you are 17 employees strong, lending could suffer as a result of that.

Mr. SCOTT. But you would agree that there is some question here of a fear of the unknown. There is an uncertainty here. We do not know; is that a fair assumption? I think we really, really need to, in order to wade through this in a fair way, fair to the financial services industry, is to have concrete examples, if you could give them, on how putting forward these protection agents for consumer protection would dry up access for credit to the very people we are trying to protect. I think that is the real core of the issue.

Ms. ANDERSEN. Speaking from experience, and, granted, we don't know exactly what the new Bureau will do, but speaking from experience, I can give you an example.

The Federal Reserve has recently issued new rules on overdraft protection. Those rules require significant resources from a bank the size of mine. We had an overdraft protection program in place to serve our customers prior to the issuance of those new rules. We have discontinued that program, so our customers have suffered. But we have discontinued that program because we are too small to absorb the costs involved with the new rulemaking.

Mr. SCOTT. Okay.

Ms. ANDERSEN. And our customers now are paying overdraft fees, because we are bouncing more checks, and they are paying fees at the merchant because we bounced the check, and they are having their names posted behind the checkout stand saying, "Don't take a check from this person." So our customers are suffering.

Mr. SCOTT. Okay. Yes, Ms. Smith?

Ms. SMITH. I cannot say that there is not an unknown. Of course there is an unknown. But the CFPB has said, "credit cards and mortgages," and they are two areas where my credit union has had to dedicate significant resources in the past 2 years. And I guess my concern is, it is working. We have made revisions to the mortgages and to the credit cards in the last 2 years. To have it redone does not help. In my opinion, it is a waste of time.

Mr. SCOTT. We gnawed on this for quite a bit of time last year when we were working on this bill. We went through this entire process and this issue. I think it is one that we will continue to move forward on, because that is the issue.

But I would like to get a word in, Mr. Shelton. I, too, have some concerns about this commission, because as you know, I represent Atlanta and Georgia, and we have had a series of problems in terms of predatory lending. And I know my friend in the banking community said she doesn't like to use the word "abusive" and would like to get that out. I can understand that. But in fact, these were very abusive practices of predatory lending, fleet finance, going all the way back to that. So I share that.

My concern with the commission is that the very nature of the reason we got so deep into this problem in the downturn of the economy was what happened in the housing bubble falling was we could not act to move to correct these situations quickly enough.

My fear is that a commission would only detour that. It would only add to the slowing down of the process. So I think we still have to work on this issue here some more.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. I would like to recognize Mr. Pearce for 5 minutes for questioning.

Mr. PEARCE. Thank you, Madam Chairwoman.

Ms. Andersen, in the previous questions, the question was: Do you know of anything that would dry up credit to real people? Now, I heard you talking about the Burmese. Don't they qualify as "real people?"

Ms. ANDERSEN. I certainly think so.

Mr. PEARCE. And wouldn't the rules dry up credit to those real people?

Ms. ANDERSEN. They absolutely would.

Mr. PEARCE. Okay.

Ms. Smith, do you all charge a different amount, different rates of interest to any of your consumers? Let us say you have 350 people who have 30-year mortgages for houses. And maybe you don't lend money for houses, but let us say you did. Do you have different interest rates for any of your customers?

Ms. SMITH. No, we do not.

Mr. PEARCE. So everybody gets one interest rate?

Ms. SMITH. Everybody gets one interest rate on a mortgage loan. We offer second mortgage loans.

Mr. PEARCE. If they have not paid their bills in the past, you are going to try to lean out and give them a little credit; you don't add just a little bit?

Ms. SMITH. If it is an unsecured or an automobile loan, it is risk-rated.

Mr. PEARCE. So some people pay a little bit higher?

Ms. SMITH. Yes, they do.

Mr. PEARCE. Now, Mr. Shelton, in your testimony when you said you wanted the same access to credit, is this then what you are saying; people are going to have different amounts of mortgage payments, different amounts of interest rate? Does that qualify in your books as the same access to credit?

Mr. SHELTON. Certainly. As we are talking about interest rates, we know that there are some aspects of the market that are high risk. I understand the importance of the prime market, quite frankly.

Mr. PEARCE. But you basically don't disagree with the idea that risk should be related; just that when they are picking out people out of the community and targeting them with fast talk and fancy products and stuff like that. But your objection is not to a market which differentiates between people who are bad risks? That is my question.

Mr. SHELTON. Not bad risks, no, sir.

Mr. PEARCE. You don't mind them paying more interest. That is not in your objections, right?

Mr. SHELTON. Certainly, risk assessments have to be made. Risk assessments have to be balanced and fair.

Mr. PEARCE. That is fine. What I would like to really concentrate on was my friend from North Carolina began to change the concept about what the CFPB is going to do, and that is where the great alarm is.

You noticed that most people in the testimony, in the hearing statements here, say that the idea of the CFPB is to protect the American people, to protect the consumer. And yet we suddenly eased the argument over: Do you have to do this to stay in business?

Now, that is significantly different than protecting the consumer. Yet, I think Mr. Miller is giving us a heads-up as to where this thing is really going. Do you really need that to stay in business? And if you can't answer it to the affirmative, I think you are going to be disavowed from creating those products that really do deal with your communities, like Ms. Andersen suggested, that we have a very unusual circumstance that is never going to come to the attention of a Federal regulator. There are 50 States. There are thousands and hundreds of thousands of communities, and the chance of them looking at this one little deal are not great. It is this we are going to only consider what you have to do to stay in business, and you don't have to do that and we are not going to approve it.

We see that every day in the Federal Government. They don't give approvals that are required. Right now, we are killing jobs off the coast of Florida, off the coast of Louisiana, by not giving permits that are required. There is no law that keeps them from doing it. We just didn't give those permits, so about 100,000 people are now out of a job; 33 $5 billion platforms are beginning to steam away at 4 knots per hour, which means they have to really have a serious desire to move to Africa and South America. Those were simply not allowing them to proceed ahead.

So as we visualize this protection of our consumers, I will tell you where the real access to credit is going to be denied, that my friend Mr. Scott was asking about. What is going to happen is that a product is not going to be approved because it maybe can't differentiate between whether or not it is race-based. The product is simply going to be disallowed and the people who desperately need access to that credit are not going to have it. I can see that circumstance arising.

Mr. Shelton, do you have a comment? Go ahead.

Mr. SHELTON. I would just say that I think the real issue here is whether or not these would be abusive products. I know the term "abusive" becomes problematic. However, when you look at some of the products that the Financial Protection Bureau was set up to address in the first place, we are talking about products like exploding ARMs. You are talking about trying to prevent people being charged an interest rate under another name at rates of 465 percent and higher. Indeed, we are talking about an oversight to provide some protection of American consumers from the kind of predatory nature of many of these products that we are trying to prevent.

Mr. PEARCE. I understand that. It is just that we do have regulator agencies that were supposed to be doing that, but they did not do it.

Mr. SHELTON. But they didn't.

Mr. PEARCE. This next regulatory agency won't—my time is gone.

Chairwoman CAPITO. Mr. Carney for 5 minutes for questioning.

Mr. CARNEY. Thank you, Madam Chairwoman.

I would like to pick up on this discussion about the effect of putting together the Bureau here on your bank practices, and in particular the testimony which you gave earlier that the Dodd-Frank bill itself would impose new hurdles and difficult conditions in the operation of your facilities. I would like to know if you can be more specific about that.

I am not as concerned about one director or a five-person board, all that kind of stuff, in setting up this regulatory agency. I am more concerned about some of the testimony that you gave about provisions that would—if you could be specific, everybody agrees that there ought to be consumer protections, it sounds like. At least that is what everybody prefaced their remarks with. They were very concerned about some of the predatory and abusive practices that we know occur in the marketplace.

So there are two things that really caught my attention. One was the specific reference to specific things in Dodd-Frank that are new requirements that would impact your businesses; and the second was gaps that exist for nonbank lenders.

If you could, either Ms. Smith or Ms. Andersen, just detail those things for me, please?

Ms. ANDERSEN. The legislation looks like we are going to have about 252 new regulations; roughly, by estimates, 5,000 new pages of regulations to deal with. Again, I have 22 employees. That is a lot of pages of regulation for us to understand, implement, and comply with.

Specifics, I can—I am happy to get you that answer later. But I do have one specific thing.

Mr. CARNEY. If there are specifics beyond just the fear of the unknown, which we have talked about, if there are some specifics, I would like to know those. Some of the specifics aren't known because there is still rulemaking going on.

Ms. ANDERSEN. Requiring the registration at the SEC of municipal advisers is one of those potential issues. I think the final rules aren't written on that yet, but the way it looks at the moment, anybody who has any contact with municipalities, so it could be a teller. The town clerk comes into my bank and has money to deposit and the teller says, "You know, if you put it over in this account, you might earn a little more interest than if you put it in this account," would qualify as a municipal adviser, and that person would then be required to register with the SEC and be regulated by the SEC.

Anybody who serves on those boards, if they are not elected and they are providing advice, in small communities, the people who provide financial advice to the schools and to the foundations are very often the banker, and the banker would have to then be registered with the SEC.

Mr. CARNEY. Anything else?

Ms. ANDERSEN. That is the one that comes to mind right now. I can get others for you. And the second part of your question—

Mr. CARNEY. That doesn't sound very onerous. It just sounds kind of ridiculous.

Ms. ANDERSEN. It is onerous to have another regulator involved. That means the SEC can then come into my bank and regulate me. The annual fees to register are excessive. It is just one more layer of regulation.

Mr. CARNEY. Thank you.

Ms. SMITH. One regulation that comes to mind is the interchange price fee cap. I think my credit union will definitely be devastated by the loss of the revenue from the Fed's proposed debit interchange fee rule. Although we fall under the so-called exemptions, because we are a lot less than $10 billion, I believe that forces as a result of this provision will drive—

Mr. CARNEY. If I can cut you off, because we have been running out of time, we have had a lengthy discussion about interchange. There are lots of things going on there.

Ms. SMITH. Okay. But we can submit more information to you at a later date.

[The additional information referenced can be found on page 140 of the appendix.]

Mr. CARNEY. Mr. Shelton, is there anything else you would like to add to the discussion about some of the concerns? I appreciate the concerns that you have talked about and I share those concerns. I am just wondering, the balance here that we are trying to strike between appropriate regulation and addressing the abusive practices, the predatory lending that concerns you and your organization.

Mr. SHELTON. Certainly, through the thorough investigation done by this committee, by the full committee, by the Senate Banking Committee, on the challenges and the problems of the lack of regulation, prompt us to make sure that these new regulations are put in place. Again, we are trying to avoid the insanity issue here. We need to do things differently because what we did before did not work. What we are seeing here are things where it is clear it will improve the process and add to the protection, and hopefully the access to capital where American people did not receive very much.

Mr. CARNEY. Thank you. We are out of time.

Chairwoman CAPITO. Mr. Westmoreland for 5 minutes.

Mr. WESTMORELAND. Thank you, Madam Chairwoman.

Mr. Shelton, in your testimony you quoted a spring of 2000 article that suggested that—I believe it says you asked the gentleman who wrote the article if credit scoring resulted in higher rejection rates for certain racial and ethnic minorities than for Whites, and his response was simply, "yes."

Are you saying that the credit bureaus are being unfair because of race and ethnicities, or are you saying that banks and credit unions have different scores for different categories of people?

Mr. SHELTON. No. Actually what I was referring to was the companies that actually do this credit scoring process, the FICOs and other organizations along those lines, had pretty much what we call a "black box." That black box is one that takes into consideration certain issues and concerns about the person who is applying for the credit and assigns a score accordingly.

What we argued was that, however, there were some racial and actually ethnic disparities in how they actually come to those scorings, and they won't tell us exactly what that is. In essence, you put it in the hands of so many Americans, a process which is considered proprietary. They argue that they don't have to tell us exactly how they come to the score because that would otherwise affect their business. That is what we were talking about.

Mr. WESTMORELAND. So you are not saying that Ms. Andersen or Ms. Smith or any of those are taking somebody who has a 650 credit score and rejecting them based on their race or ethnicity rather than the credit score?

Mr. SHELTON. What we saw was a different standard being applied for racial and ethnic minorities than for White Americans. Quite frankly, those who were in the same income class, at the same risk factors, those at the same level of property and so forth, and the same level of education, were actually being steered into subprime loans, if you were African American or otherwise a person of color, than were actually eligible for a prime loan. That is what we were talking about at that point.

Mr. WESTMORELAND. With the same credit score?

Mr. SHELTON. In some cases, with the same credit score as well.

Mr. WESTMORELAND. Ms. Smith, is that true?

Ms. SMITH. That is not. At my credit union, that is not true.

Mr. WESTMORELAND. Ms. Andersen, is that true?

Ms. ANDERSEN. No, that is not true at my bank either.

Mr. SHELTON. I would be delighted to offer for the record a copy of the report with a full analysis. I can't say their particular small—

Mr. WESTMORELAND. I don't really want to see a 2000 report. This is 2011.

Mr. SHELTON. We will give you an updated copy.

Mr. WESTMORELAND. Do you think the CFPB is going to help get everybody equal credit scores?

Mr. SHELTON. It will help make sure that everyone is scored fairly. And that is the issue here, making sure the same issues are taken into consideration and preventing the kind of misdirection of those who should have gotten a better interest rate, fees, and so forth.

Mr. WESTMORELAND. Do you have some specifics of the accusations that you are making against some of the credit scoring folks?

Mr. SHELTON. We do.

Mr. WESTMORELAND. I would like to see that, too.

Mr. SHELTON. We will send it to you.

Mr. WESTMORELAND. The next thing you mention, in the next paragraph actually, is you are talking about how even after the Fair Housing Act, after the Equal Credit Opportunity Act, after the Mortgage Disclosure Act, after the Community Reinvestment Act, that racial and ethnic minorities are still treated disproportionately in the world of financial services. So you think the CFPB or Dodd-Frank is going to straighten that out?

Mr. SHELTON. It is certainly our hope.

Mr. WESTMORELAND. Okay. Could you give me an example of what it would take for them to do to straighten it out?

Mr. SHELTON. It is clearly the increase of oversight. What we experienced before, again, we were convinced the chief regulatory agency—

Mr. WESTMORELAND. What type of oversight? Are they going to be doing—because I know to get a certain loan now, you have to do consumer financing, education, how to buy a house. So I want a specific from you about how this is going to help.

Mr. SHELTON. It should outlaw—

Mr. WESTMORELAND. Other than oversight.

Mr. SHELTON. It should outlaw exploding ARMs. We knew that there were Americans who were being sent into financial packages they couldn't sustain. Anytime you have a product that would give you a mortgage that you couldn't support in the first place, but at the introductory rate, what we had was people being given mortgages at 4 percent for the first 2 years, increasing that by 2 percent every year for the next 5 years, and then dropping the escrow so people couldn't afford to sustain them.

Mr. WESTMORELAND. I was in the construction business, but that was not because of somebody's ethnicity or anything else. They made those stupid loans to a lot of people.

Mr. SHELTON. Yes, they did; but for some reason, they targeted—

Mr. WESTMORELAND. And that was due, a lot of it, to the Community Reinvestment Act.

Mr. SHELTON. I disagree with that.

Mr. WESTMORELAND. I appreciate all of you being here. I yield back.

Chairwoman CAPITO. Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman, and thank you for the unanimous consent that I might participate.

I think that we should talk about legitimate concerns. I believe that the interchange fee is a legitimate concern. I think we have to do something about it. I think that flexibility with products is a legitimate concern. We will have to do something about it. I believe that personnel issues for small lenders, this is a legitimate concern. We have to do something about it.

But there are also other legitimate concerns that we have to do something about—3/27s, 3 years of a teaser rate that you qualify for, the adjusted rate that you do not qualify for, or 27 years of a rate that might move up or down—2/28s, the same thing. A little bit more onerous. Yield spread premium. Qualify for a prime rate, given a rate higher than the prime rate, never told that you qualified for the prime rate. Pushed into the subprime market. We need to do something about it. Teaser rates that coincide with prepayment penalty. Legitimate issues. We need to do something about them.

Naked shorts. I don't mean to sound X-rated, but for those of you who understand these things, people playing the market and not having the ability to cover.

Credit default swaps in an insidious way. There are some ways to have credit default swaps that are meaningful. But when you take it to the level of doing what we used to call participating in the numbers racket, where a number runner—many of you don't know about this. I am a little bit older than most of you, but we used to have these guys come through the neighborhood. They would sell something called numbers. And the number runner, if he had a big hit on one number, meaning a lot of people bought that number, he would go to a fellow bookie and say, "Listen, I have a big run on number 7 this week. I will give you $10,000 and if number 7 hits, you split the loss with me. If it doesn't hit, you keep the $10,000." They literally found a way to legitimize that kind of behavior in an insidious way.

We have to do something about it. So we have all of these issues that are legitimate and we have to do something about them. And because time is of the essence, I will ask but one question, perhaps a follow-up, but one question.

Are any of you contending that we need to do away with the CFPB, the Consumer Protection Financial Bureau? Are any of you contending we need to end it?

Mr. Shelton, are you contending that we need to do away with it?

Mr. SHELTON. Absolutely not, sir.

Mr. GREEN. Let the record reflect that he says "no."

Yes, sir?

Mr. SHARP. No, sir, we are not.

Mr. GREEN. Ma'am?

Ms. SMITH. No, sir.

Ms. ANDERSEN. No, sir.

Mr. GREEN. Since we are not going to end it, and I think most people in this room agree—and, by the the way, I plan to work with my friends on the other side. I think they will attest to the fact that even though sometimes it is difficult for them to do it, we still work together, we try as best as we can. I plan to work with them. I plan to work with people who are seated at the table and behind the table to try to get some of these things resolved.

That is what this really is about: How can we mend it? Because as was indicated by the ranking member, I believe, all major legislation faces challenges. The only piece of major legislation that we will ever pass that will not face a challenge, that will be perfect, is the one that I will draft.

So now, given that I am not drafting all of this legislation, it will all have to be mended. And that is the challenge. We have to find a way to mend it, rather than end it, so that all of these legitimate issues can be addressed.

Madam Chairwoman, thank you for the time. I yield back and beg that I be excused because I am late for another meeting.

Chairwoman CAPITO. Thank you.

Mr. Luetkemeyer for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Mr. Sharp, in your testimony, your written testimony, you talk about some discussion that Professor Warren had in some of her documents and some of her writings with regards to her opinion of a commission versus a board. And I think that is what Chairman Bachus' bill is all about, is we are looking at trying to go from a single person to a commission here.

In your discussion, you talk about about a 2007 article, that Professor Warren believes that it probably clearly shows a Consumer Product Safety Agency is a cost-effective way to set up an agency. Another comment you made is in a 2008 Law Review article, that she indicates that a major challenge in establishing a Federal regulator, like what she is trying to do or they are trying to do, is minimizing the risk of capture, which means that only one person can have the total control over a thing and capture all of what is going on.

Can you elaborate just a little bit on that, since that is really the focus of what this committee should be talking about today?

Mr. SHARP. Certainly. For more than 100 years, there has been a strong preference for regulatory agencies, particularly independent regulatory agencies; that there be bipartisan representation; that there be multi-member leadership. In fact, I am glad actually that Mr. Green asked the question, is anybody on the panel here asking or proposing that the CFPB go away; and the answer unanimously was no, it is important. Also, there were a number of questions about what in particular are we concerned about in the credit markets. Unfortunately, the answer for the most part is, we don't know.

So what is the best way to prevent serious unintended consequences down the road as this new agency begins to put out regulations? In our view, the best way to mitigate that at the top, early on here, before we begin to create problems, is to establish a structure, a framework, a way of doing business at this new agency that incorporates a diversity of views. Again, it appears that Ms. Warren in previous positions has agreed that structure is sound.

Mr. LUETKEMEYER. I think that is important from the standpoint that she, quite frankly, is probably the leading candidate, and she agrees with what we are trying to do here today, and I think that is an important point to make.

The second point I want to make is the the other day when she was here, I asked her about the cost/benefit of the regulations that are proposed by all the different groups, as well as something her testimony was suggesting we should take a look at, the cost/benefit of the regulations that she is overseeing. I asked her the question, I said, "Okay, give me an example of when the cost is too much for a regulation." I never got an answer.

We talked about cost quite a bit today with Ms. Andersen and Ms. Smith, and I think it is important to know—can you tell me right off the top of your head, or just a ballpark figure, what the cost of compliance is and how much it has increased in the last couple of years and what you anticipate with this new bill—just the percentage of your income?

Ms. SMITH. If I can go first, I do have a full-time employee. So it probably is costing me about $80,000.

Mr. LUETKEMEYER. Okay, so 1 out of 17. So you are probably looking at, what, a 6 percent increase; 6 percent of your cost increase is a result of compliance, fair, roughly?

Ms. SMITH. Approximately.

Mr. LUETKEMEYER. Probably similar to Ms. Andersen?

Ms. ANDERSEN. Very similar. I would estimate we have about 1½ people committed to compliance.

Mr. LUETKEMEYER. I think it is important to understand, Congressman McHenry a while ago made a great point with regard to small institutions like yourselves make it difficult when you have to spread that much cost over all of your income and all of the products you have, because you don't have quite the portfolio that the large institutions do to spread those costs out.

As a result, it makes it more difficult for you to be in business. And I think it is important to understand that by increasing these costs, it also increases the danger of—you need to continue to be viable, especially when you have to look at 5,000 new pages of regulations. You may have to hire an attorney to actually go through and make sure that you are complying with all of this.

I think this is where this leads to, is this game of "gotcha" with the examination forces. They come in with all these new rules and regulations. And I think you, Ms. Andersen, made the comment about the small banks being endangered, or I think something like that with regard to these compliance costs. I think that this is—this goes back again to answering one of the other questions I think that somebody asked earlier with regards to access to credit. I think part of this is not only it hurts in several respects, number one, it is the fear of compliance. Because if you are going to get fined by not complying with something, I think you will hesitate to make those loans and provide those services. I think just the cost of compliance increases in general hurt, overall, the access to credit.

I am out of time. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you. The gentleman's time has expired.

At this time, I would like to excuse Ms. Andersen from the panel. She has a flight, I believe, that she needs to catch. So we have a couple more questioners we are going to go through, but I wanted to thank you for your testimony. When you need to leave, just go ahead and make your exit. But I wanted to be sure and thank you.

Ms. ANDERSEN. Thank you very much, Madam Chairwoman.

Chairwoman CAPITO. Mr. Huizenga for 5 minutes for questions?

Mr. HUIZENGA. Thank you, Madam Chairwoman. I actually don't plan on taking that much time.

I had been in real estate and developing back a number of years ago. My family is still involved in the construction industry, what little there is in Michigan these days, unfortunately. But one of the questions that I had was when I was in real estate, I was taught people are not black, they are not white, they are not red, they are not yellow; they are green. And they are green because, can they afford things?

That really to me I think is the crux of this as we we are talking about this. We are talking about whether people can afford to purchase the homes that they have. We talk about what has happened in the market. I have watched it very, very closely, and no State has been hit harder than Michigan in this.

Some of it may be generational. I am 42, and I think I am on my fourth house now. Mom and Dad are in their second house and they had half of their downpayment saved up when they bought it. Natalie and I weren't quite that far along.

You are all smiling, you are all nodding your heads, because I think it is a familiar story.

In so many ways, we have just sort of overextended ourselves as we have been pursuing what we thought was the American dream. It is the American dream to own your little piece of America, and so often that is in a home.

We have seen that destroyed in many ways, because, whether it is greed or what we thought was a necessity, I am very concerned about that. I am concerned about those stories. And I too want to hear those stories, whether we can point to specific instances of people being pushed into products that they should not have been. That is very concerning to me.

But I think we are at a watershed here. How do we make sure that we get people products that they can use? Because I also know that it used to not work very well, because there were so many artificial limits on people's ability to go own a home. We had thresholds that were very difficult to achieve in many ways. So I think we have both a cultural as well as a regulatory structural problem as we are trying to go forward on that.

What I am curious about is whether you think the structure—you all have said you believe that the Consumer Financial Protection Bureau is something that shouldn't go away. Maybe the follow-up question to that is the structure, because that is really what we are talking about here with Mr. Duffy and others' proposals here.

You believe that the structure of that particular program or Bureau needs to be that one person.

Now, we have had the leading contender, Mrs. Warren, Professor Warren, here. According to news reports this morning, coming out of Michigan, my former Governor, Governor Granholm, is also being apparently looked at for that position. Having worked with her for 6 years, she is a wonderful lady. Very smart. I want to make sure that we have a Bureau on that, whether it is her or whether it is Professor Warren or somebody else.

But I am curious. Can you answer as to whether you believe that somehow the structure of this would be impacted, whether it be a three-person or a five-person board versus this one particular person?

Ms. Andersen, I don't know if you would care to answer that?

Ms. ANDERSEN. I think that the structure, restructuring and having a board or a commission, makes a lot more sense. You are able to have a broader view, broader representation, especially assuming that board consists of people who have safety and soundness regulation experience as well as consumer advocacy experience.

Mr. HUIZENGA. Thank you.

Ms. Smith?

Ms. SMITH. Yes, I agree. We do want to see a five-member board in place. I don't feel that one person should run that organization.

Mr. HUIZENGA. Thank you.

Mr. Sharp?

Mr. SHARP. We definitely agree. A commission is superior to just having a single director.

Mr. HUIZENGA. Mr. Shelton, do you care to answer that?

Mr. SHELTON. Yes, sir. What we see in this particular case is this person actually has the authority to convene smaller groups of advisors to address the concerns that are before them. We see no problem with having one director in this particular case with the authority to convene the kinds of groups to help provide support for the initiatives the agency is going to be responsible for implementing.

Mr. HUIZENGA. Do you believe it is superior having that one person versus having a three-person commission?

Mr. SHELTON. At this particular time, I think having one person gives you that dexterity, that flexibility to move very quickly. One of the things that has also been very clear to us is that many of these products end up popping up almost like a whack-a-mole, and we have to be prepared to knock them down as quickly as we can. And having one person at the head means there is one person being held accountable for the agency.

Chairwoman CAPITO. The time of the gentleman is up. I think we are edging up towards a vote, so I want to make sure I get the panel and all the questioning.

So, Mr. Duffy.

Mr. DUFFY. Thank you. To kind of follow up on that, Mr. Shelton, then would you say that with the FDIC, that should also be just a one-person director; maybe the National Credit Union Administration, that should also be a one-person director? The SEC—one person—director?

Mr. SHELTON. Those particular agencies, quite frankly, have more than one person and have been ineffective.

Mr. DUFFY. So you would advocate that we should have a one-person director?

Mr. SHELTON. I am advocating having someone who can actually carry out the responsibilities of protecting the American people.

Mr. DUFFY. If we look outside of banking, we can look to the Federal Trade Commission and the U.S. Consumer Product Safety Commission, both consumer protection agencies that use commissions as well. Are they also ineffective?

Mr. SHELTON. Let me just say that, very well, if you wanted to address those agencies, we would be happy to come back and and testify.

Mr. DUFFY. But they are ineffective. So you think we should restructure the government so these agencies have one director?

Mr. SHELTON. We believe it would be a major improvement over the system we have right now.

Mr. DUFFY. Ms. Smith, was your credit union one of the contributing factors to the financial crisis?

Ms. SMITH. No, we were not.

Mr. DUFFY. You heard a lot about predatory lending today. Were you engaged in predatory lending?

Ms. SMITH. No, I was not.

Mr. DUFFY. I guess I was going to ask Ms. Andersen the same question. I assume her answer would have been the same. But as we have gone through these Dodd-Frank regulations, is it fair to say that the regulations on your credit union have increased dramatically?

Ms. SMITH. Yes, they have.

Mr. DUFFY. And with the new regulations that are going to come from the CFPB, they will also continue to increase with regulation, right?

Ms. SMITH. Yes, they will.

Mr. DUFFY. And you are not opposed to smart regulations in banking, are you?

Ms. SMITH. No, I am not. I just feel the unregulated should be regulated.

Mr. DUFFY. But overburdensome regulation increases costs, doesn't it?

Ms. SMITH. Correct.

Mr. DUFFY. And if you look at economies of scale, it makes it more difficult for a small bank or a credit union to compete against the big banks, doesn't it?

Ms. SMITH. Yes, it does.

Mr. DUFFY. You don't have the economies of scale, right?

Ms. SMITH. Right.

Mr. DUFFY. And in the end it drives up costs for your consumers, right? And you didn't have anything to do with the financial crisis or anything to do with predatory lending?

Ms. SMITH. No, sir.

Mr. DUFFY. But your consumers are paying the price for it?

Ms. SMITH. Yes, they are.

Mr. DUFFY. In regard to what we are talking about with regard to predatory lending, Mr. Shelton, I agree with you, it is atrocious what happened in the marketplace. You and I are on the same page with that and it has to be addressed, and you will find no argument from me with regard to that.

I want to talk about how the CFPB has been set up, however. I look at the review process. To have a situation where basically the only way FSOC can review a rule from the CFPB is if we have a systemic risk in the marketplace, in the financial system. The burden is incredibly high, isn't it? Would you agree with that?

Mr. SHELTON. I am still not seeing a problem.

Mr. DUFFY. So you are okay with that, an incredibly high burden, where the only way to review it is with systemic risk to the system.

Mr. SHELTON. I would love to hear the argument as to why that is problematic.

Mr. DUFFY. I guess I would say, shouldn't we say at some point if consumer protection is an affront to safety and soundness, shouldn't we have the FSOC then review those situations as well, even though it doesn't create a systemic risk in the whole financial industry?

Mr. SHELTON. Perhaps.

Mr. DUFFY. Okay, good. We are on the same page then.

Mr. SHELTON. Perhaps.

Mr. DUFFY. Okay. And if you look at the review process, the FSOC is a 10-person board. Ms. Warren or the director of the CFPB is one of the ten. Do you think the director of the Bureau should be one of the 10 who votes on the FSOC?

Mr. SHELTON. I see no problem with that. The continuity, I think, would be extremely important to any deliberations by that body.

Mr. DUFFY. Do you think they are going to be impartial? Do you think the director is going to be impartial on that board?

Mr. SHELTON. I think more importantly they will be informed, and that is extremely important in a situation like this.

Mr. DUFFY. You can be informed without having a vote, right? You can still present your case, but not be a voting member, right?

Mr. SHELTON. But even this body doesn't do an assessment of how a government agency is performing its responsibilities without bringing the heads of that agency before it. Quite frankly, you want that intervention, you want that involvement in making your deliberations.

Mr. DUFFY. And you can do that without giving the director a vote. And this is my concern.

Mr. SHELTON. But it is only one out of how many?

Mr. DUFFY. Ten.

Mr. SHELTON. One out of ten.

Mr. DUFFY. One out of ten. And we need a two-thirds majority to pass it. And with that two-thirds majority, one of the voting members is the director of the Bureau. So this is a supermajority. Doesn't it make sense to say if—and we are all on the same page, we want consumer protection.

Mr. SHELTON. Yes, we do.

Mr. DUFFY. And we also have a concern for safety and soundness. And if there is an affront to safety and soundness, why don't we go to FSOC, take the Bureau director out of play of FSOC, and have a 5–4 majority to overrule the ruling from the CFPB?

Mr. SHELTON. That has been their overview, that has been their responsibility, and, quite frankly, they haven't carried it out.

Chairwoman CAPITO. Mr. Canseco for 5 minutes.

Mr. CANSECO. Thank you, Madam Chairwoman. I am sorry that Ms. Andersen from the Bennington Bank is not here to answer some questions that I have. But I think that I can start out by saying that I feel that there is a strong impact that the CFPB regulatory authority could have on banks' ability to assess and to adjust credit risk on an ongoing basis, because badly implemented consumer financial protection regulations could hinder a bank's ability to maintain prudent credit underwriting standards.

But with that said, Ms. Smith, in your industry do you feel that is true with regards to maintaining your credit risk and the balance on your credit?

Ms. SMITH. Yes, I do.

Mr. CANSECO. Mr. Sharp, in my district in San Antonio, Texas, we have an enormous number of start-up companies, whether it is biotech or tech or other technology firms, and a lot of them as start-up companies find that their sources of credit are sometimes a little bit diminished, so they go to their own personal credit to obtain that primary financing. I noticed that the U.S. Chamber of Commerce has estimated that 47 percent of small business owners use personal and not business lines of credit in order to grow their businesses and create jobs.

Because the CFPB essentially extracts consumer protection guidelines from other agencies and makes consumer protection its primary objective, do you feel there is a risk that small businesses and small business owners who are looking to create jobs and to build their businesses will be viewed as overextended consumers and be denied that credit?

Mr. SHARP. Yes, sir, we do have that concern. In fact, I believe that figure is even a Small Business Administration figure as well, not an internal Chamber number. I believe this is the number that comes from the government.

But, yes, that is a very big concern of ours. It is not just individual access to credit that could be harmed through this process. Again, there is a very delicate balance that needs to be struck. But, as you point out, so many small businesses, particularly in their infancy, rely on consumer products to get their businesses off the ground. And if individual credit is harmed or constrained or limited, there is a knock-on effect on the small business world, and that is a concern for us.

Mr. CANSECO. Do you feel there is a strong distinction to be made between consumer protection and safety and soundness?

Mr. SHARP. Yes. You can't have one without the other, for sure.

Mr. CANSECO. Ms. Smith?

Ms. SMITH. I do concur.

Mr. CANSECO. Thank you. I yield back.

Chairwoman CAPITO. All right, the gentleman yields back.

I would like to thank the panel for their testimony and their response to questions. I appreciate your participation. I want to dismiss the first panel.

I am going to ask the second panel to assemble. We are going to run over and make our vote, but Mr. Renacci may come back and assume the chair so we can go ahead and move the testimony forward.

Thank you all very much.

[recess]

Mr. RENACCI. [presiding] The hearing will resume. I would like to introduce our second panel of witnesses.

First, we will hear from Mr. Noah Wilcox for 5 minutes.

STATEMENT OF NOAH H. WILCOX, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GRAND RAPIDS STATE BANK, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA (ICBA)

Mr. WILCOX. Thank you. Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee, my name is Noah Wilcox, and I am a fourth-generation banker. I am president and CEO of Grand Rapids State Bank and a member of the executive committee of the Independent Community Bankers of America. Grand Rapids State Bank is a State-chartered bank with $236 million in assets, located in Grand Rapids, Minnesota. I am pleased to represent community bankers and ICBA's nearly 5,000 members at this important hearing today.

Community bankers are deeply rooted in the communities they serve. Because we cannot compete with megabanks on margins or economies of scale, we focus instead on the individualized needs of our customers. We practice relationship banking, not one-off transactional banking. Our customers are our friends and neighbors, and any given loan or other service is part of a long-term relationship. Our reputations in our communities are paramount and are a condition of our success.

Community bankers have an overriding incentive to treat each customer well and earn their trust. The Dodd-Frank Act exempts community banks with less than $10 million in assets from primary examination by the CFPB. Because we will be subject to CFPB rules and to examination on a sampling basis, we have a keen interest in improving the structure and the procedures of the Bureau and the quality of the rules that they issue.

We support Chairman Bachus' recently introduced bill, H.R. 1121, which would restructure the CFPB so that it is governed by a five-member commission rather than a single director. Commission governance would allow for a variety of views and expertise on issues before the Bureau, and thus build in a system of checks and balances that a single director form of governance simply cannot match. The commission model, which has worked well for the FDIC, the SEC, and the FTC, would help ensure that the actions of the CFPB are measured, nonpartisan, and result in balanced high-quality rules and effective consumer protection.

Consistent with our support for a commission structure, ICBA supports efforts to strengthen prudential regulatory review of CFPB rules, which is extremely limited under the Dodd-Frank Act. ICBA supports Congressman Duffy's bill, H.R. 1315, which would change the voting requirement for an FSOC veto from a two-thirds vote to a simple majority, excluding the CFPB director.

The proposal would also change the standard to allow for a veto of a rule that is inconsistent with the safe and sound operations of the United States financial institutions. The current rule standard puts at risk the safety and soundness of the banking system or stability of the financial system as a whole. This is nearly impossible to meet, and would let stand rules that are extraordinarily harmful to banks and consumers.

While this change would improve CFPB rulemaking, ICBA has proposed language that would further broaden the standard to allow FSOC to veto a rule that could adversely impact a subset of the industry in a disproportionate way. We believe this standard would give prudential regulators a more meaningful role in CFPB rule writing.

The CFPB's far-reaching impact over the financial sector, consumers, and the economy should be matched by the highest standard of accountability. Ultimately, accountability for the actions of the CFPB resides with its director, appointed by the President and confirmed by the Senate. This basic mechanism of good governance would be undermined if the CFPB were to be operative before its director is confirmed by the Senate. For this reason, ICBA supports Chairwoman Capito's discussion draft that would postpone transfer of functions to the CFPB until its director is confirmed.

The final discussion draft on which I will comment would prevent the CFPB from participating in the examination of large banks on a sampling basis before the transfer of functions to the CFPB. We appreciate your caution about CFPB exams. Though this legislation would not affect community banks such as mine, we agree that sampling exams are not an innocuous exercise, and have requested relief from sampling exams of banks with less than $10 billion in assets after the transfer of functions. The so-called "ride-along" provision allows the CFPB, at their discretion, to have input into every aspect of a small bank exam. Eliminating this authority would allow the CFPB to focus its resources on the examination of entities that pose a greater risk to consumers.

Thank you again for the opportunity to testify today. ICBA is fully committed to developing effective and practical consumer protection for our customers, for customers of our competitors, and for the safety and soundness of the financial system. Thank you.

[The prepared statement of Mr. Wilcox can be found on page 130 of the appendix.]

Mr. RENACCI. Thank you, Mr. Wilcox.

Our next witness, Mr. Rod Staatz, president and chief executive officer, SECU of Maryland, on behalf of the Credit Union National Association, is recognized for the purpose of making a 5-minute opening statement.

STATEMENT OF ROD STAATZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SECU OF MARYLAND, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION (CUNA)

Mr. STAATZ. Thank you for the opportunity to testify today. I am Rod Staatz, president and CEO of SECU of Maryland, and a member of CUNA's board of directors.

Credit unions are the best way for consumers to conduct their financial services. However, credit unions are facing tremendous regulatory burdens that will only get worse as Dodd-Frank is implemented. Relieving credit unions' regulatory burdens so that they are able to serve their members in a safe and sound manner is our objective.

CUNA has consistently stated that consumers of financial products, especially those provided by unregulated entities, need greater protections. We believe that a consumer financial protection agency could be an effective way to achieve that protection, provided the agency does not impose unnecessary regulatory burdens on credit unions and takes an active role in improving disclosures for customers.

In order for such an agency to work, consumer protection legislation must be consolidated and streamlined. It should not add to the burdens of credit unions that have been regulated for decades and performed very well.

The subcommittee has given consideration to several of our concerns regarding Dodd-Frank, specifically, debit interchange regulations. We appreciate the opportunity to testify today regarding the structure of the Consumer Financial Protection Bureau. We have had a number of conversations with the staff at Treasury, which is working to establish the Bureau. We are encouraged by the staff's outreach, and especially by the establishment of the Office of Community Banks and Credit Unions.

Still, credit unions remain concerned that regulatory change could work to the detriment of our members. We have been asked to present our views on H.R. 1121. This legislation would replace the director with a five-person commission. If Congress decides to pursue this legislation, we would encourage the size of the commission be expanded to include appropriate industry and regulator representation, including a seat specifically for a person with experience related to credit unions. This would enhance the quality of regulations promulgated by the Bureau by ensuring that both the consumer and industry perspectives are represented.

CUNA supports the intent of H.R. 1315 to achieve rules that balance consumer protection with safety and soundness. More specifically, we support the provision that would reduce, from two-thirds to a majority, the threshold for the FSOC to take action to set aside a Bureau rule.

H.R. 1315 also makes changes to the conditions under which the council can stay or set-aside Bureau regulations. What is missing from that statute is the ability of the financial regulators to review Bureau regulation in the context of overall regulatory burden. We could support legislation to allow a rule to be set aside if the council determines it would be unreasonably burdensome for financial institutions and that burden to financial institutions outweighs the benefit to consumers.

We have been asked to present our views on two discussion drafts related to the Bureau's authorities prior to the appointment of a director. We believe that much more important than details of how and when the Bureau ramps up is how it will function once fully operational. We believe the Bureau should conduct its consumer protection mission in a manner that minimizes regulatory burden on financial institutions. Credit unions have not been the subject of widespread consumer complaints, and credit unions have prudential regulators at the State and Federal level that are in a position to enforce consumer protection laws.

We ask that Congress permit and encourage the Bureau to assign the examination of larger institutions which have not had a history of consumer abuses to their prudential regulators.

We would like to recommend improvements to other areas of Title 10. We ask Congress to index the examination threshold for inflation. Without indexing these thresholds, significant erosion of the exemptions will occur in a relatively short period of time.

We ask Congress to require the Bureau to report to Congress annually on steps they have taken to reduce regulatory burden, and hold a hearing to review the report and consider whether further action is needed.

We also urge the subcommittee to work with the Bureau to establish a meaningful exemption process for credit unions under Section 1022.

Let me be clear. We are not advocating for the elimination of consumer protection regulation. Rather, we seek a regulatory approach in which consumer protection is maximized and regulatory burden is minimized.

On behalf of America's credit unions and 93 million members, thank you very much for the opportunity to testify. And I am pleased to answer any questions.

[The prepared statement of Mr. Staatz can be found on page 119 of the appendix.]

Mr. RENACCI. Thank you, Mr. Staatz.

The next witness, Mr. Richard Hunt, president of the Consumer Banker's Association, is recognized for the purpose of making a 5-minute opening statement.

STATEMENT OF RICHARD HUNT, PRESIDENT, CONSUMER BANKERS ASSOCIATION (CBA)

Mr. HUNT. Hi, and a very good afternoon. Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. My name is Richard Hunt, and I am serving as president of the Consumer Bankers Association.

CBA is the national trade association for retail banking, fulfilling the financial needs of American consumers and small businesses. Retail banking is where the CFPB will now focus its broad authorities. We have had a long history of supporting improved consumer protection. It is no secret we opposed the creation of the CFPB. We believe the benefits are outweighed by the problems that arise in separating the agency from prudential banking regulators.

Nevertheless, CBA is focused on helping our members prepare for this new agency which will be their primary regulator, and we have met on numerous occasions with those setting up the Bureau.

We also acknowledge the Bureau will provide some benefits, such as providing the first real opportunity to level the playing field and have comprehensive Federal oversight of tens of thousands of underregulated, nondepository financial providers.

We also support the simplification of TILA and RESPA disclosures. If there is a theme to our comments, it is uncertainty. Uncertainty creates risk, limits innovation, and does not promote competition, which, in the end, hurts consumers and small businesses alike. This current transition period, the absence of a confirmed director, and the power of this new Bureau has created a time of great uncertainty for retail banking.

Though the Bureau is required to coordinate with other agencies to promote consistent regulatory treatment, this concept is ill-defined. If another agency objects to a rule for any reason, the Bureau is charged only with noting the objection and its final issuance. In short, there is nothing in Dodd-Frank requiring the director of the Bureau to defer to the views of the prudential regulator, and there is virtually nothing to stop rules from being enacted that might cause serious harm to banks or even small businesses or consumers.

To minimize concern that a single powerful director might adapt rules with harmful and unintended consequences, we would support a commission-led model. A commission provides an opportunity for alternative prospectives to be discussed and has been effective at a number of Federal agencies, including the Federal Reserve, the FTC, the FDIC, and the SEC.

I will point out, Madam Chairwoman, even the Consumer Product Safety Commission, which was the model for the CFPB, is headed by a commission. Now, some have said the Bureau is checked by the veto authority of the Financial Stability Oversight Council, FSOC. That is factually correct, but not realistic.

There are two main concerns: first, the supermajority needed to overturn a rule; and second, the threshold for making such a decision. Currently, 7 out of the 10 FSOC members must vote for a stay or a veto. Since one of the 10 members is the actual director of the CFPB, which would certainly not vote against itself, 7 of the remaining 9 would have to vote for a stay in order to set aside a rule. That is nearly impossible.

Also, would it be prudent for the CFTC, who has no expertise in consumer retail banking regulation, having to decide rules regarding deposit products?

In all due respect, that would be like my telling someone how to comb their hair, both out of their league.

As for the threshold, the so-called veto is really more of a catastrophic insurance policy to protect only against a rule that would threaten the safety and soundness of the U.S. banking industry or the stability of a financial system as a whole.

While it is good to also have a backstop against draconian rules, it does not address routine safety and soundness risk for a financial institution. It would only come into play in the most extreme situations. This threshold should be broadened to include a substantial impact on individual financial institutions.

We also believe the authority to supervise large financial institutions and to issue regulations should not be transferred to the Bureau until a director has been confirmed by the Senate.

In closing, yes, we support a commission-led CFPB, but in the absence of any structural changes, and because the CFPB will not have any authority to regulate nondepository institutions until a director is in place, which, of course, leaves us with the current unlevel and unfair playing field, we would urge the appointment and confirmation of a director who possesses a strong, comprehensive understanding of the banking industry and the management skills needed to lead a $500 million-plus agency.

CBA will continue to work with Members of Congress and the Bureau on these issues, and I look forward to answering any questions you may have. Thank you for the opportunity.

[The prepared statement of Mr. Hunt can be found on page 71 of the appendix.]

Chairwoman CAPITO. Thank you.

Our final witness is Professor Adam J. Levitin, Georgetown University Law Center. And you are being recognized for 5 minutes.

STATEMENT OF ADAM J. LEVITIN, PROFESSOR, GEORGETOWN UNIVERSITY LAW CENTER

Mr. LEVITIN. Madam Chairwoman, Ranking Member Maloney, and members of the subcommittee, my name is Adam Levitin. I am a professor of law at Georgetown University. I am here today as an expert on consumer finance and as a scholar whose work is deeply concerned with the financial security of American families.

The bills being considered at this hearing would appear to be legislative tweaks to the structure of the Consumer Financial Protection Bureau. But let us not mistake what this hearing is really about.

The issue presented by this hearing is whether Congress cares more about increasing the profits of banks or protecting the financial security of American families. Which is more important? Banks or families? That is the question.

The new CFPB has not yet had a chance to get up and running, yet already we are seeing attempts to strangle the new agency in its crib. If you want to understand what this hearing is about, look at who is here at this witness table. There are three bankers and me. On the previous panel, there were three bankers and Mr. Shelton from the NAACP. Ask yourself who here likes the CFPB and who does not. The banks are opposed to the CFPB and want to see it hobbled, if not eliminated.

But it is families, Main Street, and the real economy who like the CFPB and want someone looking out for them, making sure that banks don't run wild like they did in the run-up to the financial crisis, because the other bank regulators, the prudential regulators, failed us and we were stuck with the bill.

Again, does the subcommittee care more about the interest of banks or about American families? Now, I am aware that members of the committee are concerned that the CFPB will exercise its authority capriciously. This concern is misplaced.

Despite what you will hear from the banks in the Chamber, the CFPB is more accountable than any other agency in the Federal Government, period. No other Federal agency has as many limitations on its powers as the CFPB. The CFPB is subject to the Administrative Procedures Act, notice and comment rulemaking, and hearing adjudication provisions. The CFPB's actions are subject to judicial review. The CFPB is one of only three Federal agencies that are subject to OIRA small business flexibility review, which would cover some of the concerns of small financial institutions.

The CFPB has numerous statutory limitations on its rulemaking power and must make detailed findings if it wishes to exercise the power to declare certain acts or practices unfair, deceptive, or abusive. The CFPB is prohibited from imposing usury caps or from regulating nonfinancial businesses.

The CFPB is the only Federal bank regulator subject to a budgetary cap. Every other Federal bank regulator is not going through appropriations and does not have a cap. The CFPB has a cap.

Now, the banks in the Chamber may think that this cap is too high because they will enable the CFPB to be too effective; but I have never heard them complain about the lack of budgetary controls on the Fed, on the OCC, on the OTS or the FDIC. They only seem concerned about budgetary independence when it involves an agency tasked with prioritizing American families, not banks.

The CFPB is the only Federal bank regulator whose actions are subject to a veto by the Financial Stability Oversight Council, a veto that is frankly of dubious constitutionality. Curiously, I have not heard any calls to subject the Fed or the OCC to similar vetos. And perhaps most crucially, the CFPD is subject to oversight by Congress. As this subcommittee's actions have already shown, that is no small matter. No matter how the banks spin it, there is no escaping the fact that no other Federal regulator is subject to comparable oversight and limitations on its action.

Now, turning to the bills at hand, Representative Bachus' bill would replace the single CFPB director with a five-person commission. Put differently, the Bachus bill proposes paying five people to do one person's job, and then giving each of those five a staff, and paying for office space for all of them. This is classic big government bloat and waste. What is more, by having five people doing one person's job, accountability, which seems to be the overriding concern about the CPFB, will be diminished and leadership will become less effective. There is no reason to adopt a five-person commission. If a single director is good enough for the OCC, it is good enough for the CFPB.

Representative Duffy's bill would lower the threshold for the Financial Stability Oversight Council to veto CFPB rulemaking. It is frankly astonishing that anyone would propose to strengthen the FCC or the FSOC's veto. The bank regulators given the veto are the very ones who failed to ensure both bank safety and soundness and consumer protection. In the private sector, these regulators would be out of a job. They would not be rewarded with a veto.

The Duffy bill would require a veto if the CPFB rulemaking were inconsistent with bank safety and soundness. Now, bank safety and soundness is a technical term. Let me explain it to the committee. It means profitability. At its core, it is nothing more than profitability, and it is axiomatic that a bank can only be safe and sound if it is profitable.

But consumer protection is sometimes at loggerheads with bank profits. The only reason to engage in predatory lending, for example, is because it is profitable. Banks don't do it out of spite. What this means is that any CFPB rulemaking that affected bank profitability would be inconsistent with safety and soundness and thus subject to a veto. Thus, under the Duffy bill, the Credit Card Act of 2009 and Title 14 of Dodd-Frank, which reforms the mortgage lending industry, could not be implemented because they would both affect bank profitability and be inconsistent with safety and soundness.

In conclusion, the bills before this committee today seek to improve the CFPB by destroying it, by rendering it ineffective and incapable of performing the mission which Congress tasked it with: protecting American families by ensuring they get the information necessary to make informed decisions about their finances, and that financial products help consumers rather than induce financial distress. I urge you not to delay or diminish the CFPB's effectiveness.

[The prepared statement of Professor Levitin can be found on page 79 of the appendix.]

Chairwoman CAPITO. Thank you.

I want to thank all the witnesses, and I would like to begin the questioning. I would like to pivot off of Professor Levitin's initial—it kind of shocked me a little bit to say that the choices here are between banks and families.

We heard Ms. Andersen in the first panel state unequivocally that her customers, service to her customers is the lifeblood of her institution, and she provides—and she gave us I think some very good examples of targeted help. She talked about the Burmese refugees and other folks that they have been been able to target in their own community. So I would dispute that the choice is between banks or families.

But I would like to give Mr. Wilcox a chance to weigh in on that statement as a banker.

Mr. WILCOX. Sure. Thank you, Chairwoman Capito. I appreciate that opportunity.

I would like to start by suggesting that there is a difference between banks and community banks. My bank is a $236 million community bank and, as I noted in my opening testimony, our success is dependent on the people that we take care of. You will not find community banks around this country that have taken advantage of the people that they see at the grocery store, go to church with, and otherwise see around town. That is simply not the case. Our success is dependent upon the success of the people that we serve, and the vibrancy of the community that we operate in. And so that stewardship of the community is paramount to the success of community bankers from coast to coast.

Chairwoman CAPITO. Thank you. I would like to ask Mr. Hunt to respond. I will say this about you, Professor, you changed my whole line of questioning when you made your statement.

I would like to ask, on this question, that profitability equals safety and soundness, what does safety and soundness mean to you?

Mr. HUNT. Making sure that the bank is healthy to provide the needed financial services to their consumers. They are not exclusive. You must have safety and soundness and you must have consumer protection. We have never advocated less consumer protection whatsoever. I am from Louisiana and we have a saying in Louisiana, "If Mama's not happy, nobody's happy."

Chairwoman CAPITO. I like it.

Mr. HUNT. Thank you. If the customer is not happy, the bank does not survive. Period. If we do not protect consumers getting loans, then they are going to go to another bank. There are 7,100 banks in the United States. It is pure competition out there. We know they can virtually go across the street, so it is imperative that we have an agency that is worried about safety and soundness and consumer protection.

Chairwoman CAPITO. Mr. Staatz, do you have a comment on that in terms of the credit union in terms of the profitability equals safety and soundness or banks—I suppose that could be slash, credit unions, if the choice is banks, credit unions or families? Because credit unions are families. We know they are members. If you would like to make a statement.

Mr. STAATZ. Absolutely. We exist for those members. They own us. We have to perform for them each and every day. At the end of the day, there has to be a little profit to make sure that we are safe and we are sound, but we examine for them. And just like our banker friends here, you have to perform for them. We are in the community and we are directly responsible to them.

Chairwoman CAPITO. Thank you. I would like to also respond, one of the bills is expanding—and I am on this bill—expanding from one to five in a commission. And I think we have plenty of testimony that shows that works for other government agencies, and there are some instances where there is a singular director at the top at the helm.

But to say that creating a commission contributes to bloated waste, when this bill creates 1,000 people in a new consumer financial protection agency—and as we are finding and I would like to dig deeper on this, the way Professor Warren has laid it out for us is that she has gone to all these different agencies and said, okay, all the consumer protection is now going to be under this same organization within the Fed; but what we are finding is yes, there is another thousand people there, some of them are coming from these agencies, but the agencies are still keeping parts of their consumer protection and consumer investigative parts within that agency, duplicative government, and then the FDIC is going to create their own oversight to make sure that Mr. Wilcox's bank is, whatever rules and regulations the CFPB put forward, that they can answer for that.

So I am not sure that the lines that were drawn, supposedly, in this bill are going to exist if the behavior of the regulators that are in place now—the consumer protection is in place in different agencies now, are still existing there, a new agency here, and then another new oversight within the FDIC or at least someone watching over there. So with that, I will let Mrs. Maloney begin her questioning.

Mrs. MALONEY. I want to thank all of the panelists for being here. Professor Levitin, some of my colleagues have indicated their concern, if you heard the testimonies earlier, that the CFPB will be an agency with unprecedented authority and reach. And in your statement, you said that it has more limitations on its power than any other Federal agency. So can you expand on these limitations?

I listened to my colleagues all day long about how it has unprecedented reach. Yet, you say there are more limitations. Would you clarify for us, please?

Mr. LEVITIN. With pleasure. We can compare the CFPB both to Federal agencies in general and to other bank regulators in particular. We tend to structure bank regulators differently than other agencies. One thing we do with other bank regulators is we take their budgets and we take them out of the appropriations process. And the reason we are concerned about that is we don't want political influence over safety and soundness issues. The thinking with the CFPB's budget was, similarly, we don't want political influence over consumer protection. It is too important to make it exposed to the political process within the election cycle.

The CFPB, unlike any of the other Federal bank regulators, has a cap on its budget. The OCC, if the OCC wants to increase its budget, it just increases assessments that it charges on banks. The OCC doesn't come to Congress for a budget.

Similarly, the Federal Reserve, if it wants to increase its budget, just warms up the printing press. The CFPB, though, is capped at a percentage of the Federal Reserve's operating budget and has no ability to set what that operating budget is. It sinks and swims with the Fed. And I think that is actually a very good structure because it says that we are going to make sure the consumer protection is at least going to be "X" percent of bank regulation.

Now, compared with other Federal regulatory agencies, the CFPB is the only agency around where there is a veto over its authority. Congress tried to structure a similar thing with the Public Company Accounting Oversight Board, PCAOB, with giving the SEC a veto. And within the last year actually the Supreme Court said that the PCAOB structure was unconstitutional. That was really not specifically on the veto but on some other aspects of the structure, but it certainly raises questions about the constitutionality of the veto.

There is no other agency that is subject to a veto. No one can veto the OCC's actions. Actually, by statute, the Treasury Secretary is forbidden from telling the OCC to take action or not to take action. If you want to find the rogue regulator, it is the OCC; it is not going to be the CFPB. And on top of this, we have a whole range of regular safeguards on administrative agencies. And a lot of the complaints I am hearing from the committee are complaints about the administrative state in general, not about the CFPB.

There are reasons to be uncomfortable about delegation of authority to unelected officials. But we do this all the time. And we have things like the Administrative Procedures Act, which has notice and comment rulemaking provisions so that everyone has a chance to be heard about rulemaking. And we have a judicial review making sure that agencies do not exceed the scope of their statutory authority.

We have these features and they apply to the CFPB just like they apply to any other agency. So when you look at the sum picture there, the CFPB really is subject to more restrictions than any other Federal regulatory agency.

Mrs. MALONEY. As you know, there are four bills under consideration today and under debate. What do you believe the aggregate effect of these proposals would be on the CFPB?

Mr. LEVITIN. If these bills were passed it would delay the implementation of the CFPB and render the CFPB significantly less effective and less accountable.

Mrs. MALONEY. And Mr. Hunt, I was voting, so I didn't hear his testimony, but I read it. And he, in his testimony, wrote that the FSOC veto system, as designed under current law, a veto would be nearly an impossible hurdle to meet. Do you agree? Mr. Levitin?

Mr. HUNT. I do.

Mr. LEVITIN. The current FSOC veto standard is a high threshold, without a doubt. But it is worth considering what the alternative that is being proposed is. And then also the further alternative being suggested I think, by—I can't remember which of the community banking lobbies is proposing it, but there is a further extension of it that is being proposed.

The current threshold is undoubtedly a high threshold to meet, and I think that is actually the right threshold; that we want to make sure that there is not, that we are not seeing regulations that cause systemic risk. But a threshold that simply says "safety" and "affect safety and soundness" is such a low threshold that pretty much every CFPB rulemaking will be subject to challenge.

Let me give you an example. In August 2008, the Comptroller of the Currency, John Dugan, wrote a letter to the Federal Reserve objecting to certain proposed Federal Reserve regulations that would have restricted credit card rate-jacking, a topic that I know was of particular concern to you. Among the complaints—

Chairwoman CAPITO. If you could kind of make it quick—

Mrs. MALONEY. I request a few extra seconds so he may complete his statement.

Mr. LEVITIN. Among the concerns that Comptroller Dugan raised was that it would be inconsistent with safety and soundness. A couple of months later, Congress went ahead and passed the Credit Card Act of 2009 which took those Federal Reserve regulations and raised them a notch. So basically, the bank regulators are likely to call anything inconsistent with safety and soundness to the extent that it negatively impacts the profitability of banks by raising compliance costs, etc.

I think that the current threshold is probably the right place, and we certainly should not think about extending it to where, what the community bank is arguing because, given the economies of scale in the banking industry, every regulation has a disproportionate impact on small banks. That is the nature of the business, to be big; and being big gives advantages.

Chairwoman CAPITO. Thank you.

Mr. Renacci.

Mr. RENACCI. Thank you, Madam Chairwoman.

Professor Levitin, you actually did change my direction of questioning, too. You talked about bank profitability and you said—I think one of your comments was that is what this is all about, bank profitability versus safety and soundness. Do you believe that a bank losing money is better off going forward and providing safety and soundness to its customers?

Mr. LEVITIN. I apologize if you misunderstood my comments. What I said is bank safety and soundness means profitability; therefore, that a bank that is not profitable is not safe and sound.

But a bank that is less profitable, but still profitable, is safe and sound. If a bank is only earning $1 billion a year, not a billion and a half, it is still profitable and it is still safe and sound. I think it is important to make that distinction, that less profitable as opposed to unprofitable. The exact level of the bank profits I don't think should be a concern at all of the government as long as banks are profitable. But the exact levels, they should not be a concern for any of us. That is the marketplace.

Mr. RENACCI. You do agree, though, that some of the Dodd-Frank provisions will take away some of the profitability of the banks?

Mr. LEVITIN. Without a doubt, to the extent that predatory lending practices have been very profitable for banks, and Dodd-Frank is going to curtail those, probably quite rightly. And you know to that extent, yes, it affects safety and soundness if you say that it is affecting profitability. But a bank that is not able to lend on a fair and on a nondeceptive basis shouldn't be in business.

And I don't think any of the banks here at this table are doing that. And I want to emphasize that, that the issue really here is not about community banks and credit unions. There are some bad actors in both of those spaces, but generally they are the salt of the Earth. The problem is the large banks, and we don't have any of the large banks on the panel today. And it worries me sometimes to see small banks toeing the line for the large banks.

Mr. RENACCI. That is interesting.

Mr. Wilcox, would you agree that some of these regulations will reduce your profitability and also reduce your ability to create jobs?

Mr. WILCOX. I would say without any question it will. It has already. We are still feeling the fallout of the Gramm-Leach-Bliley Act. This Dodd-Frank thing is just getting started and we are seeing the first bits of that come out. And certainly to the extent that there is an exemption in the regulatory process, some of those things filter down and become interpreted and are used in the regulatory process, certainly will challenge earnings and very well could create an issue with how do you continue to grow jobs and operate in a safe and sound and profitable manner.

Mr. RENACCI. Mr. Staatz, wouldn't you agree that some of this profitability that you are losing will be also a reduction of potential jobs?

Mr. STAATZ. Without question.

Mr. RENACCI. Mr. Hunt?

Mr. HUNT. Sure. Absolutely, it will. The cost of compliance will go up. It will be a tremendous burden. We are already heavily regulated to begin with. Going forward, if you don't mind just going back to the veto question, the only way a veto can be sustained is if it threatens the safety and soundness of the banking system or the entire United States economy.

Now, who is going to determine that threshold? What will determine the safety and soundness of a bank or the entire financial economy going forward?

And I know I mentioned earlier in my testimony about the CFTC, but also the SEC, the CFTC, and the Federal Housing Agency has a seat at the table to determine retail banking. They have nothing to do with retail banking, no expertise whatsoever.

That is why we would like to see 5 out of 9, not 7 out of 10 when it comes to a veto.

Mr. RENACCI. Thank you.

Mr. Levitin, you said that you felt pretty strongly about a single director. Does it make sense, then, to consolidate all the Federal consumer financial protection powers at the Bureau on the designated transfer date if there is no director?

Mr. LEVITIN. Actually, subtitle (f) of Title 11 of the Dodd-Frank Act, the Consumer Financial Protection Bureau Act, does say that if there is no director who has been appointed by the President on the designated transfer date, the powers go to the Treasury Secretary as director. So we would have a Treasury Secretary who has been confirmed by the Senate, exercising the powers, at least under subtitle (f).

Mr. RENACCI. Madam Chairwoman, I yield back.

Chairwoman CAPITO. Thank you. I would have to say that if that does in fact happen, and the responsibilities go to the Secretary of the Treasury, I would question, is that not postponing, delaying, throwing the whole thing into a more chaotic position? Which is why I believe we ought to, and part of my discussion draft, this is something that concerned me because of the length of time it takes to confirm anybody into one of these positions.

Mr. Manzullo?

Mr. MANZULLO. Thank you, Madam Chairwoman.

Professor, since you have made the statement that none of the people at the table, the credit unions and the community bankers, are responsible for this meltdown and crisis we have in banking, I would take it then that you would agree that they should be exempt from the Consumer Financial Protection Bureau.

Mr. LEVITIN. No, quite to the contrary. First, I was making a specific estimate about the members at this table. There are bad eggs in the community banker space and the credit union space. And we should also note that there have have a lot of community banks and credit unions that failed. And that is not—

Mr. MANZULLO. I understand that. And I want to reclaim my time because it wasn't until October 1, 2010, that the Federal Reserve published its final rule that said—are you ready for this, guys?—"If you make a mortgage application, you must have written proof of your income." To me, that is just so amazing, so elementary.

Mr. Staatz, Mr. Hunt, Mr. Wilcox, you have always had that provision; isn't that correct? Whenever you made a loan on anything?

Mr. STAATZ. In practice, absolutely.

Mr. MANZULLO. Absolutely. And so here we have the Fed, which has jurisdiction over most of the banks, by the time you figure out what they do, that had the authority all along, that could have stopped this stupid blunder in real estate. They had the authority to do that all along and they didn't do it. Why should we trust yet another organization with 1,000 new employees, untested, untried, in theory?

Mr. LEVITIN. Here is why. The CFPB has a single mission and it will be judged on whether it succeeds in protecting consumers. The Fed has multiple missions and they conflict.

Mr. MANZULLO. But the CFPB would never be judged by the people elected in this country, and those are the Members of Congress. And I find your statement to be absolutely astounding, especially in light of the fact that you were Special Counsel on the TARP, where you said that you find it offensive that this agency would be subjected to the appropriation process and therefore politicized.

For goodness sakes, Article 1 of the Constitution gives the power of the purse to the United States Congress. We are directly elected by people who want to see oversight on behalf of these agencies, and yet you make the statement that, thank goodness we have the Consumer Financial Protection Bureau that is immune from this process. I am just shocked at that. But I want to go on.

Mr. LEVITIN. If you are shocked, I would note that unfortunately there are—there is a vigorous lobbying process which is present in this room.

Mr. MANZULLO. Oh, come on. You know what? These are little guys.

Mr. LEVITIN. There are big guys, too, who are not in the room here.

Mr. MANZULLO. I have been through a thousand real estate transactions and I practiced law just before RESPA came in. And I would charge sometimes $75 to $100 to close a real estate transaction, and I could close it in 20 minutes. Along came RESPA, and there are 7 full-time employees at HUD who continue to work on RESPA and screw it up. And now you go there, and you have disclosure like this—one agency on top of the other, and all one had to do to stop the meltdown was to say, you can't give a loan unless you have written proof of your earnings.

Government doesn't work in these situations. RESPA hasn't helped one individual, it hasn't saved anything, because ultimately all people want to know is, how much does it cost me a month? And you are going to have more regulations, more rules, and you don't look to the practitioners, people who have been through this thing from little bitty houses all the way through shopping centers, people who have worked in towns with credit unions and community bankers like these little guys here. And is there something wrong with the fact that they belong to an association, that they have a lobby? They are not entitled to be represented in Washington?

Mr. LEVITIN. No one has made that argument.

Mr. MANZULLO. Sir, that is what you were saying.

Mr. LEVITIN. No, I beg your pardon, sir. That is not the argument I am making. The argument that I am making is that the democratic process does have, sometimes, influence by campaign contributions, and that we may want to be concerned about ensuring that consumer protection is insulated from financial interests.

Mr. MANZULLO. Sir, there isn't anything in this town that is insulated from anything. And the people who try to insulate themselves are the ones who isolate themselves and go beyond the reach of what Americans want to do. This whole argument, if I could finish—

Chairwoman CAPITO. You can finish.

Mr. MANZULLO. Because I have been waiting a long time.

Chairwoman CAPITO. You have.

Mr. MANZULLO. This whole argument that somehow the Consumer Finance Protection Bureau is above and beyond, has this great halo that is better than all these organizations, these people here, seated to your right, on a daily basis, do several things. The first thing they do is they always check to make sure that the people with whom they have a financial transaction can afford it. They don't need government to do that. They sit down and look at income tax returns. They look at what their earnings are and they give them advice on what to do.

And somewhere out there you have some people who really took advantage of the system, who allowed people to buy homes when they couldn't make the first downpayment, people who were allowed to—they even called them "cheater loans" where that practice went on, and the Fed winked at it. They could have stopped it. Where an existing government agency that was insulated from politics, and that is the Fed, had the authority to stop all of this, and they didn't do anything, and you expect us to believe the Consumer Financial Protection Bureau is going to do anything better than what the Fed could have done. That is not going to happen.

Mr. LEVITIN. I think in light of that, giving the Fed partial veto authority over the CFPB makes absolutely no sense. But I think it is important to note that the Fed, one of the reasons the Fed failed to act was it had conflicting missions. It was told to do safety and soundness and to do—

Mr. MANZULLO. There was no conflicting mission. The mission there was was to keep the government from collapsing. And they failed, just as the CFPB will also fail.

Chairwoman CAPITO. The gentleman's time has expired. Mr. Canseco, do you have questions?

Mr. CANSECO. Yes, ma'am.

Mr. Hunt, in your testimony you noted that the requirement for the Bureau to promote consistent regulatory treatment is ill-defined. Could you explain why you feel this is ill-defined?

Mr. HUNT. I think I was referring to the "UDAAP" provision, where they create the new "A" in "UDAP," and that is abusive. We don't know if abusive means when they charge a checking account now at a bank, or if that means the interchange fee. We think it is totally inconsistent.

And yes, I will admit to you a lot of it is fear, and that is why we have all the little mouse prints that people have said, mouse traps, trips, and everything else, because we have fear of litigation and fear of being fined by our regulators. We do everything we can to promote products that are beneficial to the consumer, to the customer, but at the same time we have one eye looking at our regulator and at civil lawsuits going forward. So we have to make sure that the UDAAP provision is used correctly, since it is a new addition to the entire Dodd-Frank bill, an addition to unfair and deceptive.

Mr. CANSECO. Are you concerned that your small banks and other financial institutions will eventually find themselves caught in a trap with one Federal agency trying to restrict their profits on certain products and another agency telling them to increase their capital base?

Mr. HUNT. Oh, absolutely. We have about three coming up here real soon. That is going to take effect in a couple of years. Quite frankly, sir, we are concerned about everything these days. For instance, look at overdraft. You had the FDIC come out with their guidelines. You had the Fed come out with their guidelines. And what is to prohibit the CFPB from coming out with their new guidelines as well? It is very important that we have the ability to continue to give consistent products to our customers without fear of retribution from the regulators.

Mr. CANSECO. Thank you. And Mr. Staatz, in your testimony you advocate for replacing the CFPB director with a commission larger than what has been proposed. You envisioned this commission to have seats on the board that are designated for industry representatives, including a seat specifically for an individual with experience related to credit unions. Would you mind elaborating on your suggestion and underlying concerns?

Mr. STAATZ. First of all, as I said in the oral testimony that I gave today as well, one of our bigger concerns is undue burdensome regulation. Earlier today, I heard about all the horrors that went on during the past few years. Obviously, we as credit unions are not part of that. We are involved in it, have to help clean it up, but weren't part of that. And I would think that any of the structures that were talked about today, under any of these structures we could move very quickly to ban those sorts of products, those that were truly abusive.

But I guess our problem is, when does it move from abusive into some bureaucrat's idea of what may or may not be right for the consumer? And so we would like somebody with industry experience to kind of buffer, when it starts to cross the line from is it abusive to just somebody's idea of a better way of doing business. And we think that is why somebody from the industry should be part of oversight in that manner.

Mr. CANSECO. What criteria from the industry would you suggest that person or those individuals have? Should they be a bank president? Should they be a small bank president? Should they be credit union presidents? Should they be payday lender presidents?

Mr. STAATZ. To the latter, absolutely not payday lenders. I would suggest that obviously from our viewpoint, we believe that credit unions should be represented. Why? Because of who we are and who we represent. As a matter of fact, maybe the CFPB could learn a few more things by spending more time with credit unions and figuring out how we serve members and maybe that could be the model. But again, that sort of expertise might help all of us.

Mr. CANSECO. Thank you, sir. I yield back, Madam Chairwoman.

Chairwoman CAPITO. The gentleman has yielded back. And that concludes the testimony from this panel. I thank you for your testimony and for your responses to our questions.

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 30 days for members to submit written questions to those witnesses and to place their responses in the record.

With that, the hearing is adjourned.

[Whereupon, at 1:34 p.m., the hearing was adjourned.]

A P P E N D I X

April 6, 2011

April 6, 2011

Testimony of

Leslie R. Andersen

On behalf of the

American 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 Maloney, and members of the Subcommittee, my name is Leslie Andersen, President and Chief Executive Officer, Bank of Bennington, Bennington, Nebraska. My bank is a $61 million institution with two offices serving the town of Bennington and parts of Omaha. I also serve as the chairman of the Government Relations Council of the American Bankers Association, and I appreciate the opportunity to present the views of the ABA on the new Bureau of Consumer Financial Protection (Bureau). The ABA represents banks of all sizes and charters and is the voice of the nation's $13 trillion banking industry and its two million employees. ABA is uniquely qualified to comment on the issues related to the Bureau. Not only will the agency's rulemaking impact every bank – large and small – but ABA's membership represents the full range of banks over $10 billion that will be under direct supervision by this new agency.

Bank of Bennington, founded in 1928, has survived many economic ups and downs for more than 8 decades. My bank's focus, and those of my fellow bankers throughout the country, is on developing and maintaining long-term relationships with customers. No bank can be successful without such a long-term philosophy and without treating customers fairly.

Our decades-long tradition of service is not unique among banks. In fact, there are 2,735 banks – 35 percent of the banking industry – that have been in business for more than a century; 4,937 banks – 64 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.

The success of Bank of Bennington is inextricably linked to the success of the small community we serve, and we are very proud of our relationship with the people and small businesses of Bennington. They are, after all, our friends and neighbors.

Let me give you just a glimpse of Bank of Bennington's close ties with our community. With only 22 employees, my bank is a small business in its own right. We understand the needs of other small businesses and all the commercial loans we make are small business loans. These loans, like the one we recently made to a start-up business that processes wild game, is what keeps jobs in our small community.

We are also very involved in helping individuals in our community. Through our Credit Builder Loan Program, for example, we have helped 26 families buy homes. This program focuses on providing financial education and home loans to refugees from Burma who have settled in Omaha. These loans would not meet standard secondary market mortgage requirements (because they do not have credit scores or tax returns for two years), but we are able to make the loans, and help the families build a credit history and realize the American Dream. Financial education is so important to our bank that a third of our staff is involved ABA's Teach Children to Save Day in our local schools.

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, we are required to have the financial wherewithal – in terms of capital, liquidity and asset quality – to be there when our customers need us.

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 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.

Furthermore, the proliferation and fragmentation of enforcement authority that Dodd-Frank has distributed among the Attorneys General in every state and the prudential regulators unleashes countless competing interpretations and second-guessing of the supposed baseline "rules of the market." This will result in complicating and conflicting standards.

At risk is the entire body of rules that has governed the development, design, sales, marketing, and disclosure of all financial products; they are subject to change under the Bureau, and could change dramatically in many instances. When developing and offering products, firms rely on the basic rules of the road, knowing that they are subject to careful changes from time-to-time. Now there would be no certainty. This lack of certainty will cause firms to pull back from developing new products and new delivery systems. And it will chill lending, as firms will not know what the rules may be when they try to collect the loan a few years out.

This problem should not be underestimated. Why design a new product if you do not know what regulatory rules will be applied to it? Everyone will be on hold, to some degree, waiting for the development, which will take years of regulatory action and judicial interpretation, of an entirely new roadmap.

For all these reasons and others, it is critical to improve the accountability of the Bureau and the Dodd-Frank framework around it. To restore the necessary accountability of the Bureau, ABA offers several suggestions:

- Strengthen accountability by making meaningful structural changes;

- ➢ Reinforce the focus of the Bureau's authority on the non-bank regulatory gaps; and
- ➢ Improve consistency in the application of consumer protection standards.

I will address each of these broad suggestions in turn and propose specific steps that Congress should consider to address the concerns about the Bureau's accountability. Before that, though, I think it is very important to dispel a myth that continues to color the debate on the Bureau: that small banks like mine would be exempt from the new Bureau. ***Small banks are <u>not</u> exempt.*** All banks – ***large and small*** – will be required to comply with rules and regulations set by the Bureau, including rules that identify what the Bureau considers to be "unfair, deceptive, or abusive." Moreover, the Bureau can require community banks to submit whatever information it decides it "needs."

The Bureau will have direct supervisory authority for consumer compliance of larger banks (with assets greater than $10 billion) – which adds another layer of regulation and supervision – and can join the prudential regulator by doubling up during any small-bank exam at the Bureau's sole discretion. It is also true that bank regulators will examine smaller banks for compliance at least as aggressively as the Bureau would do independently. In fact, the FDIC has created a whole new division to implement the rules promulgated by the new Bureau, as well as its own prescriptive supervisory expectations for laws beyond FDIC's rule-making powers. Thus, the new legislation will result in new compliance burdens for community banks and a new regulator looking over our shoulders.

Let me now turn to specific recommendations for improvements and ABA's thoughts on the several new legislative proposals that are under consideration.

I. Strengthen Accountability with Meaningful Structural Changes

ABA believes that 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. Accordingly, ABA supports the commission concept introduced in H.R. 1121 by Chairman Bachus.

ABA believes 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.

ABA also urges 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.

Another fundamental structural flaw of the Bureau's structure is that only the Director is appointed by the President and approved by the Senate. A Commission structure corrects this shortcoming.

ABA also supports changing the voting standard for Financial Stability Oversight Council (FSOC) review of Bureau rule-making introduced by Reps. Duffy, Capito and Bachus in H.R. 1315 which would require a simple majority rather than a two-thirds vote. It should clearly be sufficient to set aside a Bureau rule if a simple majority of the nation's top regulators believes the Bureau has acted in a manner that adversely impacts the safety and soundness of the American banking or financial system. The stakes are too high to let one agency's rule create such significant risk. The very purpose of the FSOC was to avoid problems that could lead to risks that threaten the economy. To ignore the majority viewpoint of those with this responsibility is completely counter to the mission of this council. Congress should erase the super-majority requirement for FSOC authority set in Dodd-Frank and replace it with a simple majority requirement.

In addition, ABA believes that the standard for the FSOC review of Bureau actions – systemic risk – is also flawed. By requiring the FSOC to find a system-wide risk, much harm can be inflicted on system segments that would impair whole subsets of legitimate market players without necessarily rising to the level of a banking, let alone a financial, system risk. Banks like mine with less than $100 million in assets perform important services for our communities. Will the FSOC really conclude that a Bureau rule that severely threatens the viability of banks my size will put the entire banking system at risk? ABA strongly urges Congress to re-calibrate the review standard by which the FSOC may act in setting aside a Bureau rule so that action may take place on less than system-wide impacts or risks.

Furthermore, the FSOC review process for Bureau rules is an administratively cumbersome and complicated process filled with timing pitfalls. For example, a petition must be filed that attests to objecting agency "good faith" within ten days of rule publication; it must be transmitted "contemporaneously" to Congressional committees; a stay of 90 days duration may be applied for, but without a stay the petition will be deemed denied if the FSOC does not issue a decision in 45 days. As constructed, this convoluted process represents precisely the kind of bureaucracy that gives government bureaus a bad name. ABA urges Congress to fix this review process so that there is at least some reasonable expectation that it can be successfully invoked. H.R. 1315 provides time to consider a regulation's safety and soundness consequences and ABA supports this change.

Several of the proposed bills delay the transfer of authority to the Bureau until a Director has been confirmed. ABA shares the concern that having the Bureau inherit certain regulatory powers, but not others because there is no Director, is not good public administration. A Director should be appointed and confirmed – someone who has the confidence of the Administration, the Congress and the stakeholders to tackle the challenges that establishing the Bureau faces and the promise for consumer protection that addresses the gap that arose when non-banks were not held to the standards imposed on the banking industry.

Delaying transfer maintains the status quo and all the current consumer protections remain in place. However, we acknowledge that such a delay – should it be extended for any significant time period – does create its own set of problems. First, the gap for examining non-bank providers would remain unaddressed. Second, the current bank regulators may impose additional or conflicting regulations that will be changed once the Bureau sets rules. Third, delay complicates the staffing and operational hand-off. It is important that the Bureau be able to attract experienced supervisory staff that has banking or bank-examination experience.

II. Reinforce the Focus of the Bureau's Authority on Non-Bank Regulatory Gaps

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 supervision and melt back into the forest.

Therefore, ABA strongly recommends that the Bureau 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. To this end, ABA sees value in Section 1016(c)(6) of the Dodd-Frank Act requiring the Bureau to report on actions taken "with respect to covered persons which are not credit unions or depository institutions."

Nevertheless, we recommend the following enhancement of this expectation: Section 1017 of the Dodd-Frank Act (which provides details on Bureau funding) should require a break-out of Bureau expenditures attributable to bank versus non-bank regulation and supervision. ABA is pleased by the pledges that have been made by the Bureau Implementation Team that more than half of the Bureau budget will be directed toward non-banks, but the Bureau should affirmatively demonstrate it has met this promise. Mandated transparency on the Bureau's non-bank expenditures will better enable Congress to fulfill its own oversight function.

Long before the crisis and throughout the reform effort, ABA and its members championed disclosure simplification and reduction of wasteful paperwork that only burdens borrowers' efforts to make informed decisions. We welcome Congress's charge to the Bureau to finally consolidate and reform the TILA and RESPA obligations that plague the conduct of residential mortgage lending. Our members are happy to be engaged in the early outreach efforts of the Bureau in meeting this mandate. ABA believes there are other candidates among existing regulatory requirements that could be simplified to the benefit of customers and providers alike.

ABA believes that the best way to keep the Bureau accountable to the Dodd-Frank objectives in section 1021(b) would have been to have the Bureau concentrate solely on rationalizing the laws and powers already on the books before passing any new authority. Unfortunately, in the process of transferring existing unfair and deceptive acts or practices authority, the unwarranted addition of "abusive" was inserted.

This addition opens wide all manner of after-the-fact excuses for rewriting the conditions of transactions entered into by customers who had complete information and competitive alternatives. It is an end run around the well-established statutory criteria that Congress and the courts have defined for conduct that is either deceptive or unfair. ABA strongly urges the Congress to eliminate the term "abusive" from the Bureau's prohibitions. This is the most effective method of keeping the Bureau focused on and accountable to the task of reforming the more-than-adequate authorities it has inherited from its predecessor regulators and shaping those into simpler, more effective, and less burdensome consumer protections.

III. Improve Consistency in the Application of Consumer Protection Standards

As discussed above in detail, the Bureau represents an unaccountable regulatory entity. While this alone is bad enough and should be addressed, the problem is magnified by other authorities granted in Dodd-Frank. The Act gives license to pile on additional state law requirements and gives unfettered authority to State Attorneys General and prudential regulators – acting on their own initiative – to enforce Bureau statutory authorities and rules. Both of these expansive powers render Bureau accountability almost superfluous. Even if one can make the Bureau answerable for its market defining rules, neither Congress, nor bankers nor customers can rely on such rules remaining intact in the states where they all reside. This broad delegation of legislative license, interpretive power and prosecutorial discretion – without adequate check by either the Bureau or other federal banking agencies – exposes all banks to uncertain market expectations, compounded compliance obligations, and potentially crippling litigation risk.

Accordingly, ABA recommends that Congress consider three possible constraints on these threats to consistent consumer protection standards consistently applied:

- Adopt statutory language prohibiting states from imposing additional consumer protection requirements without meeting the same cost benefit, credit access and burden reduction objectives that Dodd-Frank imposes on the Bureau (and demonstrated with the same level of data analysis expected of the Bureau).

- Adopt statutory language precluding prudential regulators or enforcement authorities from establishing rules, guidance, supervisory expectations or prosecutorial actions that extend obligations with respect to consumer financial products or services beyond requirements contained in rules of the Bureau.

- Adopt statutory language limiting State Attorneys General from seeking remedies of any conduct by a covered person occurring prior to the last exam report date of any exam by the Bureau or a prudential regulator.

The premise of the Bureau of Consumer Financial Protection was that it would result in a single set of rules of the road for consumers, industry and investors to abide by for the benefit of all. If we are to hold the Bureau accountable to this premise, we must hold accountable all those who derive authority from its existence to abide by the same rules of the road. To do otherwise – by allowing new rules to be written or applying new interpretations each time a state border is crossed – would completely undermine the reliance of all citizens on the Bureau's rules.

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.

Banks are working hard every day to make credit and financial services available. Those efforts will be made more difficult by the hundreds of new regulations expected from the Dodd-Frank Act. With only 22 employees, I worry that about how my bank will handle all the new compliance obligations. Even more troubling is what it means for my community. The more time bank personnel devotes to parsing regulatory requirements, the less time they can devote to the financial and credit needs of bank customers. Thus, it is critically important that Congress be vigilant in overseeing the regulatory actions of the Bureau and other rules stemming from the Dodd-Frank Act to assure they do not restrict access to responsive financial products by responsible American families.

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

April 6, 2011

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.

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GEORGETOWN UNIVERSITY LAW CENTER

Adam J. Levitin
Associate Professor of Law

Written Testimony of

Adam J. Levitin
Associate Professor of Law
Georgetown University Law Center

Before the House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit

"Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau"

April 6, 2011
10:00 am

Witness Background Statement

Adam J. Levitin in an Associate Professor of Law at the Georgetown University Law Center, in Washington, D.C., where he teaches courses in bankruptcy, commercial law, consumer finance, contracts, and structured finance. He has previously served as the Robert Zinman Scholar in Residence at the American Bankruptcy Institute and as Special Counsel to the Congressional Oversight Panel supervising the Troubled Asset Relief Program (TARP). Before joining the Georgetown faculty, Professor Levitin practiced in the Business Finance & Restructuring Department of Weil, Gotshal & Manges, LLP in New York, and served as law clerk to the Honorable Jane R. Roth on the United States Court of Appeals for the Third Circuit.

Professor Levitin holds a J.D. from Harvard Law School, an M.Phil and an A.M. from Columbia University, and an A.B. from Harvard College, all with honors.

Professor Levitin has not received any Federal grants nor has he received any compensation in connection with his testimony, and is not testifying on behalf of any organization.

Mr. Chairman Capito, Ranking Member Maloney, Members of the Subcommittee:

My name is Adam Levitin, and I am an Associate Professor of Law at the Georgetown University Law Center in Washington, D.C., where I teach courses consumer finance, contracts, and commercial law.

I have previously written on the need to reorganize federal consumer financial protection from a tangle of multiple agencies of limited authority and with conflicted missions to a single, dedicated, motivated agency.[1] I am here today to urge the Subcommittee not to adjust the structure of the Consumer Financial Protection Bureau (CFPB) or to roll back parts of the Dodd-Frank Act. In particular, I would counsel the subcommittee against the changes proposed by four bills, each of which I will address in turn:

(1) H.R. 1121, The Responsible Consumer Financial Protection Regulations Act of 2011, (the "Bachus Bill"), which would replace the CFPB's unitary Director with a five-person commission.

(2) H.R. 1315, The Consumer Financial Protection Safety and Soundness Improvement Act, (the "Duffy Bill"), which would reduce the voting threshold and findings necessary for a Financial Stability Oversight Council (FSOC) veto of CFPB rulemakings.

(3) H.R. ____ (the "first Capito Bill"), which would postpone transfer of any regulatory authority to the CFPB until a Director has been confirmed by the Senate.

(4) H.R. ____ (the "second Capito Bill"), which would eliminate authority for the CFPB to participate in bank examinations before the designated date for transfer of regulatory authority to the CFPB.

I. RESTRUCTURING THE CFPB FROM A UNITARY DIRECTORSHIP TO A FIVE-PERSON COMMISSION (THE BACHUS BILL)

H.R. 1121, the Responsible Consumer Financial Protection Regulations Act of 2011 (the "Bachus Bill") would replace the CFPB's unitary director with a five-person commission. While I understand the belief that a five-person commission might result in a more collegial rule-making discourse, there are several strong reasons to eschew such a structure, which will ultimately render the CFPB less effective and less accountable.

In structuring administrative agencies, Congress has variously elected between two models: the Founders' traditional model of a unitary agency director and the Progressive/New Deal model of five-person commissions. The Founding Fathers' model for executive agencies featured a single principal officer appointed by the President with the advice and consent of the Senate. This model is reflected in the federal cabinet agencies. Thus, the Treasury is governed by a single Secretary, rather than by committee. The traditional unitary director model is also featured in the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Internal Revenue Service, the Social Security Administration, Medicare, and the Environmental Protection Agency. This model enhances accountability and enables streamlined, decisive leadership and decision-making.

[1] Adam J. Levitin, *The Consumer Financial Protection Agency*, Pew Financial Reform Project, Briefing Paper, No. 2, 2009.

An alternative agency model arose during the Progressive era and was warmly embraced by New Deal liberals. That is the five-person commission. Thus, Progressive era agencies like the Federal Trade Commission and the classic New Deal agencies like the Securities and Exchange Commission, Federal Deposit Insurance Corporation, National Credit Union Administration (three-member board), and National Labor Relations Board feature five-person commissions. The model is also featured by the Federal Reserve Board of Governors (albeit with an unusual geographic appointment requirement), the Federal Communications Commission, Federal Election Commission, Equal Employment Opportunity Commission, Commodities Futures Trading Commission, and Consumer Product Safety Commission.

The five-person commission model encourages more collegial discourse and deal-making, but comes at the expense of accountability and efficiency. Moreover, it often provides little protection for the minority party on the commission; minority commissioners' views are typically disregarded. Representative Bachus' bill would reject the Founders' traditional model that Congress chose for the CFPB and instead replace it with the bloated, big government structure favored by Progressives and New Dealers.

I would urge the Subcommittee against adopting a five-person commission model for the CFPB. The CFPB has not yet had a chance to get up and running and there is no reason to think that the unitary directorship is a particular problem; the CFPB should be given a chance to prove itself before it is reconfigured by Congress.

The CFPB Is More Accountable Than Any Other Federal Agency

I am aware that some members of Congress are concerned that the CFPB is insufficiently accountable for its actions. This concern is misplaced. *The CFPB has more limitations on its power than any other federal agency.*

First, CFPB is subject to many of the same restrictions as other federal agencies. Thus, the CFPB is subject to the Administrative Procedures Act and must follow notice-and-comment procedures for rule-making and adjudication.[2] This means that the CFPB will be required to take account of and respond to a range of views and concerns on any regulatory issue on which it undertakes rule-making. Similarly, CFPB rule-making is subject to Office of Information and Regulatory Affairs (OIRA) review for small business impact.[3] Only the Environmental Protection Agency and Occupational Safety and Health Administration are subject to similar requirements.

Second, the CFPB is specifically limited by statute in its rule-making power. Title X of the Dodd-Frank Act requires that the CFPB make particular findings in order to exercise its authority to restrict or prohibit acts and practices as unfair, deceptive, or abusive.[4] Title X of the Dodd-Frank Act also prohibits the CFPB from imposing usury caps[5] and prohibits the CFPB from regulating non-financial businesses.[6]

[2] P.L. 111-203, 124 Stat. 2025, § 1053, July 10, 2010, *codified at* 12 U.S.C. §5563 (making CFPB hearings and adjudications subject to the Administrative Procedures Act, 5 U.S.C. §§ 553-554).

[3] P.L. 111-203, 124 Stat. 2112, § 1100G; 5 U.S.C §§ 601-612; Executive Order 12866 of September 30, 1993.

[4] P.L. 111-203, 124 Stat. 2005-06, § 1031, July 10, 2010, *codified at* 12 U.S.C. § 5531

[5] P.L. 111-203, 124 Stat. 2003, § 1027(o), July 10, 2010, *codified at* 12 U.S.C. § 5517(o).

[6] P.L. 111-203, 124 Stat. 1995-98, § 1027(a), July 10, 2010, *codified at* 12 U.S.C. § 5517(a).

Third, the CFPB is subject to a budgetary cap unlike any other federal bank regulator. If the Office of Comptroller of the Currency or FDIC or OTS wish to increase their budgets, they can simply increase their assessments on banks without so much as a by-your-leave to Congress. Similarly, the Federal Reserve can simply print money. The CFPB, however, is restricted to a capped percentage of the Federal Reserve's operating budget.[7] This means that the CFPB actually has less budgetary independence than any other federal bank regulator.

Fourth, CFPB rulemaking is subject to a veto by the Financial Stability Oversight Council. This is unique for federal bank regulators.[8] The OCC and OTS's preemption actions, for example, are not subject to review by other federal regulators, even though they were a key element in fostering the excesses in the housing market.[9] The FSOC veto provides an unusually strong check on CFPB rulemaking, not least because no CFPB director would wish to risk a FSOC rebuke.

Finally, the CFPB is subject to oversight by Congress itself, and this subcommittee's actions in the past month have shown that this oversight is serious, diligent, and exacting. Congressional oversight is perhaps the best guarantor that the CFPB will not abuse the authority delegated to it.

When viewed against this backdrop of multiple safeguards against arbitrary and capricious agency action, it becomes apparent that changing the CFPB from a unitary directorship to a five-member panel would add little. Instead, switching to a five-member panel would tilt the balance at the agency to gridlock and inaction, would add unnecessary big government bloat, and would reduce accountability.

The CFPB's Unitary Directorship Fosters Efficient Decision-making and Avoids Gridlock

A single director is able to exercise decisive leadership in promulgating rules and enforcing them. Such a streamlined decision-making structure avoids the gridlock that often faces commissions. The five-person commission structure proposed by H.R. 1121, would induce inefficiency in government, as it permit rules to be promulgated only when a quorum (generally 3/5 commissioners) affirmatively votes for the rules.

The quorum requirement is a particular concern because of the frictions in the Senate confirmation process. Numerous administrative and judicial positions remain unfilled today because of the difficulty at achieving confirmation of nominees given the Senate's internal rules that effectively create supermajority requirements not found in the Constitution. The effect has been not only to block many nominations, but also to chill potential nominations. The Senate's confirmation process has become so dysfunctional that a bipartisan group of Senators (including Majority Leader Reid, Minority Leader McConnell, and Senators Schumer, Alexander, Collins, and Lieberman) has introduced legislation, S. 679, which would reduce or streamline the number of executive branch positions requiring Senate confirmation by one-third.

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[7] P.L. 111-203, 124 Stat. 1975, § 1017(a)(2), July 10, 2010, *codified at* 12 U.S.C. § 5497.

[8] The only other federal regulatory agency that I have identified that is subject to an override by another agency is the Public Company Accounting Oversight Board (PCAOB), and as discussed *infra*, the Supreme Court found the PCAOB structure to be unconstitutional.

[9] *See* Watters v. Wachovia Bank, N.A., 550 U.S. 1 (2007) (upholding OCC preemption of state attempts to regulate subprime mortgage lenders); Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. ON REG. 143 (2009) (detailing OCC and OTS preemption of state mortgage regulations without substituting equivalent federal regulations).

This state of affairs presents the most serious threat to the effectiveness of the modern administrative state—federal agencies have had to operate without directors or chairmen or even quorums because of the increased frictions in the confirmation process. As a result, these agencies are less effective or simply ineffective at ensuring that the law is carried out. Thus, in recent years, the Federal Trade Commission, the Consumer Product Safety Commission, and the National Labor Relations Board have all gone through spells where they have been unable to operate because a quorum did not exist.

Simple math says that five confirmations are more difficult to achieve than a single confirmation (even if multiple appointments sets up opportunities to make political deals on appointments). Put differently, adopting a five-person commission instead of a unitary directorship is likely to hobble the CFPB. While I would hope that is not the motivation for such a proposal, it could well be the consequence.

A Five-Person Commission Would Create Unnecessary Big Government Bloat and Waste

Changing from a unitary directorship to a 5-person commission would also contribute to big government bloat. There is no reason to pay five people top-of-the-executive-branch pay scale salaries and benefits for work that could be done by one person, not to mention the personal staff, office space, and other accommodations for five commissioners. A five-person commission is simply wasteful and should not be pursued, particularly when we are facing a federal budget crisis.

A Five-Person Commission Would Reduce CFPB Accountability

A single CFPB director is clearly accountable to both Congress and the American people. A CFPB Director who oversteps his authority or who fails to do enough to protect consumers cannot deflect blame for his actions. A gang of commissioners, on the other hand, can always avoid responsibility by pointing to the other four people who make up the commission. If Congress wants to maximize CFPB's accountability, responsiveness, efficiency, and effectiveness, the unitary directorship should be retained.

The CFPB's Unitary Directorship Is Necessary as a Counterweight to the OCC

A major reason for the creation of CFPB was that federal banking regulators—particularly the Office of the Comptroller of the Currency (OCC), which regulates national banks and the Office of Thrift Supervision (OTS), which regulates federal thrifts—consistently put the short-term profit interests of banks ahead of the long-term interests of consumers and the economy and country as a whole. The failure of OCC and OTS to police the mortgage markets were a critical factor contributing to the financial crisis.

The OCC has been a powerful advocate for bank interests, but this has been at the expense of consumer protection. The overpowering logic for creating a CFPB was that a counterweight was necessary to the OCC in order to protect consumers' interests; the OCC has amply proven that when tasked with both bank safety-and-soundness—that is profitability—and consumer protection, it will always favor banks over consumers. If CFPB is to be an effective counterweight to the OCC, it needs a parallel structure that will allow it to act quickly and forcefully when necessary. The CFPB's current single-director structure is necessary to ensure that it can protect the interests of consumers and the overall economy.

If Subcommittee is convinced, however, that a five-person commission is the proper structure for the CFPB, I would urge the Subcommittee to also adopt a five-person commission structure for the Office of Comptroller of the Currency, which would then be the sole federal financial regulator with a unitary directorship.

II. Financial Stability Oversight Council Review Authority (The Duffy Bill)

H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act, (the "Duffy Bill") would amend section 1023 of the Dodd-Frank Act[10] to reduce the thresholds for a Financial Stability Oversight Council veto of CFPB rulemaking. It would do so in two ways. First, it would reduce the necessary vote from a supermajority of 2/3s of the FSOC members (including the CFPB Director), that is 7 out of 10 votes if all members were present, to a simple majority of FSOC members, not including the CFPB, that is 5 of 9 votes. It would also reduce the necessary finding from the CFPB "regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk" to a less exacting finding merely that the CFPB rulemaking is "inconsistent with the safe and sound operations of United States financial institutions." Finally, by deleting section 1023(c)(5) of the Dodd-Frank Act, the bill would require the FSOC to take a vote if any FSOC member raised an objection to a CFPB rulemaking.

The FSOC veto power provides an unnecessary and possibly unconstitutional check on the CFPB and should be eliminated, rather than made more stringent.[11] Irrespective, *the Duffy Bill's proposed finding for an FSOC veto would render virtually every CFPB rulemaking in doubt.* Indeed, under the Duffy Bill's proposed standard—whether the CFPB rulemaking is "inconsistent with the safe and sound operations of United States financial institutions"—it would be impossible for the CFPB to implement several recent pieces of Congressional legislation, including Title XIV of the Dodd-Frank Act, the Mortgage Reform and Anti-Predatory Lending Act.[12]

Safety and soundness means, first and foremost, profitability. It is axiomatic that a financial institution that is not profitable is not and cannot be safe and sound. To the extent that a proposed CFPB regulation would reduce the profitability of a financial institution, it would reduce that institution's safety and soundness. Thus, any CFPB regulation, even if it merely increased compliance costs, would be "inconsistent with the safe and sound operations" of a financial institution.

Consumer financial protection is often inconsistent with bank profitability. Financial institutions only engage in unfair, deceptive and abusive acts and practices because they are profitable; they are not done for spite. While bank regulators have argued that consumer protection goes hand in hand with safety and soundness because it is unsafe for a bank to systematically exploit its customers or engage in unfair and deceptive practices, the run up to the financial crisis provides clear evidence that federal bank regulators were unwilling to put the brakes on unfair and deceptive mortgage lending. Similarly, the run up to the Credit CARD Act of 2009 shows that federal regulators were unwilling to act on unfair and deceptive credit card acts and practices until Congress itself started to move.

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[10] P.L. 111-203, 124 Stat. 1985, § 1023, July 10, 2010, *codified at* 12 U.S.C. § 5513.

[11] I would urge that if Congress adopts the five-person commission model for the CFPB per the Bachus Bill, it should eliminate the FSOC veto over CFPB actions

[12] P.L. 111-203, 124 Stat. 2137-2212, §§ 1401-1498, July 10, 2010.

To understand just how overbroad the Duffy Bill's proposed rule is, consider, for example, consider if there had been a CFPB in 2005, and it had proposed a rule that would have severely restricted the underwriting of payment-option adjustable-rate mortgages. Such a restriction would have significantly curtailed Countrywide's mortgage lending business, and would surely have resulted in the OCC or OTS demanding an FSOC veto. Similarly, if the CFPB had proposed rules like the ones Congress itself passed in section 1411 of the Dodd-Frank Act[13] or section 109 of the Credit C.A.R.D. Act[14] that restrict lending without consideration of the ability to repay, there would have been grounds for an FSOC veto under the Duffy Bill's standard.

Indeed, we actually have an example from 2008 of a bank regulator challenging a proposed consumer financial protection regulation on safety-and-soundness grounds. In August 2008, Comptroller of the Currency John C. Dugan wrote to the Federal Reserve Board to urge it to insert two significant exceptions to the proposed Regulation A (unfair and deceptive acts and practices) credit card rule that would limit the ability of card issuers to reprice or colloquially "rate jack" card holders.[15] Duggan wrote that the restrictions "raise safety and soundness concerns" because they limited the ability of issuers to re-price their loans if issuers determined that the risk profile of the customer had worsened.[16] If the CFPB had proposed such a rule, the OCC would surely have challenged it before the FSOC as "inconsistent with the safe and sound operations of United States financial institutions." Yet, Congress itself passed an even tougher restriction on credit card repricing less than a year later.[17]

Indeed, under the Duffy Bill's standard, several laws passed by Congress in recent years, such as the Credit C.A.R.D. Act and the Mortgage Reform and Anti-Predatory Lending Act would themselves be unenforceable by regulation because the laws themselves might reduce bank safety-and-soundness (i.e., profitability), so any faithful rule-making would have to as well. The effect of the Duffy Bill would be to eviscerate several recent, popular, consumer financial protection statutes.

The Consumer Financial Protection Bureau is a new agency tasked with protecting the financial security of American families, ensuring that they can get the information necessary to make responsible, informed financial choices. Congress created the Bureau to ensure that American families can trust the financial products they use to help them achieve their goals, rather than ensnare them with tricks and traps that lead to financial distress. The Duffy Bill's proposed expansion of the FSOC veto would place bank profits ahead of the well-being of American families, and would put us on a return course to the financial crisis of 2008.

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[13] P.L. 111-203, 124 Stat. 2142, § 1411, July 10, 2010, *codified at* 15 U.S.C. § 1693c ("no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.").

[14] P.L. 111-24, 123 Stat. 1743, § 109, May 22, 2009, *codified at* 15 U.S.C. § 1665e ("A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.").

[15] Letter from Comptroller of the Currency John C. Dugan to Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System, Re: Docket Number R-1314, August 18, 2008.

[16] *Id.*

[17] P.L. 111-24, 123 Stat. 1736-37, § 101, May 22, 2009, *codified at* 15 U.S.C. § 1666i-1.

The FSOC Veto Is Possibly Unconstitutional

I would also note that the FSOC veto under section 1023 of the Dodd-Frank Act is already of dubious constitutionality. On June 28, 2010, a fortnight before the enactment of the Dodd-Frank Act, the Supreme Court handed down its judgment in a case captioned *Free Enterprise Fund v. Public Company Accounting Oversight Board*.[18] In this case, the Supreme Court held that it was an unconstitutional violation of the separation of powers to restrict the President in his ability to "remove a [principal] officer of the United States, who is in turn restricted in his ability to remove an inferior officer, even though that inferior officer determines the policy and enforces the laws of the United States".[19] This ruling raises the question of whether by giving the FSOC veto power over CFPB rulemaking, Congress has impermissibly restricted the power of the President to "take Care that the Laws be faithfully executed" through his appointee as Director of the Bureau of Consumer Financial Protection.

The existing FSOC veto power is already constitutionally suspect, and the Duffy Bill, which would make exercise of the veto authority mandatory and on a hair-trigger basis, would only increase the likelihood that section 1023 of the Dodd-Frank Act offends the Constitution.

III. Postponement of CFPB Functions Until a Director Is in Place

A presently unnumbered bill sponsored by Chairman Capito (the "first Capito Bill) would delay transfer of all regulatory authority to the CFPB until a CFPB Director is in place.[20] I urge the Subcommittee not to postpone the transfer of authority to the CFPB in any way, including making it contingent upon the appointment of a Director.

A critical reason for the creation of the CFPB was the recognition that the current system of consumer financial protection does not work. In the current system, 17 separate statutes are enforced by ten federal agencies with other primary and often conflicting missions.[21] A chart at the end of this testimony (Figure 1) illustrates the current crazy quilt structure. Not surprisingly, consumer financial protection frequently falls between the cracks—it is an orphan mission.

Congress rightly recognized the severe shortcomings of the current system when it enacted Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and created the Bureau of Consumer Financial Protection. Congress also recognized that the Senate confirmation process has often become excruciatingly slow and therefore created transitional authority for the Treasury Secretary to assume the functions of the CFPB Director under Subtitle F of Title X of Dodd-Frank. While it would be preferable to have a true CFPB Director in place, the exercise of CFPB's Subtitle F powers by the Treasury Secretary is vastly preferable to the current dysfunctional system of consumer financial protection.

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[18] 130 S. Ct. 3138 (2010).

[19] *Id.* at 3147.

[20] The bill also seems to insist upon "confirmation" by the Senate of the Director for authority to vest in the CFPB. Such insistence, if taken seriously, would put the Constitutionality of the bill in serious doubt. Article II, Section 2 of the Constitution states that "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session." Congress has no ability to abrogate or delimit the President's Constitutional recess appointment power by statute.

[21] *See* Levitin, *supra* note 1.

IV. REMOVAL OF AUTHORITY TO PARTICIPATE IN EXAMINATIONS BEFORE THE DESIGNATED CFPB TRANSFER DATE

A fourth bill, currently unnumbered (the "second Capito Bill") would remove Section 1067(e) of the Dodd-Frank Act, which provides authority for the CFPB to participate in bank examinations before July 21, 2011 (the "transfer date") when the CFPB becomes effective. Section 1067(e) provides that:

> In order to prepare the Bureau to conduct examinations under section 1025 upon the designated transfer date, the Bureau and the applicable prudential regulator may agree to include, on a sampling basis, examiners on examinations of the compliance with Federal consumer financial law of institutions described in section 1025(a) conducted by the prudential regulators prior to the designated transfer date.[22]

This provisions is designed to ensure a smooth flow in the examination process for compliance with the 17 federal statutes and rulemaking thereunder that are being transferred to the CFPB. It is an extremely prudent provision, to ensure that there is continuity in the examination process and that CFPB examiners can learn from examiners at other bank regulators.

The reason for eliminating pre-transfer date examination participation is not clear; there is no affirmative argument for doing so. Irrespective, the second Capito Bill would have a significant effect on the on-going multi-agency federal-state investigation of mortgage servicing fraud. The CFPB has provided federal and state regulators with advice regarding the investigation and settlement possibilities and by all accounts has taken servicing fraud much more seriously than some of the federal bank regulators. Eliminating pre-transfer date examination participation prevents CFPB examiners from being able to examine bank mortgage servicers, lest the CFPB's examiners uncover further evidence of mortgage servicing fraud and counsel for a more demanding resolution. This bill would have the effect of shielding a special interest group—large banks—from the consequences of failing to comply with the law by interfering with the bank regulatory process and an on-going investigation. While political interference with the bank safety-and-soundness regulatory process is surely not intended, that would be the inexorable effect of the bill, and I urge the Subcommittee not to adopt it.

CONCLUSION

The Consumer Financial Protection Bureau has not even had an opportunity to begin to exercise its regulatory authority. It is simply premature to consider reforms to its structure, as it is not yet clear whether any changes are needed, much less what those changes are. The four proposed bills would all diminish the effectiveness of the CFPB as a regulatory agency. I strongly urge the subcommittee not to adopt these bills, which would start us on the path back to the pre-2008 period when the lack of effective consumer financial protection facilitated the destructive housing bubble and financial collapse from which we have still not recovered.

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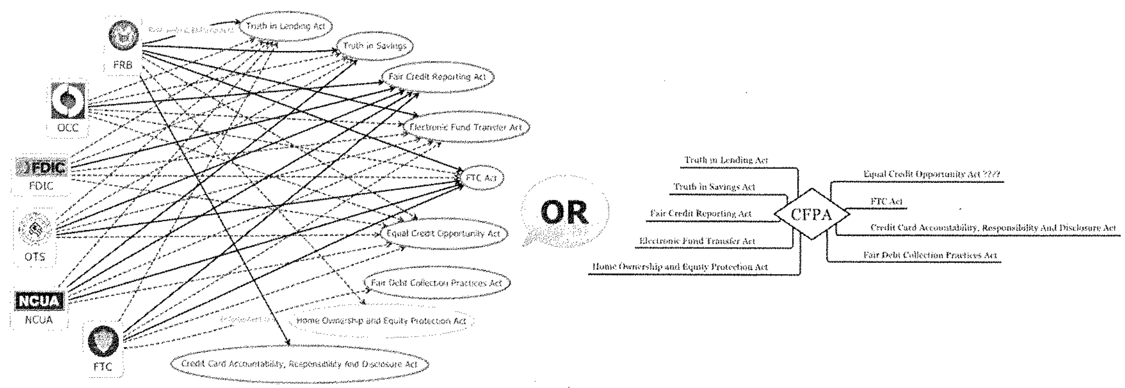
[22] P.L. 111-203, 124 Stat. 2056, § 1067(e), July 10, 2010, *codified at* 12 U.S.C. § 5587.

Figure 1. The Current Consumer Financial Protection Regulatory Structure vs. the Regulatory Structure with the Consumer Financial Protection Bureau.[23]



[23] Consumer Federation of America. The current regulatory structure is depicted on the left, with solid black lines indicating rule writing & enforcement authority and dashed red lines indicating only enforcement authority. Also note that the Consumer Financial Protection Bureau is referred to as CFPA, not CFPB.

Statement
of the
U.S. Chamber
of Commerce

ON: **Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau**

TO: U.S. House Subcommittee on Financial Institutions and consumer Credit

DATE: **April 6, 2011**

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.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged 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 national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

INTRODUCTION

Chairman Capito, Ranking Member Maloney, and distinguished members of the Committee, my name is Jess Sharp and I am Executive 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. All players, including businesses as well as consumers, benefit from a marketplace free of fraud and other deceptive and predatory practices.

We also want to work with the CFPB to ensure that the Bureau takes a targeted approach to regulation and enforcement, taking care to prevent sweeping policies that would impose duplicative regulatory burdens on small businesses and, perhaps even more importantly, that would prevent small businesses from obtaining the credit they need to expand, and create the new jobs that our economy so desperately needs.

At the same time, we are acutely aware that good intentions by themselves cannot ensure good results. The ability of a regulatory agency to carry out its mission successfully is influenced by—among other things—organizational structure; coordination with other agencies operating in related areas; and the ability to maintain over the long term a consistent, effective approach to regulatory and enforcement issues.

The unprecedented structure and authority of the Consumer Financial Protection Bureau ("CFPB") fails these longstanding, commonsense tests. Indeed, the House recognized these problems in the last Congress, adopting a structure for the Bureau very different from the Senate-passed approach that was included in the final legislation

The proposals that the Subcommittee is considering today—the "Responsible Consumer Financial Protection Regulations Act," introduced by Chairman Bachus; the "Consumer Financial Protection Safety and Soundness Improvement Act of 2011," introduced by Representative Duffy; and two discussion drafts—provide an opportunity to reinstate the multi-member commission approach embodied in the House bill, an approach that has proven so successful for a variety of regulatory agencies, as well as to address other structural issues essential to the success of the Bureau's mission.

NEED FOR CHECKS AND BALANCES

I want to make clear at the outset that the CFPB can help further these goals, but only if Congress puts in place the appropriate controls and oversight.

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 sclerosis are not put in place. Aware of this inherent risk, Congress has historically subjected all federal agencies, including independent regulators, to a system of robust 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.

DANGERS OF THE CFPB'S CURRENT STRUCTURE

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, will be 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.

- 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, subject only to a cap that in the first year exceeds $500 million.

There is no other government official who serves for a fixed term, and is therefore exempt from Presidential control, 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 now abolished Office of Thrift Supervision—have single directors. Members of the commissions heading independent regulatory agencies generally serve for fixed terms. 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. It is a dangerous mix.

Some have pointed to the OTS, 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. Both the OTS and the OCC are part of the Treasury Department, and the heads of both serve at the pleasure of the President. They are 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—a single director, nearly complete independence, and exemption from the budget process—renders the Bureau virtually immune from the checks and balances that normally guide and constrain agency action. The director's spending authority is especially dramatic. To put the Bureau's potential $500 million-plus budget in perspective, in FY 2010, the budget of the Consumer Products Safety Commission was $118 million and the budget of the Federal Trade Commission was $292 million. Both of those agencies are, of course, subject to the appropriations process.

Moreover, while some have suggested that the Federal Reserve will be able to effectively control the Bureau's budget, that is not in fact the case. Dodd-Frank expressly states that the Federal Reserve "***shall*** transfer to the Bureau, from the combined earnings of the Federal Reserve System, the amount determined by the ***Director*** to be reasonably necessary to carry out" the Bureau's functions, up to a cap of between 10 and 12 percent of the Federal Reserve's operating budget. Subject to the limits inscribed in the Act itself, then, the Director—not the Federal Reserve—decides the Bureau's budget.

The threat posed by the Bureau's insulated and essentially unaccountable structure is magnified by the extraordinary authority that the Bureau will wield once it receives its full complement of powers. The Bureau's authority is not limited to banks and other financial service businesses. It also will have the power to regulate a number of activities that are common to Main Street businesses (for example, over-the-counter financing of goods purchases), and in some cases to regulate the service providers to those companies. And it will have 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 will require immediate interpretation by the Bureau— and likely will continue to evolve into the future.

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. 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.

This FSOC process is also not a substitute for the need for regulator coordination between the CFPB and other Federal and State regulators in order to avoid conflicting rules or guidance from regulators.

In sum, it is fair to say that the Bureau's current structure places more unreviewable power in the hands of a single unelected official than any other federal regulatory law. The combination of the Bureau's unprecedented lack of accountability with its vast powers creates a significant foreseeable risk that, at some point in the future, it will take action that harms the American economy—including the very consumers it is meant to protect. When that time comes, it will be too late for Congress to make the necessary legislative corrections. The time to act is now.

I would now like to turn to the specific legislative measures that are the subject of this hearing.

BACHUS BILL

The bill introduced by Chairman Bachus, H.R. 1121 would restructure the CFPB so that it is governed by a five-member, bipartisan commission rather than a single director. Under the legislation, the President would appoint, with the advice and consent of the Senate, commissioners to staggered five-year terms. The President alone would select a Chair from among the Commission's members to serve as the Bureau's principal executive officer. Significantly, under this proposal, no more than three of the five commissioners could be affiliated with any one political party. This proposal thus adopts the basic provision in the House-passed version of the Dodd-Frank legislation. For four main reasons, we strongly support this reform as necessary to address the significant flaws in the Bureau's current governance and funding structure.

1. **Conform the Bureau to Other Independent Agencies.** Far from singling the Bureau out for special treatment, the Bachus Bill would conform the Bureau to other independent federal agencies, including those responsible for consumer protection. Indeed, that has been 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. In addition to the FTC, SEC, CFTC, and FCC, examples include the Consumer Product Safety Commission, the Equal Employment Opportunity Commission, the National Credit Union Administration, the National Transportation Safety Board, the Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, and the U.S. International Trade Commission. Congress has almost uniformly rejected periodic efforts to replace certain of these commissions—such as the NRC and FERC—with a single administrator.

Moreover, the decision to place a single director in charge of the Bureau—far from being essential to the original conception of this agency—actually was made quite late in the legislative process. Professor Warren first introduced the concept of a federal regulator of consumer finance in a 2007 article for the journal *Democracy*. She identified the model for her proposed "Financial Product Safety Commission" as the Consumer Product Safety Commission, which as I have already noted is just the type of multi-member, bipartisan decision-making body that the Bachus Bill would create. That structure has demonstrated its effectiveness in the consumer-protection context: in the words of Professor Warren, "[t]he evidence clearly shows that CPSC is a cost-effective agency."

The President's June 30, 2009, draft legislation proposing the creation of the Consumer Financial Protection Agency likewise would have adopted this commission model, as would the original version of financial reform legislation reported by the House Energy and Commerce Committee in 2009. Although the House-passed bill provided for a single director to serve for 30 months from the date of the bill's enactment, a five-member commission would have come into existence at the end of that period. It was the Senate bill that introduced the concept of a single, tenure-protected director serving for a fixed five-year term, and that modification was adopted in the final compromise legislation.

As this history makes clear, there is nothing about the single director structure that is inherent to the concept of a consumer financial protection agency. In fact, that unprecedented structure was tacked on very late in the legislative process. The history of the Bureau concept, and the uniform approach taken with respect to other independent agencies, demonstrate that a multi-member commission actually is the proven, logical approach to regulating consumer financial products—just as it is for the broad consumer protection oversight provided by the FTC.

2. Ensure Better, Impartial Decision-Making. The Chamber believes that technical expertise, exercised in a non-partisan fashion, should guide the Bureau's regulatory and enforcement activities. This view counsels strongly in favor of a multi-member commission structure, particularly given the legal difficulty, technical complexity, and political sensitivity of the Bureau's consumer protection mandate. As the historical practice suggests, decisions regarding such technical issues 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. By contrast, leadership by an individual director is more likely to lead to extreme swings in approach. Without the need to accommodate multiple viewpoints, there is no check against a regulatory agenda driven by possibly idiosyncratic or even ill-considered policy views. That is especially true in light of the inability of either the President or Congress to exercise oversight through the appropriations process.

A robust deliberative process is particularly important in the context of the Bureau's activities because of the inherent tradeoffs and informational challenges involved in the regulation of consumer finance. For example, more stringent rules and stricter enforcement would protect some credit users from fraud and, in some cases, the consequences of their own poor choices. It would also lead to higher prices and reduced access to credit—with potentially significant adverse implications for consumer well-being and economic growth. The Bureau must balance these considerations in deciding where to draw the appropriate regulatory line. Smart, evidence-based decision-making in this complex area depends on full consideration of a diversity of inputs and views. Only a multi-member Commission can guarantee that such a process will take place.

3. Minimize Risk of Regulatory Capture. In a coauthored 2008 law review article, *Making Credit Safer*, Professor Warren observed that a major challenge in establishing a unified federal regulator of consumer credit products is "minimizing the risk of capture."[1] The Chamber agrees, and believe that a multi-member commission is the best way to address this risk. As Professor Rachel E. Barkow of NYU Law School recently noted, "having only one person at the apex can . . . mean that the agency is more easily captured."[2] The reason is simple and obvious: it is much easier for special interests on one side of an issue or another to capture one person than five people—particularly if those five have diverse viewpoints and political leanings. A multi-member commission further protects against the threat of capture by embedding an early warning system into the fabric of the agency's governance. A dissent against questionable agency action, which by definition cannot occur when a single director is in charge, can alert Congress and the public that the agency is off course and merits closer scrutiny.

4. Ensure Continuity and Stability. Enactment of the Bachus Bill would also facilitate continuity and stability in the Bureau's regulatory approach. Agency heads gain experience and effectiveness as they accumulate years on the job and develop familiarity with the regulated industry and the agency's personnel and practices. This process of acculturation and education is particularly important in the context of the Bureau, which has a vast regulatory mandate—including many parts of the economy outside the financial services sector. New directors are unlikely to have deep familiarity with all aspects of the regulatory environment. Yet, as the Bureau is currently structured, all of the accumulated knowledge gained by the Director during his or her tenure will be lost upon departure. The result will almost inevitably be discontinuity and an extended period of agency drift while the new appointee settles in and gets up to speed on the issues. Moreover, if a vacancy coincides with a different party assuming the Presidency, the departure of the incumbent director will likely lead to significant substantive policy shifts. In particular, there is a risk that a new administration unenthusiastic about the agency's mission could undermine its effectiveness through a single appointment.

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[1] Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. Pa. L. Rev. 1, 99 n.325 (2008).

[2] *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 Tex. L. Rev. 15, 38 (2010).

A multi-member commission with staggered terms, by contrast, ensures the continuous presence of a significant number of experienced members at all times and prevents any gaps in agency effectiveness. The commission structure helps ensure that a change in the party affiliation of the President does not lead to sharp changes in regulatory approach, but rather a period of transition that is smooth and gradual.

DUFFY BILL

The Duffy Bill, H.R. 1315 would authorize the FSOC to overrule Bureau regulations by a majority rather than two-thirds vote, and would exclude the Bureau's Director from that vote. The bill also would lower the substantive standard necessary for the FSOC to overrule Bureau regulations—to a standard of "inconsistent with the safe and sound operations of United States financial institutions"—and would require, not just authorize, the FSOC to act when that standard is met.

The Chamber supports the Duffy Bill because it would enhance the FSOC's ability to serve as a critical check on unsound Bureau rulemaking that threatens the financial system. Even if Congress replaces the current single-director structure with a multi-member Commission, it is still essential for the prudential regulators to have an effective mechanism for ensuring that Bureau regulations do not put at risk the safety and soundness of U.S. financial institutions. If every prudential regulator opposes a proposed regulation, that regulation should not stand, and a majority requirement based on a vote of nine of the FSOC's members would permit that result. The bill would require them to do so any time the Bureau's regulations are inconsistent with safety and soundness—thus ensuring intervention when it is warranted.

I would point out that the Duffy Bill does not address the Dodd-Frank Act's failure to allow FSOC to intervene when the Bureau takes ***enforcement action*** that threatens safety and soundness. Professor Warren has already explained that the Bureau will not be adopting a "rules-based approach" to regulation. That means a heavier reliance on enforcement, and enforcement actions meant to establish broad guidance can impinge on safety and soundness, just as regulations can. The Chamber urges the Committee to consider modifying the bill to address this loophole.

DISCUSSION DRAFTS

The discussion drafts would delay the transfer of consumer protection functions to the Bureau until a Director has been confirmed, and would remove the current authorization for the Bureau and prudential regulators to include Bureau examiners in examinations of large financial institutions on a sampling basis prior to the designated transfer date.

With respect to the first proposal, the Chamber agrees that consumer protection functions should remain with their existing agencies until the leadership of the Bureau (in the form of a multi-member Commission) has been confirmed. Section 1066(a) of the Dodd-Frank Act authorizes the Secretary of the Treasury to perform the Bureau's functions until a Director is appointed. It is the view of the Inspectors General of the Treasury and the Federal Reserve that this provision authorizes the Secretary to exercise those consumer protection functions transferred to the Bureau on the designated transfer date. We believe that the existing agencies are the more appropriate repositories for these significant powers until the Bureau has Senate-confirmed leadership.

As for the second proposal, we agree that it raises concerns for Bureau examiners to participate in examinations of large financial institutions prior to the designated transfer date. Accordingly, the Chamber would support legislation along these lines.

CONCLUSION

Well-regulated, transparent, efficient capital markets are the lifeblood of the American economy. There was wide agreement both on the need for financial regulatory reform and more effective consumer protection. Both businesses and consumers will benefit from the right reforms which include ensuring regulators are structured to function effectively and are required to work well together. The CFPB is no exception to this. We urged Congress to work on a bi-partisan basis to ensure we have transparent, accountable, and effective regulators.

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.

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TESTIMONY OF MR. HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU & SENIOR VICE PRESIDENT FOR ADVOCACY AND POLICY

before the

HOUSE OF REPRESENTATIVES' FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
CONGRESSWOMAN SHELLY MOORE CAPITO, CHAIR

on

"LEGISLATIVE PROPOSALS TO IMPROVE THE STRUCTURE OF THE CONSUMER FINANCIAL PROTECTION BUREAU"

April 6, 2011

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CONGRESSWOMAN SHELLY MOORE CAPITO, CHAIR
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April 6, 2011

Good morning, Chairwoman Capito, Ranking Member Maloney, and so many of my good friends here on the Subcommittee. It is a pleasure and an honor to be here to share in your discussion about improving and strengthening the Consumer Financial Protection Bureau, or the CFPB. We at the NAACP feel very strongly that the nascent agency needs as much support as possible so that it can reach its greatest potential to protect the American public in ways that it has never been protected before.

Founded more than 102 years ago, in 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. For almost 15 years now, I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and political advocacy arm.

As I stated earlier, the NAACP feels strongly that a robust CFPB is not only necessary in our Nation today, it is crucial. For too long, too many consumers, particularly racial and ethnic minority Americans, have been disproportionately underserved and even targeted by unfair or down-right unscrupulous financial servicers. The result has been dramatically diminished opportunities and an inability to build wealth or, in too many cases, to own a home or even buy a car.

More than four years ago, I testified before the Senate Banking Committee about predatory lending in the home mortgage and refinancing market and the racial disparities that existed[1]. At that time, I stated that

> ...predatory lending is unequivocally a major civil rights issue. As study after study has conclusively shown, predatory lenders target African Americans, Latinos, Asians and Pacific Islanders, Native Americans the elderly and women at such a disproportionate rate that the effect is devastating to not only individuals and families, but whole communities as well. Predatory lending stymies families' attempts at wealth building, ruins people's lives and, given the disproportionate number of minority homeowners who are targeted by predatory lenders, decimates whole communities[2].

Sadly, since that time, my words have been reinforced by more studies and more importantly, and more tragically, have had catastrophic consequences for families, neighborhoods, and whole communities as the foreclosure rate among racial and ethnic minorities has disproportionately skyrocketed.

And we all know that home mortgages are not the only way in which racial and ethnic minorities are consistently treated worse by the financial services industry. As the former Chairman of our National Board of Directors, Julian Bond, observed, "payday lending stores open their doors in low-income neighborhoods at a rate equal to Starbucks openings in affluent ones."

In fact, a 2009 study of payday lenders in California by the Center for Responsible Lending, found that "Payday lenders are nearly eight times as concentrated in neighborhoods with the largest shares of African Americans and Latinos as compared to white neighborhoods, draining nearly $247 million in fees per year from these communities. Even after controlling for income and a variety of other factors, payday lenders are 2.4 times more concentrated in African American and Latino communities[3]."

Another area in which racial and ethnic minorities have consistently reported disparate treatment is in the matter of credit scores. In the Spring 2000 edition of the Federal Reserve of Boston's newsletter, Peter McCorkell, the Executive Vice President and General Counsel of Fair, Isaac and Company was asked if credit scoring resulted in

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[1] Testimony of Hilary Shelton before the Senate Banking Committee, February 7, 2007

[2] Ibid

[3] Wei Li, Leslie Parrish, Keith Ernst and Delvin Davis, Center for Responsible Lending "Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California", March 26, 2009

higher reject rates for certain racial and ethnic minorities than for whites. His response was simply "yes[4]".

Madame Chair, distinguished Members of the Subcommittee, I could go on and on with examples and studies which demonstrate the undeniable: more than 40 years after enactment of the Fair Housing Act and the Truth in Lending Act and more than 35 years since enactment of the Equal Credit Opportunity Act, and regardless of the mountains of data that we have had access to since 1975 through the Home Mortgage Disclosure Act, and despite all of the progress which has been made since the 1977 enactment of the Community Reinvestment Act, racial and ethnic minorities are still treated disparately in the world of financial services. As a result, as I said earlier, racial and ethnic minority Americans are faced with dramatically diminished opportunities to fulfill the American dream and build any sort of wealth.

It is because of this continuing disparity in treatment, and the blatant targeting of racial and ethnic minority communities by exploitative financial servicers that the NAACP joined many other national civil rights organizations in applauding the creation of the Consumer Financial Protection Bureau under last year's Dodd-Frank Act. As a matter of fact, many civil rights organizations including the NAACP testified before this very committee on the need for a single, robust, independent agency charged with protecting consumers and ensuring that racial and ethnic minority Americans have the same access to credit as all other Americans.

In the past, most institutions were either regulated based on how they were "chartered" or were not covered by federal regulators at all. Under the old system, five federal agencies played a role in watching how financial institutions complied with consumer and civil rights laws while three federal agencies provided additional enforcement authority. There was not a single entity charged with investigating if or ensuring that all consumers were treated equally and fairly.

Under the Dodd-Frank system, for many financial institutions, consumer financial protection will now be the sole focus of a single agency, the CFPB. The CFPB will have broad authority to write rules, supervise a wide variety of financial institutions, and enforce federal fair lending and consumer protection laws.

Fair lending is explicitly built into the CFPB's mission, structure, and research mandates. The CFPB is tasked with the responsibility to "seek to implement and, where applicable, enforce federal consumer financial protection 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 competitive."[5]

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[4] Statement of Peter L. McCorkell, Executive Vice President & General Counsel, Fair, Isaac and Company, Inc., "*Communities and Banking*", Spring, 2000, pp.15-17, published by the Federal Reserve Bank of Boston

[5] Public Law 111 – 203, Sec. 1021

In short, a robust, functioning CFPB will work through rule making, enforcement, and research to ensure a more fair and equitable financial playing field. The NAACP is particularly pleased to note that the CFPB will be looking at almost every aspect of financial services, including mortgage lending, credit cards, overdraft fees and payday loans.

Madam Chair, I recognize that the subject of this hearing is four particular pieces of legislation intended, the committee contends, to strengthen the nascent CFPB. I will be interested in hearing the analysis of all those present of these four bills, because I would like to state unequivocally for the record, that the NAACP staunchly opposes any moves which may weaken or undermine the CFPB or otherwise impede it from reaching its full potential.

Any proposals which would result in a weakening of the mission of the CFPB would result in fewer protections for American consumers in general, and racial and ethnic minorities in particular, as they attempt to manage the often confusing world of finances, mortgages and credit.

Emasculating the CFPB, before it even gets off the ground, would result in a return to the system of inadequate financial supervision that failed taxpayers, depositors, investors, homeowners and other consumers. Allowing continued predatory lending to consumers will inject greater risk into the financial system. That will raise the threat of a repeat of the Wall Street-caused financial crisis that cost Americans millions of lost jobs, billions of dollars in taxpayer funded bailouts and trillions of dollars in lost home values and retirement savings. It will also perpetuate the targeting of racial and ethnic minority communities by unscrupulous wealth-stripping predatory lenders. Even if we learned nothing else over the past 5 years, we should now know better than to allow this to continue.

And so, in closing, let me say to you again that I look forward to working with you and all the Members of the Subcommittee to ensure that the CFPB is as strong as possible and that it offers the maximum protections to ensure there is a fair and balanced field for all Americans to pursue their hopes and dreams.

Thank you again for allowing me to participate in your discussion; I welcome any questions you may have.

NAFCU

National Association of Federal Credit Unions

Testimony of

Lynette W. Smith
President/CEO
Washington Gas Light Federal Credit Union

On Behalf of

The National Association of Federal Credit Unions

"Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau"

Before the

House Financial Services Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives

April 6, 2011

Introduction

Good morning, Chairman Capito, Ranking Member Maloney and Members of the Subcommittee. My name is Lynnette Smith and I am testifying this morning 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 6,800 members with assets totaling $80.9 million.

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 64 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to discuss the profound impact that regulatory restructuring under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L. 111-203] is having, and will continue to have, on credit unions. NAFCU is especially pleased to participate in this hearing today concerning proposals to improve the structure of Consumer Financial Protection Bureau (CFPB).

America's credit unions have always remained true to their original mission of "promoting thrift" and providing "a source of credit for provident or productive purposes." In fact, Congress acknowledged this point when it adopted the Credit Union Membership Access Act (CUMAA – P.L. 105-219) over a decade ago. In the "findings" section of that law, Congress declared that, "The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means ... [and it] continue[s] to fulfill this public purpose."

To be clear, credit unions and other community based financial institutions were not the root cause of the housing and financial crises. As the Subcommittee is aware, this point was recently reiterated by the co-chairmen of the congressionally established Financial Crisis Inquiry Commission during testimony before the House Financial Services Committee on February 16, 2011.

Credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and 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 have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy members during difficult times, they are still affected 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 additional requirements in Dodd-Frank and new rules soon to come out of the CFPB are leading to an overwhelming number of new compliance burdens, which will take credit unions considerable time, effort, and resources to resolve.

We applaud recent efforts by the Obama Administration and the House of Representatives to tackle excessive regulations that hamper the ability of an industry to create jobs and aid in the economic recovery. With a slew of new regulations emerging from the Dodd-Frank Act, such relief from unnecessary or outdated regulation is needed now more than ever by credit unions.

NAFCU has long recognized the need for additional consumer protection in the financial services arena. 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 on Wall Street, as well as rating agencies. We believe that if a CFPB is to exist, its primary focus should be on regulating the unregulated in the financial services arena, and not adding new regulatory burdens to those entities that already fall under a functional regulator. We are concerned that the current CFPB structure encourages more regulation for those who are already regulated, instead of focusing on the unregulated entities that pose the biggest threat to consumers.

NAFCU also supported the National Credit Union Administration's (NCUA) establishment of an office dedicated to consumer protection. Given that credit unions did not create the financial crisis, it's perplexing why Congress ultimately placed credit unions under the jurisdiction of the CFPB.

I cannot emphasize enough how burdensome and expensive unnecessary Dodd-Frank Act related compliance costs will be for credit unions. My credit union only has a staff of 17. My employees already spend countless hours updating disclosure booklets and Web sites and constantly rewriting documents to comply with the never ending changes to laws and regulations. An ever-increasing number of new burdens in just the last couple of years – whether from new credit card legislation or new overdraft protection rules – have kept my compliance officer busy.

The 2,000+ page Dodd-Frank Act has already required countless new disclosures while creating operational concerns for my credit union. New or updated policies, procedures, and/or changes in disclosures have been or soon will be required on appraiser independence, Regulation CC, risk-based pricing, loan originator compensation and steering, escrow accounts and TILA/RESPA, just to name a few. Unfortunately, there is more to come. Indications are that some of the first areas that the CFPB may tackle include mortgage lending and credit card practices – areas that have already seen a number of changes in recent years. Indeed, less than two years ago, Congress passed sweeping legislation affecting the credit card industry. Just last month, the Federal Reserve issued its fourth rule implementing that legislation. The four final rules span approximately 1,000 pages. Even with all of those changes in just the last two years, the CFPB has already indicated that it intends to revise credit card rules once again. In most of these areas, there were not problems with credit unions. However, we all must comply with the new "solutions" that the regulators deliver.

The debit interchange price cap amendment remains NAFCU's number one concern with Dodd-Frank, and accordingly, we are pleased to see the introduction of H.R. 1081, and look forward to working with this Subcommittee to enact this vital legislation. I will focus my comments today on the other main concern with the Dodd-Frank legislation – the impact on credit unions of the new Consumer Financial Protection Bureau.

Regulatory Reform and the Consumer Financial Protection Bureau

The creation of the new Consumer Financial Protection Bureau (CFPB) is potentially problematic as the Bureau will have rule writing authority over credit unions of all sizes, and examination and enforcement authority for those above an arbitrary threshold of $10 billion. NAFCU has consistently opposed efforts to include credit unions, regardless of size, under the new CFPB. As not-for-profit cooperatives owned by the people they serve – their members – credit unions have different motives in serving their members than for-profit financial service entities. Unfortunately, despite the Financial Services Committee holding numerous hearings on regulatory reform in the last Congress, credit unions were ultimately included in the scope of the new CFPB without a single hearing to examine whether or not they should be covered by the CFPB.

It is with these facts in mind that NAFCU has been at the forefront of opposing the inclusion of credit unions under the new CFPB and would urge the subcommittee to return existing authority on rulemaking, examination and enforcement authority for all credit unions to the National Credit Union Administration (NCUA).

Nonetheless, if the current authorities of the CFPB remain in place, we do see other areas where the structure and operations of the CFPB can be improved.

Financial Stability Oversight Council Veto

While we were pleased to see the Financial Stability Oversight Council (FSOC) granted some "veto" authority over some proposed CFPB 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 the adoption of legislation proposed by Representative Sean Duffy, Chairman Capito, and full Committee Chairman Spencer Bachus to modify the threshold needed for the FSOC to veto a proposed rule, and that clarifies the standard of what can be considered. We believe this approach to make it a majority of the FSOC (minus the CFPB Director) is a positive step that ensures safety and soundness concerns do not take a back seat in this new regulatory environment.

CFPB Governance

NAFCU is pleased to see H.R. 1121, legislation introduced by Chairman Bachus and others to create a 5-person commission to govern the CFPB. We believe a 5-person Board has benefits over one single director. Moving forward under the law that is in place at this time, however, NAFCU believes that the CFPB must have a Senate confirmed director before it becomes an official stand alone federal agency (scheduled to be on July 21, 2011), and we would support legislation to not allow the transfer date to move forward as scheduled without a confirmed director in place. Lawmakers, their constituents, and every entity under the CFPB deserve a fair and open process in which candidates that may head the new agency are properly vetted. After Senate confirmation, the new director should routinely testify before Congress about the CFPB's work. This will be especially important in the agency's infancy while credit unions and others adjust to a new regulatory framework, and the credit union prudential regulator, the NCUA, works to ensure that new protection plans don't create unintended safety and soundness concerns.

CFPB Examinations

NAFCU is concerned about the broad authority granted to the CFPB to partake in examinations, especially "ride-along" examinations with functional regulators before the designated transfer date. We would support legislation to remove this authority.

Furthermore, in these tough budgetary times, we believe it would be prudent use of taxpayer dollars for Congress to transfer CFPB examinations back to functional regulators if only a handful of that type of institution charter fall under CFPB examination authority. For example, only three credit unions are above the current $10 billion threshold and would be subject to examination and enforcement authority of the CFPB. We believe it is a waste of taxpayer dollars for the CFPB to have credit union examination teams for only three institutions, when the NCUA has handled examining these institutions for decades. Congress should require the CFPB to delegate that authority back to the NCUA.

Additional Suggestions for Improving the CFPB

We would urge Congress to take action to make the following additional changes to the CFPB:

- Raise examination and enforcement threshold to $50 billion: Raising the arbitrary $10 billion threshold to $50 billion for insured depository institutions subject to examination and enforcement authority of the new CFPB would allow the CFPB to focus on the very largest national banks and unregulated financial services providers and not add this new burden on credit unions, regional banks and community banks – the institutions that were primarily the "good actors" before this past crisis. It should be noted, in the only vote in the 111th Congress that the full Committee took where it had a choice to replace the arbitrary $10 billion number found throughout the Dodd-Frank Act, the Committee choose $50 billion by an overwhelming bipartisan margin of 52-17 (Full Committee Record Vote FC-99). Furthermore, we believe all monetary thresholds in Dodd-Frank should be indexed for inflation on an annual basis. This is important to keep the intent of the legislation intact over time. $10 billion in assets today will not be the equivalent of $10 billion in assets next year, and NAFCU is concerned that more and more institutions will find themselves crossing this arbitrary line and will become subject to new and unintended requirements.

- Unified Mortgage Loan Disclosure: Although Dodd-Frank calls for a joint HUD-RESPA rule concerning mortgage loan disclosures, the bill provides an important exception—it leaves the CFPB with the final say on whether a new rule is needed.

A combined disclosure rule is critical to avoiding some of the confusion and overlap that currently exists during the mortgage loan transaction process, easing the compliance burden on financial institutions and reducing confusion for borrowers.

- CFPB Document Access: While Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the CFPB, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, CFPB access to the reports essentially amounts to an examination in itself, even for those institutions with assets of $10 billion or less. NAFCU does not believe that this is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.

- Funding and Pay: We believe that Congress should change the funding mechanism for the CFPB to require Congressional appropriation. We believe that this would allow better oversight of this new powerful agency. One aspect to consider in this approach would 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. Subjecting the CFPB to the annual appropriations process would allow Congress to provide oversight and ensure that this balance is being met.

Furthermore, we believe Congress should examine whether or not the CFPB should be on the General Schedule (GS) pay scale, as special pay rules for the agency can lead to their own series of budget issues.

- Curtail or Clarify the Ability of CFPB to act under UDAP: While the ability to prevent unfair and deceptive practices is important, we are concerned that the CFPB's authority under UDAP could amount to a blank check for it to delve into any number of areas that create new regulatory burdens or hurdles for credit unions. It may be prudent for Congress to require joint-rulemaking with functional regulators when the CFPB wishes to write new rules using its UDAP authority.

- Prevent Reputation Risk to Institutions: While it is important for the CFPB to hear consumer complaints, we believe it is important that the CFPB create safeguards for ensuring that consumer complaints remain confidential and that institutions do not face reputation risk due to unsubstantiated claims.

The Dodd-Frank Act included a section (Section 1100G) that says the CFPB must evaluate as part of its regulatory flexibility analysis the impact that its actions have on "small entities" (which includes "small organizations"). We believe that credit unions meet the definition of a "small organization" as defined in Title 5, Section 601 of the U.S. Code as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field..." We are pleased that Special Assistant Elizabeth Warren in testimony before the Subcommittee highlighted the need to lessen the regulatory costs for credit unions and other small institutions and has told NAFCU that the CFPB is specifically charged with considering the impact of proposed rules on smaller credit unions.

Still, we would urge Congress to make sure that the CFPB abides by this Congressionally-mandated standard, and does not try to narrow the definition of "small entity" in the future in order to strengthen its authority over credit unions. We believe this authority could be enhanced by Congress strengthening the cost-benefit analysis requirement for rule-writing that would allow institutions to rebut the need for rules based on cost thresholds.

Conclusion

In conclusion, the ink is barely dry and credit unions are already being negatively affected by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* [P.L. 111-203]. First and foremost, Congress must act to stop the Federal Reserve from moving forward with proposed debit interchange regulations as the impact of the proposed rule on credit unions and their members will be devastating.

With respect to the Consumer Financial Protection Bureau, credit unions remain at a loss as to why they have been placed under a new regulatory regime to begin with. That being said, credit unions and their members welcome having an ongoing dialogue with

Congress on possible changes to the structure, governance and authorities of the new CFPB. We are pleased that the Financial Services Committee is moving forward with a number of these ideas.

I thank you for the opportunity to appear before you today on behalf of NAFCU and would welcome any questions that you may have.

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Testimony
of
Rod Staatz
President and Chief Executive Officer
SECU of Maryland
On behalf of the Credit Union National Association

Before the
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
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Chairman Capito, Ranking Member Maloney, Members of the Subcommittee: Thank you very much for the opportunity to testify at today's hearing and to present the views of the Credit Union National Association (CUNA)[1] regarding legislative proposals to improve the Consumer Financial Protection Bureau (CFPB). My name is Rod Staatz and I am President and Chief Executive Officer of SECU of Maryland.[2] I am also a member of CUNA's Board of Directors.

Credit unions are the best way for consumers to conduct their financial services. However, credit unions are facing tremendous regulatory burdens that are only going to get worse as the implementation of the Dodd-Frank Act unfolds. In light of this, relieving credit unions' regulatory burdens so that they are able to serve their members in a safe and sound manner is a key objective for credit unions, state credit union leagues and CUNA.

As you know, credit unions are not-for-profit financial cooperatives; the only owners of a credit union are its members, who receive the benefit of ownership through reduced fees, lower interest rates

[1] CUNA is the nation's largest credit union advocacy organization, representing approximately 90 percent of the 7,600 state and federal credit unions in the United States and their 93 million members.
[2] SECU of Maryland is a state chartered, federally insured credit union headquartered in Linthicum, MD. It serves 242,800 members and has $2.09 billion in total assets as of December 31, 2010.

on lending products, and higher dividends on savings products. As a result, credit unions' motives and mission are very different from their counterparts in the for-profit financial sector. Credit unions have a special obligation to protect both the consumer needs of their members, as well as their business interests as owners of the credit union. The credit union structure also means the cost of compliance with unnecessary and unduly burdensome regulations impacts its members directly. Every dollar that a credit union spends complying with an unnecessary or overly burdensome regulation is a dollar that cannot be used to benefit the credit union's membership, which looks to the credit union for favorable loans and saving products.

During consideration of the Dodd-Frank Act, CUNA stated on a number of occasions that consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections. We believe that a consumer financial protection agency ***could*** be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions and takes an active role in improving disclosures for consumers without making compliance more difficult for financial institutions. In order for such an agency to work, we said, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burdens of those that have been regulated for decades and performed well, such as credit unions.

The fact is that credit unions are among the most highly regulated financial institutions in the United States; they are subject not only to many of the regulations with which banks must comply, but they are also subject to additional statutory and regulatory restrictions on capital, business lending and other activities. Credit unions' regulatory burdens continue to multiply with little or no apparent regard for the costs of each requirement or, more important, the cumulative impact on the institutions that must comply. These concerns are compounded by the range of upcoming regulations credit unions will face under the Dodd-Frank Act.

We appreciate the attention that this Subcommittee has given to several of our concerns regarding the Dodd-Frank Act, specifically Section 1075 with respect to debit interchange regulation. We urge Congress to move swiftly to delay the implementation of the Section 1075 so that policymakers can study debit card interchange issues more thoroughly and develop meaningful changes that will not hurt small issuers – the institutions that Congress has already pledged to protect from the impact of the interchange rule.

We are grateful for the opportunity to testify today regarding legislative proposals to improve the structure of the CFPB. We have had a number of conversations with the staff at the Department of Treasury which is working to establish the CFPB, and we are encouraged by the staff's outreach and by the establishment of the Office of Community Banks and Credit Unions. Even still, credit unions remain concerned that the CFPB could significantly change, to the detriment of the members they serve, the regulatory environment in which they operate; therefore, we appreciate the opportunity to present recommendations to improve the CFPB structure.

H.R. 1121, the Responsible Consumer Financial Protection Regulations Act

We have been asked to present our views on H.R. 1121, the Responsible Consumer Financial Protection Regulations Act. This legislation would replace the Director of the Consumer Financial Protection Bureau with a five person Consumer Financial Protection Commission (the Commission). Under this legislation, CFPB Commissioners would serve five year terms.

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.[3]

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 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 H.R. 1121 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 regulation promulgated by the CFPB by ensuring both the consumer perspective as well as the industry perspective is represented in the decision-making process.

H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act

We have also been asked to present our views on H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act. CUNA supports what we believe is the intent of this legislation: to achieve rules that balance consumer protection and the safety and soundness of institutions providing financial services.

H.R. 1315 would modify the voting procedure of the Financial Stability Oversight Council when voting to stay or set aside rules finalized by the CFPB by reducing the threshold for the Council to take

[3] CUNA Letter to House Financial Services Committee Chairman Barney Frank. July 14, 2009. 5. http://www.cuna.org/download/congress_letter_071409.pdf

action from a two-thirds vote of the Council to a majority vote of the Council, excluding the Director of the Bureau. The effect of this provision would be to reduce the number of members of the Council who must vote in favor of a petition to set aside or stay a final CFPB regulation from seven to five. We support this provision. Given the current financial crisis from which we are struggling to emerge, the threshold to prevent harmful regulation from going into effect should not be as high as a two-thirds vote of the financial regulators. Reducing the threshold would help balance consumer protection with safety and soundness concerns.

H.R. 1315 also makes changes to the conditions under which the Council can stay or set aside CFPB regulations by striking the requirement that the regulation or provision subject to petition by a Council member "would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk" and replacing it with a requirement that the regulation subject to petition be "inconsistent with the safe and sound operation of United States financial institutions." With respect to this provision, we believe there may be alternative ways to achieve an appropriate balance. In the context of reviewing CFPB regulation, what is missing from the statute is the ability of the financial regulators to review CFPB regulation in the context of overall regulatory burden, a serious and growing problem for credit unions. We could support legislation to expand the conditions that must be met in order for the Council to override a regulation if the Council determines a new rule would be unreasonably burdensome for financial institutions; the burden to financial institutions outweighs the benefit to consumers.

Legislation Affecting the CFPB's Authorities Prior to the Appointment of a Director

We have been asked to present our views on two discussion drafts related to the CFPB's authorities prior to the appointment of a Director of the Bureau. The first bill would strike Section

1067(e) of the Dodd Frank Act which permits the prudential regulators to allow the CFPB to participate in examinations of large financial institutions before the designated transfer date. The second bill would delay the date for transferring regulatory authority to the CFPB until a Director has been appointed and confirmed by the Senate.

Much more important than details of when and how the CFBP ramps up is how it will function once fully operational. In that regard, we believe the CFPB should conduct its consumer protection mission in a manner that minimizes regulatory burden on financial institutions. Prior to the transfer date, there are likely to be no more than three credit unions subject to examinations under Section 1025. Credit unions, including the three largest, have not been the subject of widespread consumer complaints, and credit unions have prudential regulators at the state and federal level that are in a position to enforce consumer protection laws. We encourage Congress to permit and encourage the CFPB to assign the examination of larger institutions which have not had a history of consumer abuses to prudential regulators.

With respect to the legislation that would delay the transfer date of regulatory authority until a Director has been appointed and confirmed by the Senate, it is worth noting that one of the benefits we see in the implementation of the CFPB is the extension of regulation to currently unregulated providers of financial services. If the transfer date is delayed, these unregulated providers will continue to not be subject to the same level of regulation as the currently regulated providers of financial services.

Other Recommendations for Improvements

We would like to recommend improvements to other areas of the CFPB Title of the Dodd-Frank Act. We suggest the Committee consider legislation to index for inflation the thresholds under Section 1026 with respect to the examination of small banks or credit unions (and its companion threshold in

Section 1025), to enhance the Bureau's attention to the reduction of regulatory burden. Further, we suggest the Committee encourage the CFPB to establish a process to grant exemptions from its rules under Section 1022.

Indexing the Examination Thresholds

Section 1026 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.

Enhance Attention to Reducing Regulatory Burden

One of the objectives of the CFPB is to identify and address outdated, unnecessary and unduly burdensome regulation in order to reduce unwarranted regulatory burden.[4] The CFPB must also take costs and benefits of its regulations into account during its rule-making process.[5] We feel these are among the most important provisions in the Dodd-Frank Act.

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[4] Section 1021(b)(3)

[5] Section 1022(b)(2)(A)(i)

Combined with existing regulatory burdens, the increasing regulatory requirements pursuant to the Dodd-Frank Act and other government initiatives are among the major drivers of credit union consolidation. As we have testified before, we believe this is a crisis of creeping complexity. It is not any one particular regulation, mandatory information collection, or required form which makes it impossible for smaller credit unions to continue to exist. Instead it is the steady accumulation of regulatory requirements over the years which eventually add up until a straw breaks the camel's back. Credit unions are concerned that these creeping regulatory burdens not only take up an increasing share of credit union employee and volunteer time—often necessitating mergers with larger credit unions—but also stifle innovation in credit union financial services.

To that end, we encourage the Committee and the CFPB to take meaningful steps to address the regulatory burden of financial institutions which have been subject to regulation for decades. Specifically, we ask the Committee to:

- consider legislation which would require the federal financial regulators and the Bureau to report to Congress annually on steps they have taken in the previous year to reduce the regulatory burden on the institutions they supervise;
- hold an annual hearing to review the reports and to consider whether further Congressional action is needed to contain the regulatory burdens that are creating an operational drag on affected institutions;
- consider legislation to direct the Bureau to conduct a study and present recommendations on statutory and regulatory improvements to reduce regulatory burdens on financial institutions, consistent with the requirement under Section 1021 that the Bureau identify and address unnecessary, outdated and unduly burdensome requirements.

Let me be clear, we are not advocating the elimination of consumer protection regulations. Rather, we seek a regulatory regime in which consumer protection is maximized and regulatory burden is minimized. To that end, we have recommended to the CFPB that an Office for Regulatory Burden Monitoring be established. As we envision it, this office could be housed within the Office of Community Banks and Credit Unions and would be responsible for working with credit unions and community banks to assess the impact of regulatory burdens being imposed on these institutions. It would also coordinate with prudential regulators to assess the entirety of the regulatory burdens such institutions face. The new office could play a very significant role in assembling the CFPB's annual report to Congress on regulatory burdens that we are recommending above. While we believe the CFPB could establish this office without further legislative authority, if Congress were to direct the CFPB to establish the new office, we would strongly support it.

In addition, we believe Congress should undertake a comprehensive review of the regulatory burden facing financial institutions with an eye toward simplification for financial institutions without jeopardizing consumer protection. In fact, we think efforts to address institutions' regulatory burdens will facilitate compliance and help ensure consumers receive the protections in the financial marketplace that they deserve. One area that Congress identified as having this potential is the reconciliation of disclosure requirements under the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). We are pleased that the CFPB is reviewing how to coordinate and simplify these disclosures and plan to work with the CFPB on that project.

The Dodd-Frank Act directs the CFPB, within five years of the effective date of a significant rule or order to conduct an assessment of the regulation or order.[6] We supported this provision but we also encourage other major regulatory reviews, including a study of the range of consumer protection laws,

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[6] Section 1022(d)(2)

such as TILA, from the stand point of benefits to consumers versus costs of compliance to financial institutions.

CFPB Should Be Encouraged to Establish a Process to Exempt Entities under Section 1022

Finally, we note that the CFPB already has authority to exempt any class of covered entities or products from its rules.[7] We are not aware that a process for these exemptions has been established. We believe credit unions and the pro-consumer products they provide are the very type of entities that should be considered for exemptions, particularly from any onerous new rules. Given the fact that credit unions exist to provide favorable rates to their member-owners, we urge the Subcommittee to work with the CFPB to make the exemption process meaningful and timely.

Conclusion

Chairman Capito, on behalf of America's credit unions and their 93 million members, thank you very much for the opportunity to testify at today's hearing. I am pleased to answer any questions that the Members of the Subcommittee may have.

[7] Section 1022(b)(3)

INDEPENDENT COMMUNITY
BANKERS of AMERICA

Testimony of

Noah Wilcox

President and CEO of Grand Rapids State Bank

Grand Rapids, MN

On behalf of the

Independent Community Bankers of America

Before the

Congress of the United States

The House Financial Services

Subcommittee on Financial Institutions and Consumer Credit

Hearing on

"Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau"

April 6, 2011

Washington, D.C.

Opening

Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee, I am Noah Wilcox, fourth generation President and CEO of Grand Rapids State Bank and a member of the Executive Committee of the Independent Community Bankers of America. Grand Rapids State Bank is a state chartered community bank with $236 million in assets located in Grand Rapids, Minnesota. I am pleased to represent community bankers and ICBA's nearly 5,000 members at this important hearing on "Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau."

The recent financial crisis showed us in dramatic fashion how broad the consequences of abusive consumer practices are. In addition to the direct harm they cause to individual consumers, abusive practices can put the entire financial system at risk. Poorly underwritten loans packaged into collateralized debt obligations and dispersed through the financial markets caused the credit markets to freeze up, shuttering businesses, destroying wealth, and causing levels of unemployment not seen in over a generation. This experience has appropriately raised the profile of consumer protection. Getting consumer protection policy right is one of the most important things we can do to prevent a repeat of the financial crisis of 2008-09. For that reason, we are pleased to have the opportunity to offer our views on proposals before the committee to amend the structure of the Consumer Financial Protection Bureau and to make additional suggestions of our own.

Community bankers are deeply rooted in the communities they serve. Because we cannot compete with the megabanks on margins or economies of scale, we focus instead on the individualized needs of our customers. We practice relationship banking, as opposed to one-off, transactional banking. Our customers are our friends and neighbors and any given loan or other service is part of a long-term relationship. Our reputations in our communities are paramount and a condition of our success. Community bankers have an overriding incentive to treat each customer well and earn their trust. We did not engage in the abusive practices that contributed to the recent financial crisis. No one has ever alleged otherwise. In addition to fundamental business incentives that deter consumer abuse, community banks have long been, and continue to be, subject to robust supervision and examination from our prudential regulators. We believe that the key to improving consumer protection is to focus on the "shadow" financial services industry that has been most responsible for victimizing consumers while avoiding serious regulatory scrutiny.

Because targeting of limited resources is essential to effective regulation, it is appropriate that the Dodd-Frank Act exempts banks with less than $10 billion in assets from primary examination and enforcement by the CFPB. Community banks will continue to be examined by their prudential regulators, and the CFPB's resources will be focused where the risk is greatest. However, because community banks are subject to CFPB rules and to examination on a sampling basis, we have a keen interest in improving the structure and procedures of the Bureau and the quality of the rules they issue. We are pleased to have the opportunity to offer our views on proposals before the committee to amend the structure of the Consumer Financial Protection Bureau and to make additional suggestions of our own.

ICBA VIEW OF LEGISLATIVE PROPOSALS

Commission Governance

We support Chairman Bachus' recently introduced bill, the "Responsible Consumer Financial Protection Regulations Act," which would restructure the new Consumer Financial Protection Bureau so that it is governed by a five member commission rather than a single director. Commissioners would be confirmed by the Senate to staggered, five-year terms, and no more than three commissioners would be affiliated with any one political party.

The new CFPB will have far reaching discretion in writing rules for all banks, including those exempt from primary CFPB examination, as well as non-bank financial services providers. Commission governance would allow for a variety of views and expertise on issues before the Bureau and thus build in a system of checks and balances that a single director form of governance simply can't match. The commission model, which has worked well for the FDIC, SEC, and FTC, would help ensure that the actions of the CFPB are measured, non-partisan and result in balanced, high quality rules and effective consumer protection.

Strengthening Review of CFPB Rules

Consistent with our support for a commission structure, ICBA supports efforts to strengthen prudential regulatory review of CFPB rules, which is extremely limited under the Dodd-Frank Act. Prudential regulators have the ability to comment on CFPB proposals before they are released for comment and an extremely limited ability to veto regulations before they become final. This veto can only be exercised if, by a 2/3 vote, the Financial Stability Oversight Council (FSOC) determines that a rule "puts at risk safety and soundness of the banking system or the stability of the financial system," a standard that is nearly impossible to meet. A rule that doesn't meet this high standard could nevertheless do extraordinary harm to banks and consumers.

ICBA supports a legislative proposal before this committee that would change the voting requirement for an FSOC veto to a simple majority, excluding the CFPB Director, and change the standard to allow for a veto of a rule that "is inconsistent with the safe and sound operations of United States financial institutions." While this change would improve CFPB rulemaking, ICBA has proposed language that would further broaden the standard to allow FSOC to veto a rule that could adversely impact a subset of the industry in a disproportionate way. We believe that this standard would give prudential regulators a more meaningful role in CFPB rule writing.

A Confirmed Director Should Precede Transfer of Functions

The CFPB's far reaching impact over the financial sector, consumers, and the economy should be matched by the highest standard of accountability. Ultimately, accountability for the actions of the CFPB resides with its Director, appointed by the President and confirmed by the Senate. This basic mechanism of good governance would be undermined if the CFPB were to be operative before its Director is confirmed by the Senate. For this reason, ICBA supports Chairman Capito's discussion draft that would postpone transfer of functions to the CFPB until its Director is confirmed.

Sampling Examination Authority

The final discussion draft on which I will comment would prevent the CFPB from participating in the examination of large banks on a "sampling basis" before the transfer of functions to the CFPB. We appreciate your caution about CFPB exams. Though this legislation would not affect community banks such as mine, we agree that "sampling" exams are not an innocuous exercise and have requested relief from sampling exams of banks with less than $10 billion in assets after the transfer of functions. The so-called "ride along" provision allows the CFPB, at their discretion and without the concurrence of the prudential regulator, to have input into every aspect of a small bank exam, acting as more of a full partner than a passive observer. The prudential regulator must consider the CFPB's input concerning the scope of the examination, the conduct of the examination, the contents of the examination report, and examination rating. The CFPB can also require the bank to provide reports in connection with the exam. There is no doubt that the CFPB's participation would significantly change the character of the exam and could upset the balance between consumer protection and safety and soundness, which the prudential regulators better know how to achieve. ICBA recommends that the Act be amended to delete the CFPB's sampling authority, a change which would be consistent with the exemption from primary examination. Eliminating this authority would allow the CFPB to focus its resources on the examination of entities that pose a greater risk to consumers.

ADDITIONAL RECOMMENDATIONS

In addition to commenting on legislative proposals that have been introduced or are pending introduction, we would like to use this opportunity to recommend additional structural changes to the CFPB.

Joint Rulemaking

As a more comprehensive solution to our concern about CFPB rules, we recommend that CFPB regulations be issued jointly with the federal banking agencies. Rule writing for banks should not be the sole responsibility of the CFPB. With neither the institutional incentive, nor the expertise, to protect the safety and soundness of the lender, the CFPB runs the risk of promulgating rules that are unnecessarily burdensome or contrary to those issued by the prudential regulator. Joint rulemaking would obviate this concern.

Fair Lending Laws Belong with the Prudential Regulator

Rulemaking and enforcement under the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act should be transferred back to the banking agencies. The Dodd-Frank Act left Community Reinvestment Act rulemaking and enforcement with the prudential regulators, acknowledging that it is best situated in the agencies that conduct safety and soundness examinations. Like CRA, ECOA and HMDA are fair lending laws with a direct relation to safety and soundness. ECOA and HMDA regulations are often reviewed and considered in conjunction with CRA. For consistency, efficiency, and to promote specialization, they should all reside with the same regulator.

Relief from Reporting and Data Collection

The reporting and data collection requirements of the Act place a disproportionately high burden on community banks without commensurate benefit to consumers. As mentioned above, the CFPB may require any community bank to provide a report in connection with a "sampling" exam, or for the broader purpose of assessing and detecting risks. In addition to maintaining records of all credit applications received from small businesses, community banks are required to maintain records of applications from women-owned and minority-owned businesses of all sizes and a separate record of the responses to all such applications. Finally, these records are to be kept separate from the underwriting process. In other words, the requirement creates a separate bureaucracy within the bank that cannot be integrated with lending operations. This is especially inefficient, and may not be feasible in certain cases, in organizations that are too small to accommodate fire wall structures. Further, data collected by community banks and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information.

The cost of these mandates will be very high for small institutions, including Grand Rapids State Bank, that simply do not have the extra resources available to comply. We support elimination of reporting requirements for community banks that do not appropriately balance costs and benefits.

Closing

Thank you again for the opportunity to testify today. ICBA is fully committed to developing effective and practical consumer protection regulation for our customers, the customers of our competitors, and for safety and soundness of the financial system. Our recommendations will improve the operations of the CFPB by creating internal checks and balances, better focus its resources on the true sources of risk, and exempt community banks from requirements where the cost is disproportionate to any consumer benefit. We appreciate your consideration and look forward to working with this committee to enact these recommendations or others that are consistent with the principles we've outlined.

American Financial Services Association

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 – 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 – 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 – 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:

- Finding that existing state law or regulation is inadequate;
- Determining an estimate of the number of state-licensed or supervised entities to which the proposed rule will apply;
- Describing the projected reporting, recordkeeping and other compliance requirements of a proposed rule; or
- 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.

NAFCU Insert – Page 56

Representative Maloney wanted NAFCU witness Lynette Smith to respond in writing to, "Whether or not the CFPB would have helped prevent and protect consumers during the subprime crisis, comparing that to what happened with the old system."

Insert –

Lynette Smith:

As you know, I cannot personally speak to the activities of other financial institutions participating in mortgage lending, or on behalf of other players in the mortgage market at the height of the subprime crisis. However, I would like to make it perfectly clear that credit unions were not involved in the types of activities that contributed to the worse financial crisis our country has seen since the Great Depression. This makes it especially troubling that credit unions will fall under the jurisdiction of the new Consumer Financial Protection Bureau (CFPB).

If somebody was regulating the unregulated entities, perhaps that may have helped. However, I do know that subjecting credit unions to additional regulatory oversight, and, in some cases, dual examination, will do absolutely nothing to protect consumers and could actually hinder the ability of credit unions to successfully serve their members – something they did successfully throughout the financial crisis.

NAFCU Insert – Page 88

NAFCU witness Lynette Smith said she would send Rep. Carney a letter detailing specific provisions of Dodd-Frank that credit unions have concerns about the impact or would like to see changes to.

Lynette Smith:

There are a number of provisions that NAFCU has concerns with and would like to see changes in. The list below reiterates a number of the comments we shared with the Committee in a January 2011 letter.

- Interchange Provisions: the bill's hastily included requirement that the Federal Reserve issue a new rule capping debit card interchange fees will have a significant impact on credit unions, which may be forced to cut back on their card programs as a result. NAFCU asks that the Committee work to stop the harmful interchange language from going into effect on July 21st, as it will have a damaging impact on credit unions and other small financial institutions.
- Inflation Adjustment: an important omission in Dodd-Frank is the indexing of all monetary thresholds in the bill annually for inflation. This is important to keep the intent of the legislation intact over time. $10 billion in assets today will not be the equivalent of $10 billion in assets next year, and NAFCU is concerned that more and more institutions will find themselves crossing this arbitrary line and becoming subject to new and unintended requirements.
- Preemption Clarification: one area that remains ambiguous in its application to credit unions is that of the Bureau of Consumer Financial Protection (BCFP)'s power to preempt consumer protection rules issued by the NCUA. The bill is silent as to credit unions, though Senator Carper, the author of many of the adopted preemption provisions, stated on the Senate floor that they were not intended to apply to credit unions. We ask that the Committee add this clarification to the bill's language, to avoid any ambiguities in the future.

- Unified Mortgage Loan Disclosure: although Dodd-Frank calls for a joint HUD-RESPA rule concerning mortgage loan disclosures, the bill provides an important exception—it leaves the BCFP with the final say on whether a new rule is needed. A combined disclosure rule is critical to avoiding some of the confusion and overlap that currently exists during the mortgage loan transaction process, lessening the compliance burden on financial institutions and easing procedures for borrowers.
- Definition of "Remittance Transfer": NAFCU also remains concerned that the overly broad definition of a "remittance transfer" in the bill imposes new disclosure requirements on all international electronic transfer of funds services, and not just transmissions of money from immigrants in the U.S. to their families abroad—which are in fact conventional remittances. The new regulatory and disclosure requirements would impose significant compliance obstacles for non-remittance services, and we ask that the definition be narrowed accordingly.
- BCFP Document Access: while Dodd-Frank excludes financial institutions with $10 billion or less in assets from the examination authority of the BCFP, the new agency is provided with unlimited access to financial reports concerning covered persons issued by other regulators. Since the reports are drafted by federal agencies as part of their examination procedures, access by the BCFP to the reports essentially amounts to an examination in itself, even for those institutions with $10 billion or less. NAFCU does not believe that this kind of overreach is the result Congress was seeking to achieve, and asks that this broad language be narrowed appropriately.
- Appraiser Independence: Section 1472 of the Act imposes mandatory reporting requirements on credit unions and other lenders who believe an appraiser is behaving unethically or violating applicable codes and laws, with heavy monetary penalties for failure to comply. These provisions would impose a significant burden on each credit union to essentially serve as a watchdog for appraisers violating their own professional practices, and should therefore be optional. If reporting continues to be compulsory, NAFCU asks that Congress amend the severe penalties of up to $10,000 or $20,000 per day. Such high amounts are simply unreasonable in this situation.

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