



HOUSE FINANCIAL SERVICES COMMITTEE  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS  
AND CONSUMER CREDIT

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Hearing on:  
Legislative Proposals to Promote Accountability and  
Transparency at the Consumer Financial Protection Bureau

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STATEMENT OF CHRIS STINEBERT  
PRESIDENT and CEO  
AMERICAN FINANCIAL SERVICES ASSOCIATION

My name is Chris Stinebert, and I am the President and CEO of the American Financial Services Association (“AFSA”). I am pleased to offer this testimony on “Legislative Proposals to Promote Accountability and Transparency at the Consumer Financial Protection Bureau.” I wish to express AFSA’s appreciation to Chairman Capito and Ranking Member Maloney for holding a hearing on these proposals, which are of keen importance to AFSA’s member companies.

### **Statement of Interest**

Founded in 1916, AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. Our 350 members include consumer and commercial finance companies, auto finance and leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers. Before the passage of the Dodd-Frank Act, most AFSA members have been regulated and examined by the states. Today, the still embryonic Consumer Financial Protection Bureau (CFPB) will add an additional layer of federal regulation on these companies.

The CFPB’s authority has a disproportionate impact on the many AFSA members that are finance companies, sales finance companies or retail installment sales finance companies.

These companies, many of which are small local or regional businesses, are licensed and supervised by state banking agencies or a consumer credit authority. They are not federally chartered and are funded by putting their own capital at risk, not by federally-insured deposits. They had no part in causing the financial crisis the Dodd-Frank Act purports to address. Thanks to the Dodd Frank legislation, the companies find themselves subject to an additional level of federal regulation and enforcement that could dramatically raise their compliance costs and impact the availability of consumer credit.

Even worse, the Dodd-Frank Act failed to give any statutory direction to the new CFPB to determine the adequacy of existing state laws and regulations under which these companies operate before imposing new federal burdens. We note that every dollar spent on additional compliance burdens is a dollar not loaned to American consumers.

We wish to address three major policy concerns. First, reflecting our membership and mission, we will discuss structural improvements to the Consumer Financial Protection Bureau, which we believe would bring that agency’s structure in line with the norm for independent federal regulatory agencies. Second, we wish to highlight some ambiguity in the law with regard to the treatment of confidential information in the supervisory process. Finally, we will discuss the need for systemic reform of the regulatory process beyond the CFPB that we believe will restore balance to the regulatory process.

This testimony should not be taken as a comment on the professionalism of the civil servants at the CFPB, many of whom who are veterans of other administrative agencies. We are, however, concerned about the underlying structure of the agency and its lack of oversight.

## **The Current Structure of the CFPB is Unique among Independent Agencies**

Congress has given the CFPB extraordinary authority over all facets of consumer credit. Unlike traditional agencies governed by a bipartisan commission, the CFPB is directed by a single regulator. Unlike the traditional independent agency model, the CFPB is guaranteed a percentage of the Federal Reserve Board's (FRB) budget, hence there is no congressional oversight through the normal budget process.

The CFPB also has independent litigating authority and need not notify the Department of Justice (DOJ) of any proposed action – far outside the usual norms of federal agency practice. AFSA believes DOJ consultation is necessary to coordinate enforcement activities across agencies and to provide a critical check on the CFPB's discretion when a company is exposed to damaging penalties.

Fortunately, a number of proposals address many of these concerns.

We are grateful to Chairman Capito for her co-sponsorship of H.R. 1121, Chairman Bachus's "Responsible Consumer Financial Protection Regulations Act," which replaces the single director of the CFPB with a five-member commission, including the Vice Chairman for Supervision of the Federal Reserve System — a structure similar to that of the Federal Trade Commission.

We note that the original proposals to create a consumer agency, including the administration's proposal and the Wall Street Reform and Consumer Protection Act of 2009, introduced and shepherded through the House by Rep. Barney Frank, all structured the agency as a commission.

AFSA is pleased that a similar bill, H.R. 1315, the "Consumer Financial Protection Safety and Soundness Improvement Act," sponsored by Rep. Duffy, passed the House by a 241 to 173 vote last July.

Unfortunately, this bill languishes in the Senate — necessitating this hearing and the need for further action by the House to provide an alternative road to reform.

For those reasons, we support H.R. 1355, introduced by Oversight and Investigations Subcommittee Chairman Neugebauer, which would move the CFPB into the Treasury Department in a structure similar to that of the Office of the Comptroller of the Currency. Doing so would provide the congressional oversight and budgetary accountability currently lacking in the CFPB's structure, without creating a full independent commission.

We also believe that H.R. 1640, the "Bureau of Consumer Financial Protection Accountability Act." sponsored by Rep. Posey, merits support. This bill would fund the CFPB through an authorization of annual appropriations by Congress, rather than the current autonomous transfer of funds from the FRB, which lacks any meaningful oversight.

Since a preponderance of AFSA members are non-depository companies rather than federally-insured depositories, we do not take a position on H.R. 2081, sponsored by Rep. Renacci, which

replaces the CFPB director's appointment to the FDIC Board with the Chairman of the Federal Reserve.

### **Protecting the Confidentiality of Supervisory Information**

AFSA is concerned about the treatment of confidential information collected during the examination process. There is precedent for maintaining this confidentiality in the longstanding practice by the federal banking agencies of claiming privilege with regard to bank examination records.

When challenged, the courts have upheld this privilege. In 1992, the U.S. Court of Appeals for the D.C. Circuit sustained the assertion of privilege by the FRB and Office of the Comptroller of the Currency (OCC) in denying the discovery of confidential supervisory information related to a national bank. AFSA believes that this argument should apply to the supervision and examination of bank and non-bank financial institutions alike.

We are pleased that a recent CFBP bulletin states that institutions providing privileged information in response to a supervisory request will not waive any privilege — and that the CFBP will maintain that information as privileged and confidential. However, we have additional concerns that may have to be addressed by legislation.

It is unclear whether the CFBP is a “federal banking agency” under the Federal Deposit Insurance Act, which governs the treatment and waiver of privilege for depository institutions. In the recently issued CFBP Bulletin 12-01, the bureau asserts it has the authority to demand privileged documents from supervised institutions without the privilege being waived despite the fact that the CFBP is not a “federal banking agency.” It is doubtful whether this body of law extends to the non-depository companies that AFSA represents.

We are encouraged that Director Cordray has indicated a desire to work with Congress to include the CFBP among covered agencies for the purpose of maintaining privilege. We are also pleased to offer enthusiastic support for H.R. 3871, the “Proprietary Information Protection Act of 2012,” which was introduced by Rep. Huizenga and co-sponsored by the Chair and by Chairman Bachus. H.R. 3871 would clarify the law to say that the submission of confidential information to the CFBP in the course of the supervisory process does not waive any privilege that a regulated entity may claim with respect to such information.

Similarly, Senator Richard Shelby has offered S. 2055, which goes a step further in extending this privilege universally to any federal banking agency, state bank supervisor or foreign banking authority including the CFBP.

Given that the CFBP has already begun its supervision of large depository institutions and is now launching its supervisory program for non-depositories, AFSA urges Congress to enact legislation swiftly to codify the confidentiality provisions of these legislative proposals. We hope that the CFBP will work with this committee to secure quick House consideration of this important measure. Moreover, we would like to use this opportunity to call on the Senate to

move in accord with this effort so that we can have these statutory protections on the President's desk as soon as possible.

### **Other Systemic Reform of the Federal Regulatory Process**

The complexity, impact and lack of congressional oversight over the Dodd-Frank Act is merely one example of a broken regulatory process. Without a doubt, this problem is manifested in other major regulatory initiatives impacting all segments of the economy. In fact, the role of the regulators has become so pervasive that: a) management is impeded from making basic operational decisions without checking with and getting approval from regulators; and b) the cost of regulatory compliance has gone up dramatically without any increase in effectiveness. Therefore, AFSA believes that the entire regulatory process is in need of comprehensive, systemic reform.

Happily, the House of Representatives passed H.R. 10, the "Regulations from the Executive in Need of Scrutiny Act" (REINS Act) — co-sponsored by Chairman Capito. That bill prevents federal agencies from implementing major regulatory initiatives without congressional approval. It ensures that new major rules that impose annual economic costs in excess of \$100 million or otherwise have significant economic or anticompetitive effects cannot take effect unless Congress passes a Joint Resolution approving the regulation within 90 session or legislative days of the rule's submission to Congress.

We believe enactment of the REINS Act would restore congressional oversight over federal agencies that are, all too often, adopting rules that either exceed their underlying statutory authority or reflect the views of unelected bureaucrats rather than elected officeholders constitutionally charged with creating public policy.

Finally, most federal agencies promulgate rules subject to the Administrative Procedures Act of 1946 (APA), which requires agencies to keep the public informed of their organization, procedures and rules; provides for public participation in the rulemaking process; establishes uniform standards for the conduct of formal rulemaking and adjudication; and defines the scope of judicial review.

Unfortunately, the APA provides little protection when federal agencies exceed their congressional mandates. Happily, there is a model that does so. In 1975, in response to an out-of-control Federal Trade Commission (FTC), Congress enacted the Magnuson-Moss Warranty Act, which imposed procedural safeguards on FTC rulemaking.

Under Magnuson-Moss, the FTC must first show "substantial evidence" before it is able to regulate "prevalent" unfair and deceptive acts. In addition to APA procedures, the Magnuson-Moss Act requires two notices of proposed rulemaking, prior notification to Congress, an opportunity for informal hearings, and importantly, possible cross-examination of witnesses. Magnuson-Moss also requires that the FTC justify a new rule with "particularity" after obtaining objective evidence based on a relevant market taken as a whole rather than the FTC's (and doubtless other agencies') previous reliance on anecdotal evidence.

AFSA believes that the important procedural safeguards of the Magnuson-Moss Act should be extended to other forms of federal regulatory rulemaking.



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Again, AFSA appreciates the opportunity to testify before the subcommittee on the impact of the structure of the CFBP, and I'd be happy to take any questions.

United States House of Representatives  
Committee on Financial Services

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

1. Name:	2. Organization or organizations you are representing:
Chris Stinebert	Amer. Financial Serv. Assn.
3. Business Address and telephone number:	
	
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature:  Chris Stinebert	

Please attach a copy of this form to your written testimony.