



Americans for Financial Reform
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March 22, 2010

The Honorable Christopher Dodd
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

***Re: Need for Strong, Independent Consumer Regulator as Part of Financial Reform
Legislation being Marked-Up by the Banking Committee***

Dear Chairman Dodd:

The consumer, civil rights, labor and community organizations that make up Americans for Financial Reform would like to thank you for offering a comprehensive proposal in the Restoring American Financial Stability Act (RAFSA) to overhaul the nation's failed consumer financial protection regulatory structure. In order to provide Americans with the strongest possible protections from lending and financial abuses in the future, the consumer regulator must have rule-making autonomy that does not require the approval of any banking regulator, an independent budget and adequate resources, and broad supervisory and enforcement authority over all types of providers of financial services. A new federal consumer regulator also should not replace the essential consumer protection role of the states.

We urge you to retain key provisions of Title X of RAFSA that grant the Consumer Financial Protection Bureau significant autonomy and broad rule-writing authority, delete sections that could allow other regulators to inappropriately veto consumer rules, and strengthen the Bureau's ability to enforce and supervise all players in the lending marketplace, particularly non-bank lenders and banks with assets of less than \$10 billion. We also urge you to provide for a vigorous role for the states to pioneer consumer protection standards and to enforce federal and state consumer laws, and to fill a key gap that leaves consumers without remedies because the Bureau cannot respond to every individual complaint.

I. Regulatory Independence is the Key to Effective Consumer Protection

Existing bank regulators utterly failed to protect consumers from abusive lending practices because they were not independent of the lenders they regulated and because they subordinated consumer protection concerns to a dangerously shortsighted focus on the near-term profitability of these institutions. In fact, the current regulatory system places consumer protection in banking agencies, for which consumer protection is not the primary mission, focus, or expertise. Only the establishment of a robust entity, functionally independent in all respects,

will protect America's families from unfair or predatory credit and financial products that can ultimately have a destabilizing effect on not only those families, but the economy as a whole. It is simply not "reform" to leave the final word over the rules of the game to the same regulators who ignored consumer problems until they grew so large that they sparked the financial meltdown. That is why Americans for Financial Reform and our member organizations support the creation of a completely independent Consumer Financial Protection Agency.

The RAFSA makes some significant strides in achieving regulatory independence for a Consumer Financial Protection Bureau within the Federal Reserve System. The Bureau would be led by a director who is appointed by the President and confirmed by the Senate and who has the authority to set the Bureau's budget as needed, up to a pre-established cap. Importantly, the RAFSA does not require that the Bureau get sign off from the banking agencies before it can do its job.

The consumer regulator should not be a subordinate part of the Federal Reserve or any bank regulator. **We urge your opposition to amendments 209 and 210 (Shelby) to create non-independent consumer divisions with the Federal Reserve and FDIC.** Consumer protection has consistently taken a back seat at the Federal Reserve to its monetary policy and supervision responsibilities. The Federal Reserve infamously refused to use broad rule-writing authority it had for many years to address unfair and deceptive mortgage lending and credit card practices until problems in those markets had harmed tens of millions of consumers and Congress threatened to take its this authority away. The FDIC has only in the last four years taken its consumer protection responsibilities seriously and must always make resolving bank failures its chief priority during periods of crisis.

We urge your support for amendment 263 (Reed) to eliminate the unnecessary and potentially dangerous veto of Bureau regulations by the systemic risk council. Consumer protections reduce, rather than increase, systemic financial risk. It was the lack of adequate consumer protections for nonprime mortgages that started the financial crisis. Any process that permits regulators with a history of indifference or outright hostility to consumer problems to second-guess the Bureau will undermine accountability, impose delay and discourage the Bureau from addressing harmful practices as they are still developing. Several specific provisions in the bill require the Bureau to actively and frequently consult with bank agencies, such as the requirement that the Bureau consult with these regulators prior to proposing a rule and during the public comment process, that it consider prudential concerns when developing rules, and through the traditional judicial review process under the Administrative Procedures Act through which agencies provided input into each other's proposed rules.

We urge your opposition to amendment 211 (Shelby) to create a Consumer Protection Council consisting of many of the same bank regulators who have failed to protect consumers. Creating a new regulatory bureaucracy, rather than streamlining authority in a single regulator, is a recipe for gridlock, turf battles and inaction.

II. The Bureau Must have Full Authority over the Financial Services Market Without Gaps

The Bureau must be able to take a comprehensive, even-handed approach to consumer protection in financial products and services that avoids the pitfalls of the current system that involves seven different agencies that provide different treatment for different types of financial institutions. The consumer protection regulator must have the power to address unfair, deceptive, or abusive practices that target consumers no matter what type of entity engages in those bad practices. In the recent past, serious problems developed because no one agency had the primary job of looking out for consumers regardless of the type of provider.

We applaud the fact that the bill confers full rule-writing authority over all types of providers of financial products and services, with minimal exceptions. The exemptions in the bill are carefully drawn and should not result in significant gaps in coverage.

We urge you to resist attempts to carve out new exceptions to the Bureau’s authority for auto lending, attorneys, and other industries or for any product or service that affects consumer financial protection. Whether or not particular industries contributed to the current crisis is not the issue. A “Swiss cheese” approach to consumer protection simply cannot respond to the challenges that the future holds. This bill must provide a comprehensive structure for tomorrow’s problems and not merely fight yesterday’s battles.

In addition to rule-writing, the Bureau needs full authority to seek compliance with its rules, through the provision of both supervisory authority and the ability to bring enforcement cases over all those to whom the rules apply. Supervision permits the regulator to address problems early, in a cooperative fashion, and to understand the problems institutions may be facing. Enforcement is the necessary “stick” the Bureau could use to require compliance when cooperative efforts fail.

We applaud several significant provisions that provide the Bureau with broad supervision and enforcement authority. We urge you to oppose attempts to weaken these powers:

- Nonbank entities involved in the mortgage industry.
- The very largest banks, those with over \$10 billion in assets.
- The larger nonbanks outside the mortgage industry.

However, problems for consumers of financial products and services do not start and stop with the mortgage industry or with the largest institutions. The Bureau also needs strong tools to effectively police the market for non-bank, non-mortgage providers of financial products and services. As we learned with the mortgage lending crisis, bad practices can be pioneered in a market by larger or by smaller participants. If the Bureau is hobbled in addressing harmful conduct of smaller participants, that can create marketplace pressure on their competitors to adopt the same harmful practices.

We urge your support for amendment 26 (Schumer) to give the Bureau full powers over all nonbank institutions. Payday lenders, auto dealers that sell loans, consumer reporting agencies, debt collectors and many other types of nonbanks, large and small, play critical roles in consumers’ financial lives. The Bureau must have the power to address problems where they

arise without gaps in authority. Nonbank enforcement cannot be left to the Federal Trade Commission. The FTC has a small staff to oversee consumer financial protection and no examination powers. It failed to use its authority to address problems in the nonbank sector prior to the financial crisis. It also will not have the expertise that the Bureau will develop over financial consumer protection.

We also urge your support for amendment 262 (Reed) to give the Bureau back-up enforcement power over banks with less than \$10 billion in assets. The \$10 billion cutoff leaves enforcement for well over 90 percent of banks completely in the hands of the existing regulators that have a record of enforcement failure. It will give the same modest back-up authority to the Bureau conferred in the House bill to bring cases after receiving consumer complaints or if a recommendation arising out of an examination is ignored after 120 days. We strongly urge that the supervision and enforcement provisions regarding small banks be strengthened. **That is why Americans for Financial Reform and our member organizations support the creation of a completely independent Consumer Financial Protection Agency with full enforcement and supervisions authority and urge support for amendment 57 (Reed) to create such an agency.**

We urge support for Senator amendment 97 (Merkley) to provide enforcement of rules through existing statutes. The current federal consumer protection statutes generally have provisions to make injured consumers whole. But new rules that are written under the new authority over unfair, deceptive or abusive practices will give consumers no ability to protect themselves. The Bureau will not be able to address anything close to every complaint. Senator Merkley's amendment partly closes this gap by providing that violation of a rule addressing consumer credit, for example, would be treated as a violation of the Truth in Lending Act.

We urge your opposition to amendment 212 (Shelby) to prohibit the Bureau from regulating loan underwriting. This amendment would prohibit the Bureau from, for example, enforcing existing rules mandating that borrowers have the ability to repay mortgage loans and similar provisions of the Credit CARD Act targeting predatory lending aimed at students. A key lesson of the financial crisis is that it is a mistake to allow regulators focused mainly on bank profitability to determine whether lenders are protecting consumers by offering loans based on their ability to repay the loans. Bank regulators were apparently so blinded by the short-term profit boost provided by abusive lending that they ignored the long-term harm these loans would cause borrowers or financial institutions. To reward bank regulators who have a horrific track record on this issue with sole underwriting authority is shocking and dangerous.

We urge you to oppose amendments 214 (Shelby) and 304 (Corker), which deprive the Bureau of authority to issue rules on unfair arbitration practices. Few practices are as abusive, unfair and deceptive as the widespread use of forced arbitration, which allows wrongdoers to escape accountability in our justice system by steering cases to a biased, secretive and lawless forum that they control. These amendments would relegate the Bureau to studying arbitration without any authority to issue rules to address problems uncovered with the study. Both the Administration's proposal and the House-passed bill recognized the fact that forced arbitration has already been found to be harmful to consumers and investors; the Senate bill should similarly protect consumers and allow the Bureau and the SEC to issue rules limiting forced arbitration within an expeditious and timely manner.

III. States Must be Full Consumer Protection Partners

States have an essential constitutional and practical role in protecting their citizens. States are our nation's first responders when new threats target consumers. States can act before local problems become national ones and can protect honest competitors who are pressured to follow the practices of less scrupulous players. The mortgage crisis, for example, started in the nonbank sector but then spread to institutions that the states could not touch. In 2006, the peak year of toxic mortgage lending, nationally chartered banks or thrifts and their subsidiaries made 32 percent of subprime loans, 40 percent of alt-A loans, and 51 percent of the toxic payment-option and option ARM loans.

We urge you to retain the strengths of the bill with respect to the role of the states in this area, in particular:

- *No preemption for nonbank subsidiaries.*
- *Attorney general authority to enforce non-preempted state law against banks.*
- *Attorney General enforcement of Bureau rules.*
- *Bureau rules as a floor, not a ceiling, except where preempted as to national depositories.*

The bill also takes extremely modest steps to curtail the excessive efforts of bank regulators to wipe out state consumer protection law by requiring the OCC to determine that a law actually imposes a significant interference with banking before preempting.

We urge your **opposition to amendment 318 (Corker)**, which would eliminate all of these provisions of the bill.

We urge your **support for amendment 264 (Reed)**, which returns to the system in place during most of this nation's first 200 years, when national banks were expected to comply with state laws. This amendment protects nationally chartered banks and thrifts from laws that discriminate against them, while otherwise generally applying state law. Preemption undermines our federal system and is a barrier to effective government responses to the real problems of real people.

IV. Other Amendments to Watch

We also urge your support for these important strengthening amendments:

- #29 (Schumer): Establishes a nonprofit Financial Consumer Association for purposes of informing and representing financial services consumers.
- #73 (Menendez): Makes permanent CDFI Fund's Financial Education and Counseling Program.

- #91 (Merkley): Prevents evasions of the \$10 billion asset standard for Bureau enforcement and supervisions by aggregating assets of bank affiliates.
- #93 (Merkley): Adjusts the Truth In Lending Act’s 1968 jurisdictional limits for inflation to bring most consumer auto loans and consumer credit cards back under the Act and gives Bureau authority to adjust dollar limits in the Act for inflation.
- #96 (Merkley): Requires national banks to comply with the interest rate laws of the consumer’s state.
- #99 (Merkley): Adjusts statutory maximum check hold times for inflation and modern technology.
- #100 (Brown): Ensures that the Bureau and other regulators respond to complaints, and establishes Private Loan Ombudsman
- #102 (Brown): Protects consumers by ensuring that a credit card holder’s decision to close a account when terms are changed does not trigger a decrease in their credit score.
- #125 (Akaka): Provides clear disclosures to protect remittance transfers.
- #267 (Reed): Instructs HUD to recommend a national default and foreclosure database.

We urge your opposition to these weakening amendments:

- #270 (Kohl): Broad exclusion of regulated persons acting in a fiduciary capacity from Bureau oversight.
- #251 (Bennett): Remedies a false “conflict” between the Fair Debt Collection Practices Act and judicial rule and permits unfair attorney debt collection practices.
- #253 (Bennett): Deprives the Bureau of authority over various types of consumer financial products and services.
- #305 (Corker): Removes authority to deal with abusive practices and deletes definitions of unfairness and abusive.
- #306 (Corker): Imposes unnecessary paperwork burdens on the Bureau regarding its reports to Congress.
- #307 (Corker): Deprives the Bureau of funds for consumer education and financial literacy and imposes unnecessary paperwork burdens.
- #310 (Corker): Deprives the Bureau of supervision and enforcement authority over the affiliates of the largest banks and credit unions.

- #315 (Corker): Removes the authority to require that the risks and benefits of products be fully, accurately and effectively disclosed.
- #317 (Corker): Permits persons to enforce or attempt to enforce illegal contracts for unlawful products or services.
- #324 (Corker): Imposes more burdens on the Bureau's rulemaking process and additional hurdles on judicial review beyond those imposed on other agencies.
- #450 (Johanns): Exempt all business to business contracts, even those that affect how the two businesses will treat their consumers.

As the Committee approaches mark-up on this legislation, it is clear that crucial decisions that are made within the next few days and weeks could determine the structure and effectiveness of consumer protection regulation for many decades. With so much at stake for Americans, we strongly urge you to ensure that the consumer financial protection regulator is independent, has broad authority to regulate all financial services providers and has strong enforcement and supervision powers.

Sincerely,

Americans for Financial Reform

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

National Organizations

- A New Way Forward
- AARP
- ACORN
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Family Voices
- American Income Life Insurance
- Americans for Democratic Action, Inc.
- Americans for Fairness in Lending
- Americans United for Change
- Business for Shared Prosperity
- Calvert Asset Management Company, Inc.
- Campaign for America's Future

- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Community Law Center
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- HNMA Funding
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights
- MoveOn.org Political Action
- NAACP
- NASCAT

- National Association of Consumer Advocates
- National Association of Investment Professionals
- National Association of Neighborhoods
- National Coalition for Asian Pacific American Community Development
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Institute
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Training and Information Center/National Peoples Action
- National Council of Womens Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- National People's Action (NPA)
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Responsible Endowments Coalition
- Sargent Shriver Center on Poverty Law
- Scam Victims United
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Carrots and Sticks Project
- The Fuel Savers Club
- The Seminal
- UNET
- Union Plus
- United for a Fair Economy
- U.S. PIRG
- Unitarian Universalist for a Just Economic Community
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce

- We The People Now
- Western States Center
- Woodstock Institute
- Working America
- World Privacy Forum

State Organizations

- 9 to 5, the National Association of Working Women (CO)
- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans for Responsible Lending
- Association for Neighborhood and Housing Development (NY)
- Audubon Partnership for Economic Development LDC (New York, NY)
- BAC Funding Consortium Inc. (Miami, FL)
- Beech Capital Venture Corporation (Philadelphia, PA)
- Bell Policy Center (CO)
- California PIRG
- California Reinvestment Coalition
- Center for Media and Democracy
- Century Housing Corporation (Culver City, CA)
- Changer(NY)
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund (Chicago, IL)
- Chicago Community Ventures (Chicago, IL)
- Chicago Consumer Coalition
- Citizen Potawatomi CDC (Shawnee, OK)
- Coalition on Homeless Housing in Ohio
- Colorado AFL-CIO
- Colorado PIRG
- Colorado Center on Law and Policy
- Community Action of Nebraska
- Community Capital Development
- Community Capital Fund (Bridgeport, CT)
- Community Capital of Maryland (Baltimore, MD)
- Community Development Financial Institution of the Tohono O’odham Nation (Sells, AZ)
- Community Redevelopment Loan and Investment Fund, (Atlanta, GA)
- Community Reinvestment Association of North Carolina
- Community Resource Group (Fayetteville, AR)
- Connecticut Association for Human Services
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (New York, NY)
- Cooperative Fund of New England (Wilmington, NC)

- Corporacion de Desarrollo Economico de Ceiba (Ceiba, PR)
- CWA 7777 (CO)
- Delta Foundation, Inc. (Greenville, MS)
- Economic Opportunity Fund (EOF) (Philadelphia, PA)
- Empire Justice Center (NY)
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing Enterprises, Inc. (Berea, KY)
- Fitness and Praise Youth Development, Inc. (Baton Rouge, LA)
- Florida Consumer Action Network
- Florida PIRG
- Forward Community Investments (Madison, WI)
- Funding Partners for Housing Solutions (Ft. Collins, CO)
- Georgia PIRG
- Grow Iowa Foundation (Greenfield, IA)
- Homewise, Inc. (Santa Fe, NM)
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Idaho Nevada CDFI (Pocatello, ID)
- Illinois PIRG
- Impact Capital (Seattle, WA)
- Indiana PIRG
- Information Press (CA)
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc. (Mayville, NY)
- Keystone Research Center
- La Casa Federal Credit Union (Newark, NJ)
- Low Income Investment Fund (San Francisco, CA)
- Long Island Housing Services NY
- MaineStream Finance (Bangor, ME)
- Maryland PIRG
- Massachusetts Consumers' Coalition
- Massachusetts Fair Housing Center
- MASSPIRG
- MichiganPIRG
- Midland Community Development Corporation (Midland, TX)
- Midwest Minnesota Community Development Corporation (Detroit Lakes, MN)
- Mile High Community Loan Fund (Denver, CO)
- Missouri PIRG
- Montana Community Development Corporation (Missoula, MT)
- Montana PIRG
- Mortgage Recovery Service Center of L.A.
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital (Trenton, NJ)

- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City AIDS Housing Network
- Next Step (MN)
- NOAH Community Development Fund, Inc. (Boston, MA)
- Nonprofit Finance Fund (New York, NY)
- Nonprofits Assistance Fund (Minneapolis, MN)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northern Community Investment Corporation (St. Johnsbury, VT)
- Northside Community Development Fund (Pittsburgh, PA)
- Ohio Capital Corporation for Housing (Columbus, OH)
- Ohio PIRG
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance (Charlottesville, VA)
- Rhode Island PIRG
- The Rocky Mountain Peace and Justice Center
- Rural Community Assistance Corporation (West Sacramento, CA)
- Rural Organizing Project OR
- San Francisco Metropolitan Transportation Authority
- Seattle Economic Development Fund dba Community Capital Development
- SEIU Local 105 (Colorado)
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia, AR)
- TexPIRG
- The Association for Housing and Neighborhood Development
- The Fair Housing Council of Central New York
- The Help Network
- The Loan Fund (Albuquerque, NM)
- Third Reconstruction Institute (NC)
- V-Family, Inc.
- Vermont PIRG
- Village Capital Corporation (Cleveland, OH)
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty – Florida
- WashPIRG
- Westchester Residential Opportunities Inc. NY
- Wigamig Owners Loan Fund, Inc. (Lac du Flambeau, WI)
- WISPIRG