



Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

June 10, 2014

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to convey our concerns about the bills being marked up on June 10th, which we believe would negatively impact the operations of the Consumer Financial Protection Bureau (CFPB), and thus have adverse consequences for consumers. The measures being marked up in the committee—specifically H.R. 3389, H.R. 4262, H.R. 4383, H.R. 4539, H.R. 4604, H.R. 3770, H.R. 4684, H.R. 4662, and the “Bureau Examination Fairness Act”—would weaken the CFPB and make it harder for the agency to do its job.

The CFPB was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and opened its doors as the nation’s only financial regulator completely devoted to consumer protection in July 2011. Since then, the CFPB has been protecting consumers by ensuring that markets work in an open, transparent, and fair way. The Bureau’s mission is to hold financial companies accountable for being up front about the costs of, and risks associated with, their products, and also to ensure that consumers are treated with dignity and respect, rather than set up to fail. The Bureau has successfully gone to bat for consumers, delivering results that are making markets work more fairly and putting a stop to fraud and abuse.

The proposals being considered today will not protect the public or increase agency accountability; instead they are part of a continuing pattern of mischaracterizing the CFPB’s organization and processes. These proposals would hobble the agency and interfere with its ability to fulfill its mission. The bills, described in the summary below, represent the latest in a continuing effort to tie the agency’s hands, and we urge you to oppose them.

- H.R. 3389, the “CFPB Slush Fund Elimination Act of 2013,” would eliminate the Bureau’s Civil Penalty Fund, instead directing the Fed to transfer existing funds and future penalties to the Treasury. The operations of the CFPB’s Civil Penalty Fund are based on a rulemaking, and its activities are both narrow and statutorily based. Through the fund, the Bureau uses fines collected from more deep-pocketed violators to make whole consumers who were cheated by lawbreakers with no money to pay restitution. Thus far the Bureau has provided over \$13 million from the fund to over 4,000 consumers who were harmed by fraudulent companies with no assets. A secondary use of funds is for financial literacy, a task given to the CFPB by Congress. In particular the Bureau has used the funds for programs targeted toward military families and veterans.

This bill would make it harder for the CFPB to protect vulnerable and targeted populations, and would weaken the agency's work on financial literacy issues.

- H.R. 4262, the "Bureau Advisory Commission Transparency Act," would apply the provisions of the Federal Advisory Committee Act (FACA) to the CFPB, which would require that advisory committee meetings all be made public. The CFPB has already implemented much of the FACA voluntarily, and recently the CFPB increased its longstanding substantial conformance with the FACA further, announcing changes to the format of its Board and Council meetings. On May 20th, the Bureau increased its voluntary compliance with the FACA and made their Board and Council meetings open to the public.

It is important, however, that the agency retain the flexibility to determine when information is preliminary; for example, this bill could have the unintended consequence of creating a disincentive for Academic Research Council researchers and academics to share preliminary data and methodologies with each other. It could also impact the CFPB's Small Business Review Panel operations. The Bureau is required to consider the needs of small businesses in developing rules, and their procedure for doing so, in temporary Small Business Review Panels, is designed to give small businesses a right to help develop proposed rules, before they are actually proposed. This procedure is an important opportunity small businesses have to discuss their concerns before others get involved; the consequences of this bill would be to dilute that "sneak peek." Finally, it is worth noting that the FACA currently does not apply to a number of agencies beyond the CFPB, including the Federal Reserve, the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, the National Academy of Sciences, and the National Academy of Public Administration.

- H.R. 4539, the "Bureau Research Transparency Act," would require that research papers the Bureau makes available to the public be accompanied by all related studies, data, and analyses. This bill would burden staff with demands with which it would be impractical to comply. Requiring that ALL studies, data, and analyses be published along with research papers would hamper the Bureau's productivity. It could put the CFPB in the impossible position of being required to release information that it is otherwise required to protect, including confidential supervisory information, materials specifically protected by contracts with companies providing data, and more. This bill could prevent the CFPB from using or collecting the data it needs to understand markets and make wise regulatory decisions. Finally, the bill is redundant. The Data Quality Act already provides safeguards, making further requirements unnecessary. The CFPB already describes all of its analyses, which is an adequate requirement.
- H.R. 4604, the "CFPB Data Collection Security Act," would require an opt-out list for consumers who do not want the CFPB to collect personally identifiable information (PII) about them. This bill is unnecessary and misleading. The CFPB does not collect PII, unless it is voluntarily provided by members of the public with affirmative consent. As Deputy Director Steve Antonakes mentioned in testimony delivered before your committee in July 2013, "The Bureau collects and studies data in order to protect

consumers throughout the United States in accordance with its statutory mandate, not to study any particular individuals.”

The Bureau collects much of its information from commercial vendors, without including PII. Data collected from other third parties does not include PII, unless it is supervisory information, in which case it is already confidential. Furthermore, the CFPB already protects consumer privacy, both when consumers submit PII and when the agency studies datasets that do not include PII. In regards to privacy breaches, the CFPB has an emergency response plan that is based on OMB requirements for all government agencies. That plan, and other ways that the CFPB protects data, are described in the Bureau’s Privacy Impact Assessment, last updated in December 2013. This bill would impede the Bureau from collecting data, which would thwart its efforts to do its Congressionally-mandated job of handling consumer complaints, regulating financial firms, and monitoring financial markets.

- H.R. 3770, the “CFPB-IG Act of 2013,” would create a separate, independent inspector general (IG) for the CFPB and would require the IG to appear at semi-annual hearings of the House Financial Services Committee and the Senate Banking Committee. This legislation is unnecessary because the CFPB already has an IG, shared with the Federal Reserve, within which the CFPB is housed: the Dodd-Frank Act of 2010 established that the Federal Reserve’s Office of Inspector General has oversight authority for Bureau, conducting audits, investigations, and other necessary reviews. The current Inspector General’s detailed work plan for CFPB oversight lays out the fact that the IG has completed, is conducting, and is planning a variety of CFPB oversight functions. The current IG has repeatedly stated, in letters to Congress and to the Bipartisan Policy Center, that it has the authority, resources, and independence to conduct oversight activities of the CFPB. There is no evidence that the existing structure is inadequate. Instead, the bill looks to be an effort to send a message that the Bureau lacks oversight, when in reality proper oversight systems are in place.
- H.R. 4684, the “Bureau Guidance Transparency Act” would require the CFPB to provide a public notice and comment period before issuing any guidance in final form. It also would require that the Bureau make public any studies, data, and analyses it relied upon for preparing and issuing the guidance. Guidances are not currently subject to the Administrative Procedures Act (APA), so this bill would radically revise the APA with regard to the CFPB alone. Guidances are interpretive rules or policy statements, intended to provide regulated entities with clarity on the regulator’s expectation with regard to existing laws. They can be particularly important in providing warnings on emerging practices. Attaching a notice and comment period to guidances would hinder the CFPB’s ability to make compliance expectations clear to market participants, and to act in a timely way to facilitate compliance with the law.
- H.R. 4662, the “Bureau Advisory Opinion Act,” would impose a statutory requirement that the CFPB issue advisory opinions on request. It then requires confidentiality of those opinions by creating an extremely problematic new FOIA exemption. This proposed bill would take scarce resources intended to protect the public and divert them to create

private opinions for financial firms. Worse, while it purports to encourage consistency in the end it will be inefficient, due to the mandated secrecy. The bill denies the public access to any documents or materials received by or prepared by the CFPB in connection with a request for an advisory opinion and, most critically, the advisory opinion itself. A wholesale exemption from disclosure of the advisory opinion and other materials would deprive the public (including other regulated entities in the marketplace) from understanding how the CFPB interprets and applies federal law to business practices and acts that affect consumers. If the agency is to issue advisory opinions, and we strongly oppose that it is forced to do so by this burdensome bill, it should be through a transparent process.

While some agencies do provide limited advisory committee processes in limited circumstances, there is no previous occurrence of Congress mandating such a burdensome requirement as exists in this bill. This bill would create an unprecedented and impractical procedural requirement—one that is not imposed anywhere else in the government.

- The “Bureau Examination Fairness Act” would prohibit the CFPB from including enforcement attorneys in examinations, regulate data requests, and place time limitations on the completion of examination field work and the issuance of exam reports. This bill is somewhat redundant as the CFPB has already stopped the regular participation of enforcement attorneys in examinations. This bill would, however, ban this practice absolutely; whereas the agency would benefit from having the flexibility to call an experienced attorney if need be. Furthermore, the bill would impose a number of requirements on the Bureau in regards to coordination, data sampling, and cost benefit requirements. Its restrictions on the length of examinations and its limits on the costs of data collection would harm the CFPB’s ability to conduct necessary and adequate supervision.
- H.R. 4383, the “Bureau of Consumer Financial Protection Small Business Advisory Board Act,” would establish a Small Business Advisory Board to meet at least twice a year, comprised of at least twelve representatives of the small business community. This proposal is unnecessary and duplicative because the CFPB is already specifically—and to a greater extent than most other regulatory agencies—required to take small business concerns into account when issuing rules. Small business representatives already have a unique first look at CFPB rules under Section 1100G of the Dodd-Frank Act, which requires the CFPB to convene a Small Business Review Panel and collect advice and recommendations from representatives of small entities on potential economic impacts of proposed rules under consideration, and to report on their review. Additionally, the CFPB’s largest advisory board, the Consumer Advisory Board, is a multi-stakeholder board that consists of a variety of members with different backgrounds—including those from financial firms. Adding yet another council or panel to the mix would be unwieldy and redundant. It would also clash with H.R. 4262 (discussed in the bullet above), which states that the CFPB comply fully with the FACA. The FACA states that “new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary.”

We see the CFPB as an agency seriously and responsibly doing the job Congress gave it: making consumer financial markets fairer and more transparent; putting money back in the pockets of members of the public who were fleeced by illegal conduct, and policing rules of the road that make the financial system work better for responsible businesses and responsible consumers alike. Obstructing reasonable regulation only serves the interests of the worst elements of the financial industry, and encourages law breaking. We urge the committee to use its time to explore ways to move forward on making sure that the U.S. financial system supports people's ability to save, transact, and borrow prudently.

Sincerely,

AFL-CIO

Americans for Financial Reform

California Reinvestment Coalition

Center for Responsible Lending

Community Legal Services, Philadelphia

Consumer Action

Consumer Federation of America

Consumers Union

Empire Justice Center

Empowering and Strengthening Ohio's People

Greenlining Institute

The Leadership Conference on Civil and Human Rights

NAACP

National Association of Consumer Advocates

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)

Northwest Federation of Community Organizations

Philadelphia Unemployment Project

Public Citizen

U.S. PIRG

Woodstock Institute

Following are the partners of 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.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- 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 Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- 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
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices

- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- 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
- California PIRG
- California Reinvestment Coalition
- 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
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- 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 A
- Connecticut PIRG

- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- 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
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy 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
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

