



April 5, 2016

Dear Senator,

Americans for Financial Reform (AFR)<sup>1</sup> appreciates the opportunity to provide this statement for the record of the Senate Committee on Banking, Housing on Urban Affairs regarding the Effects of Consumer Finance Regulations. It is less than five years since the Consumer Financial Protection Bureau (CFPB) was established. Since then, the CFPB has fulfilled Congress's vision of a federal agency with "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced."<sup>2</sup> Through its rulemaking, supervision, enforcement, and consumer education and complaint system, the CFPB has made enormous strides in ensuring that the financial marketplace is fair to consumers. Its rules and supervision have already begun to reform the industry's conduct, making banks and other financial services companies more attentive to consumers' rights.

In this statement, AFR focuses in particular the CFPB's enforcement successes, the need to retain its statutory structure, and some of the CFPB's priorities in the coming years. AFR members are submitting statements for the record on issues we did not address in this short statement, and we ask the Committee to give those statements full consideration.

### **Enforcement**

Director Cordray has been straightforward in stating that "the Consumer Bureau fully intends to be the 'cop on the beat' that was envisioned when the financial reform law was enacted."<sup>3</sup> Through its enforcement actions, the CFPB has lived up to those words, resolving more than 80 cases and securing \$11.2 billion in relief for consumers - more than four times what the Bureau has spent on all functions over the course of its existence. These settlements have also yielded more than \$375 million in fines.

A few examples illustrate the breadth of the CFPB's successes:

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<sup>1</sup> AFR is a coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of AFR member groups is attached to this letter.

<sup>2</sup> Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference, at 874 (June 29, 2010), <http://www.illsdc.org/assets/DoddFrankdocs/dodd-frank-act-jt-expl-statement.pdf>

<sup>3</sup> Richard Cordray, *Prepared Remarks of CFPB Director Richard Cordray at the National Association of Attorneys General* (Feb. 23, 2015), <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-national-association-of-attorneys-general-2/>.

- Securing \$1.8 billion in refunds for the credit card customers of Citibank,<sup>4</sup> Bank of America,<sup>5</sup> and JP Morgan Chase<sup>6</sup> for worthless add-on products like fraud monitoring services and deceptively-marketed insurance.
- Entering into a \$2.1 billion settlement with Ocwen for systematically overcharging homeowners by misapplying their payments and adding unauthorized fees, and by misleading homeowners and courts in the foreclosure process.<sup>7</sup>
- Securing a \$530 million default judgment against Corinthian,<sup>8</sup> a for-profit school that swindled students into paying for worthless degrees and then engaged in illegal debt collection in its private student loan program, as well as \$480 million in debt relief for affected students.<sup>9</sup>
- Putting an end to the unfair practices of dozens of other companies in other cases. To take one example, in December 2015, the CFPB stopped CarHop from continuing to convey inaccurate information to credit reporting agencies; CarHop also agreed to pay a \$6,465,000 civil penalty in recognition of the 84,000 customers already been harmed by its false reports.<sup>10</sup>

In the face of these law enforcement successes and their tangible results for consumers, the CFPB’s critics assert that the Bureau is engaging in “rulemaking by enforcement.” This is simply a pejorative label for routine agency practice. For more than a century, Congress has recognized the necessity of having agencies make judgments on a case-by-case basis, particularly in stopping unfairness in the marketplace. As the legislators who passed the Federal Trade Commission Act in 1914 wrote, “[i]t is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again.”<sup>11</sup>

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<sup>4</sup> <http://www.consumerfinance.gov/newsroom/cfpb-orders-citibank-to-pay-700-million-in-consumer-relief-for-illegal-credit-card-practices/>

<sup>5</sup> <http://www.consumerfinance.gov/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/>

<sup>6</sup> <http://www.consumerfinance.gov/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/>

<sup>7</sup> <http://www.consumerfinance.gov/newsroom/cfpb-state-authorities-order-ocwen-to-provide-2-billion-in-relief-to-homeowners-for-servicing-wrongs/>

<sup>8</sup> <http://www.consumerfinance.gov/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/>

<sup>9</sup> <http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/>

<sup>10</sup> <http://www.consumerfinance.gov/newsroom/cfpb-orders-carhop-to-pay-6-4-million-penalty-for-jeopardizing-consumers-credit/>

<sup>11</sup> House Report No. 1142, 63d Congress, 2d Sess., at 19 (Sept. 4, 1914) *cited with approval* *FTC v. R. F. Keppel & Bro., Inc.*, 291 U.S. 304, 312 n.2 (1934).

Similarly, the Supreme Court has long recognized that case-by-case adjudication is entirely appropriate and necessary for an administrative agency:

Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity.

In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.<sup>12</sup>

At bottom, objection to case-by-case development of the law is an objection to the entire common law system that forms the foundation of Anglo-American law. The feigned outrage at this ordinary and longstanding practice is simply a pretext to complain about the CFPB's success in fulfilling its mission to enforce consumer finance laws.

## **Structure**

The CFPB's success has confirmed the wisdom of creating an agency accountable to a single Director with the independent funding to shield financial regulation from undue politicization.

Vesting a single director with responsibility for the Bureau's functioning facilitates effective decision-making and ensures a clear point of responsibility for the CFPB's performance. A single-director structure for a financial regulator is nothing new: the Office of the Comptroller of the Currency, the regulator of national banks, has been headed by a single official since it was

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<sup>12</sup> *SEC v. Chenery Corp.*, 332 US 194, 201-202 (1947); *accord NLRB v. Bell Aerospace Co.*, 416 US 267 (1974); *Conference Group, LLC v. FCC*, 720 F. 3d 957 (D.C. Cir. 2013) (Rogers, J.) (“The Commission’s decision involved a statutory interpretation that could be rendered in the form of an adjudication, not only in a rulemaking. . . . Although the Commission stated its decision would apply to ‘similarly situated’ providers, that is true of all precedents.”).

established in 1863.<sup>13</sup> Since Congress established the Federal Housing Finance Agency in 2008, that agency has also been headed by a single director who can be removed only for cause.<sup>14</sup>

The CFPB nevertheless faces many structural checks on its authority. Its rulemakings are subject to notice-and-comment procedures that provide opportunity for input by the affected industries, the public, and elected officials, and its rules may be challenged in court under the Administrative Procedures Act. Similarly, enforcement actions may be appealed to the courts. Unlike other bank regulators, the CFPB's decisions are also subject to veto by the members of the Financial Stability Oversight Council,<sup>15</sup> and CFPB rulemakings that impact small businesses are initially reviewed by a panel of affected small businesses.<sup>16</sup> The CFPB is also subject to extensive oversight through semi-annual testimony before each house of Congress's committee of jurisdiction, annual Government Accountability Office audits, and frequent reports by the Inspector General.

Independent funding is also a common characteristic of the federal bank regulatory agencies. Like the other federal bank regulators – the OCC, the FDIC, and the Federal Reserve – the CFPB does not receive appropriations. None of these agencies have ever been appropriated agencies. While other bank regulators have mechanisms to increase their own independent funding, only the CFPB's budget is capped by Congress. The CFPB has proven itself prudent in the use of this funding. In FY2015, the CFPB spent \$524.4 million, 17% less than its Congressionally-authorized cap of \$631.7 million and 49% less than the \$1.04 billion spent by the OCC.

### **Future Policy Priorities**

The CFPB must continue to move forward on many pressing priorities. Despite the enormously successful initiatives of the past four-and-a-half years, consumers continue to face unfair, deceptive, and abusive practices when accessing financial services. To that end, AFR continues to urge the CFPB to move forward on each of the nine priorities it has identified for the next two years<sup>17</sup> as well as in a number of other areas. We discuss several, but not all, of these priorities below.

*Payday lending.* AFR hopes and expects that the CFPB will soon propose a strong rule requiring all high-cost lenders, including payday, car title and installment lenders to confirm a borrower's ability to repay in light of their income and expenses without defaulting on other bills and without taking out a new loan. This work is vital to stopping the worst abuses in predatory small dollar lending and the debt trap that has ensnared millions of Americans.

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<sup>13</sup> 12 U.S.C. § 1(b)(1).

<sup>14</sup> 12 U.S.C. § 5491(b).

<sup>15</sup> 12 U.S.C. § 5513(a).

<sup>16</sup> 5 U.S.C. § 601 *et seq.*

<sup>17</sup> CFPB Fact Sheet, Policy priorities over the next two years (Feb. 25, 2016), [http://files.consumerfinance.gov/f/201602\\_cfpb\\_policy-priorities-over-the-next-two-years.pdf](http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf).

*Arbitration.* AFR urges the CFPB to propose a strong rule banning or restricting forced arbitration. Lenders and financial servicers use mandatory arbitration clauses to block consumers from joining together to seek compensation; these clauses typically force wronged consumers to individually bring their claims against large companies in a private arbitration system that is shaped by companies to favor their own interests. The empirical findings in the CFPB's comprehensive report on the use of arbitration clauses unequivocally demonstrate that forced arbitration leaves consumers effectively powerless to hold companies accountable.

*Debt collection.* AFR is encouraged that the CFPB has announced its intention to initiate a rulemaking process on debt collection. The CFPB receives more complaints about debt collection than any other issue, and it is vital that continued abuses be addressed by the Bureau.

*Student lending.* AFR welcomes the CFPB's attention to the student loan servicing market, including its ongoing collection of debt collection and private student loans. The CFPB recently solicited feedback from students on their student loan-related problems in the form of a Request for Information (RFI) on servicing,<sup>18</sup> which received more than 30,000 comments. The information collected through this RFI was analyzed in a September report that found student loans are more distressed than other types of consumer debt, with more than 1-in-4 student loan borrowers now delinquent or in default on a student loan.<sup>19</sup> We urge the CFPB to use the lessons it learned from its September servicing report to inform future action to address ongoing failures in student loan servicing.

*Mortgage servicing.* AFR looks forward to a final CFPB rule revising its mortgage servicing standards to address ongoing problems faced by homeowners. These problems include unnecessary delays in the processing of mortgage modification requests, family members being left unable to seek mortgage modifications after inheriting a home, and homeowners negatively impacted by the transfer of a mortgage from one servicer to another. Even after these rules are instituted, the CFPB will need to address mortgage servicing issues involving the needs of borrowers with limited English proficiency and to take additional steps to maximize the number of borrowers able to access sustainable loan modifications as the housing market and policy environment change.

*Collection of data on lending to small businesses.* AFR is very pleased to see the CFPB identify meeting its responsibility to collect data on lending to small businesses and women- and minority-owned businesses as a top priority.<sup>20</sup> Small businesses are critical to job creation, and the founding of a successful small business is one of the ways for people to build wealth and get ahead. Unfortunately, small businesses – especially women- and minority-owned businesses –

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<sup>18</sup> CFPB, *Tell us about your student debt stress* (May 14, 2015), <http://www.consumerfinance.gov/blog/tell-us-about-your-student-debt-stress/>.

<sup>19</sup> CFPB, *Student Loan Servicing* (Sept. 29, 2015), <http://www.consumerfinance.gov/reports/student-loan-servicing/>.

<sup>20</sup> See 15 U.S.C. § 1691c–2.

have trouble attracting needed capital.<sup>21</sup> The CFPB's data collection will provided a valuable tool to address this problem, and we hope that the CFPB will move quickly to establish this statutorily-required system.

*Data availability.* AFR has been impressed by the success of the CFPB's complaint database. In particular, AFR appreciates that consumer complaints are now available for public review with personally identifiable information redacted. We hope that the CFPB will also take steps to ensure the public disclosure of the maximum amount of information from both the Home Mortgage Disclosure Act database and the forthcoming small business lending database. We believe that it is possible to combine expansive disclosure with protecting borrowers' legitimate privacy interests.

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Thank you for the opportunity to express AFR's views on the success of the CFPB. If you have additional questions on these issues, please contact Brian Simmonds Marshall, AFR's Policy Counsel, at [brian@ourfinancialsecurity.org](mailto:brian@ourfinancialsecurity.org) or 202-684-2974.

Sincerely,

Americans for Financial Reform

**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

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<sup>21</sup> Karen Gordon Mills & Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, HARVARD BUSINESS SCHOOL WORKING PAPER 15-004, at 58 (July 22, 2014), [http://www.hbs.edu/faculty/Publication%20Files/15-004\\_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf](http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf).

- 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
- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders 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

### *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, Phoenix AZ
- UNET