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Advancing Fairness
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April 5, 2016

Chairman Richard Shelby
Ranking Member Sherrod Brown
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

Re: April 5, 2016 hearing on the Effects of Consumer Finance Regulations and April 7, 2016 hearing on The Consumer Financial Protection Bureau's Semi-Annual Report to Congress

Dear Chairman Shelby, Ranking Member Brown, and Members of the Committee:

The National Consumer Law Center, on behalf of its low income clients, would like to submit the following statement for the record for the U.S. Senate Committee on Banking, Housing and Urban Affairs' April 7, 2016 hearing on the Consumer Financial Protection Bureau's Semi-Annual Report to Congress.

This statement focuses on several areas where the CFPB is doing critical work to protect consumers: debt collection, credit cards, credit reporting, access to bank accounts and prepaid cards. In each of these areas, we provide only a very brief summary of the problems and the CFPB's efforts. We invite you to visit our website, including the comments on our Rulemaking page, for more in-depth information about the problems facing consumers and the CFPB's role in making the financial marketplace safer for consumers. We also support the work of the CFPB and the need for more consumer protection in other areas addressed in statements prepared by members of Americans for Financial Reform. Although we may not have a position on every consumer regulatory issue discussed by other AFR groups, we strongly associate ourselves with other remarks defending the CFPB's work and structure.

Credit Cards

The Credit Card Accountability, Responsibility and Disclosures (CARD) Act of 2009 addressed some of the worst abuses in the credit card market. The credit card industry claimed that the CARD Act and implementing regulations would drive up prices and unduly restrict access to credit. But the CFPB has produced two in-depth reports using rich data sources and rigorous analysis that refute the naysayers. The all-in cost of using credit cards has declined across credit score ranges; the Credit CARD Act increased price transparency and saved consumers \$16 billion in back-end fees; an credit is increasingly available, except where Congress explicitly intended it to be more restricted (i.e., consumers under 21 years old and others who did not have

the ability to repay the credit).¹ Consumer satisfaction with credit cards is also much higher, and most in the credit card industry would also likely agree that the regulations improved a dysfunctional market.

The disparity between the industry's Chicken Little claims in 2009 and the reality shows the importance of discounting gloom and doom predictions about consumer protection regulations and the CFPB's value as a data-driven regulator. The CFPB's insightful, groundbreaking credit card research adds facts to the discussion about the impact of regulation, and has also highlighted areas of continuing concern, especially deferred interest offers, laying the groundwork for potential future reforms.

The Credit CARD Act did not, and could not, address every single abuse developed by credit card lenders to extract profits from consumers. Part of the very reason for the CFPB's existence is to have a strong and nimble agency to address abuses in a timely fashion so as to minimize consumer harm. The CFPB has successfully fulfilled this purpose by taking aggressive action against abuses in the credit card sector, recovering billions for injured consumers.

After the Credit CARD Act, two of the worst abuses left in the credit card market were (1) deceptive sales of often useless add-on products, such as debt suspension products and credit monitoring; and (2) deferred interest promotions, which promise "no interest" but are a trap that can result in the imposition of hundreds or thousands of dollars in retroactive interest. The CFPB has brought actions regarding add-on products against almost all of the major credit card lenders (American Express, Bank of America, Capital One, Citibank, Discover, JPMorgan Chase, Synchrony, and US Bank), resulting in over \$2.2 billion being returned to injured consumers. Furthermore, these actions have resulted in a dramatic reduction in the marketing for these products, which are overpriced and of limited use at best.

The CFPB has also taken aggressive action against Synchrony, one of the major purveyors of deferred interest promotions, over the use of these promotions with its healthcare credit card product CareCredit. This action resulted in major reforms in the marketing of CareCredit cards to vulnerable, economically stressed patients while returning \$34 million to them.

Credit Reporting

Prior to the CFPB, there was no regulator with authority to supervise the credit reporting industry. The Big Three nationwide credit reporting agencies - Experian, Equifax and TransUnion – operated with oligopolistic impunity, allowing errors to infect the credit reports of millions of consumers, making a mockery of the federally-mandated dispute process, and deceptively promoting expensive credit monitoring subscription products. The FTC was outgunned and under-resourced, without the legal tools necessary to bring about significant reform. The Big Three credit bureaus consistently resisted any reforms, and could do so because they were immune to normal market forces such as competition. Unresponsive to the complaints of consumers, without a strong regulator to rein them in, the Big Three wreaked havoc on the lives of those consumers with errors in their credit reports— 20% of consumers with credit reports or 40 million Americans.

¹ See CFPB, The Consumer Credit Card Market (Dec. 2015), http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

The CFPB has wrought a sea change in the realm of credit reporting. The Bureau's supervisory and enforcement activities have already made significant improvements to this historically intransigent sector, including:

- Getting the credit bureaus to finally agree, after years of complaints and litigation, to take the simple step of providing the consumer's actual dispute and supporting documentation to the creditor or debt collector ("the furnisher") that provided the information. The credit bureaus have also finally provided the ability for consumers to upload supporting documents when they file disputes online.
- Taking enforcement actions against creditors and debt collectors in their role as furnishers of information for failing to properly investigate disputes, providing inaccurate information, and making deceptive statements about credit reporting when engaged in debt collection. In addition, the CFPB has taken enforcement action against at least one background check credit reporting agency.
- Examining the practices of lenders and debt collectors under its supervision in their role as furnishers of information.

Finally, the CFPB has conducted groundbreaking research on consumer credit reporting. For example, the Bureau issued a landmark report on the enormous role of medical debt in damaging the credit reports of tens of millions of consumers, finding that 1 in 5 consumers with a credit report has a medical debt collection item and over half of collection items on credit reports are for medical debt. The CFPB's report on *Key Dimensions and Processes in the U.S. Credit Reporting System* is considered a standard reference document.

However, there is still much more to be done. The Big Three credit bureaus still continue to abuse consumers, which is dramatically reflected in the fact that they are consistently among the top four or five companies for which the CFPB receives the most complaints, and in some months have been *the* top three most complained-about companies. Consumers need a strong CFPB to ensure that the credit reporting industry treats them fairly and with respect.

Debt Collection

In 2015, the CFPB resolved critical, targeted enforcement actions to curb abusive debt collection practices, such as:

- Encore Capital and Portfolio Recovery Associates – the two largest debt buyers in the country – were engaged in practices such as attempting to collect unsubstantiated or inaccurate debt, robo-signing documents, and suing consumers past the statute of limitations;
- JPMorgan Chase – one of the largest banking institutions in the United States – was selling credit card accounts that already been paid or discharged in bankruptcy and robo-signing documents used in litigation against its former customers; and
- Frederick J. Hanna & Associates – a Georgia-based law firm and debt collection lawsuit mill – was filing lawsuits without meaningful review or involvement by attorneys and introducing faulty or unsubstantiated evidence.

In each of these cases, the defendants were clearly violating existing law and harming consumers. The CFPB's negotiated consent orders remedied these violations and prevented future harm by preventing collection of debts that were in the wrong amount, against the wrong person, or not legally collectible. The CFPB's enforcement actions also have had a helpful deterrent impact against wrongdoing by the industry as a whole and serve as a roadmap to industry compliance going forward.

In addition to these important enforcement actions, the CFPB continues to work toward comprehensive debt collection regulations for debt collectors, debt buyers, and creditors collecting debts in their own name. The need for debt collection regulations is underscored by the 82,500 debt collection complaints received by the CFPB – the highest of any industry – and the 897,655 debt collection complaints received by the FTC in 2015. Problems are widespread, including continued collection of debts not owed, in the wrong amount or against the wrong person; telephone harassment; deceptive and abusive collection of ancient, zombie debt; harmful practices involving medical debt and student loans, and inaccurate information impacting consumer credit reports. The CFPB's debt collection rulemaking will allow the agency to update and strengthen the provisions of the nearly 40-year old Fair Debt Collection Practices Act to address old problems that remain and new issues posed by communication technology and debt collection practices that did not exist in 1977, such as the sale of charged-off debt to debt buyers. Regulations will provide clarity to both consumers and the collection industry.

Access to Bank Accounts

Access to a safe and affordable bank account is a cornerstone of financial empowerment. However, almost 17 million Americans do not have bank accounts. One of the obstacles that prevents many consumers from opening an account is a negative history at a bank account screening consumer reporting agency (CRA), such as ChexSystems or Early Warning Services. Account screening CRAs operate databases that receive and report information, mostly negative, about a consumer's banking history and are used by banks to determine whether to allow a consumer to open an account.

Originally intended to warn financial institutions about potential fraud, the vast majority of negative information at account screening CRAs actually involves accounts closed due to overdrafts. Yet many consumers end up overdrawing their accounts due to unfair banking practices that permit or exacerbate overdrafts, such as allowing overdrafts on debit cards where they are almost completely avoidable and unnecessary or re-ordering transactions to create the maximum number of overdrafts in order to charge more fees. In addition to costing consumers billions in overdraft fees, these practices result in shutting out millions of consumers from the mainstream banking system.

The CFPB has taken a number of steps to address the problems with account screening CRAs and access to bank accounts in general. The CFPB took the first step in October 2014 by holding a Forum on Access to Checking Accounts. The CFPB followed up by examining, in its supervisory role, practices at both the account screening CRAs and the financial institutions that furnish and use their information. Discovering insufficient procedures and policies to ensure accuracy at both, the CFPB has directed both to institute reforms.

In February of this year, the CFPB took a number of additional steps to improve access to bank accounts. First, Director Cordray sent a letter to the 25 largest banks encouraging them to offer and promote "safe" accounts that help consumers avoid overdrafting. The CFPB also issued a

bulletin reminding financial institutions of their obligations under the Fair Credit Reporting Act to have reasonable policies and procedures regarding the accuracy and integrity of information that they furnish to account screening CRAs.

Ultimately, ensuring fair access to bank accounts involves reform of bank overdraft abuses. The CFPB is considering a rulemaking process on this critical issue. The Bureau has conducted several in-depth research studies and issued a notice and request for information regarding the topic. There is much work that remains to reform bank overdraft practices, and we urge Congress to let the CFPB do its job.

Prepaid and Payroll Cards

The prepaid card market (including payroll and government prepaid cards) has been growing exponentially in the last several years. Prepaid cards fill an important gap left by banks' failure to adequately and safely serve low and moderate income consumers. But antiquated regulations have left most prepaid cards out of key consumer protection statutes that protect the safety of bank debit cards and bank accounts. In addition, while the vast majority of the prepaid cards on the market are true to their name and their promise – a safe account for vulnerable consumers that does not risk overdraft fees or the risks of credit – a few cards are designed to exploit consumer struggles, encouraging overdraft fees and enabling payday loans that undermine the safety and prepaid nature of the account.

The CFPB has proposed rules that would close the gaps in consumer protections for prepaid cards, improve those protections, and preserve the vital role prepaid cards play for families who struggle paycheck to paycheck. The proposal would extend Regulation E to prepaid cards, ensuring that prepaid cardholders have protection against unauthorized charges and a mechanism to address errors and disputes. The CFPB has proposed vastly improved fee disclosures that would give consumers clear information about the cost of the card, making comparison shopping easier. The proposed rule would also limit – but unfortunately not completely prohibit – overdraft fees and credit features on prepaid cards, helping to preserve prepaid cards as a safe refuge for consumers who have been denied access to or have trouble managing checking accounts.

The proposed rule is long and detailed, reflecting the careful thought, nuance, and care to avoid evasions and unintended consequences that the CFPB has brought to designing a rule that will encompass a variety of different types of cards and a variety of different consumer protection issues. The detailed specifics also make it easier for companies to comply, knowing exactly what is required. Ironically, a long and detailed regulation addressing a variety of situations actually results in a more straightforward product for consumers and simpler compliance for the industry – a hallmark of the CFPB's rulemaking approach.

Conclusion

The Consumer Financial Protection Bureau has been doing exactly what Congress created it to do: addressing a long backlog of consumer protection issues that have been sorely neglected. The Bureau has been listening carefully to consumers, industry and other interested parties and gathering critical research in order to make financial markets work better for all concerned. Congress should applaud the CFPB for the tremendous progress it has already made in a short period of time and provide strong support to the agency to continue its vital work in protecting the American public.

If you have any questions, please contact Lauren Saunders, Associate Director, National Consumer Law Center, lsaunders@nclc.org, (202) 595-7845.

Respectfully submitted,

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