AFR Americans for Financial Reform

May 20, 2016

Dear Representative,

The undersigned organizations urge you to oppose H.R. 5112 or any similar bills that dramatically undermine the Consumer Financial Protection Bureau (CFPB) by eliminating its authority to prohibit abusive acts and practices and by imposing unworkable procedural requirements that would make it effectively impossible for the CFPB to write critical rules.

H.R. 5112 repeals the CFPB's authority to stop abusive acts and practices in consumer finance by literally striking the prohibition on abusive acts and practices from the U.S. Code. The Dodd-Frank Act addressed the shocking and widespread predation in the lead up to the financial crisis by expressly granting CFPB authority to stop abusive acts and practices. The Act defined "abusive" practices to include undermining a consumer's ability to understand a financial product, taking unreasonable advantage of the consumer's lack of understanding, and taking unreasonable advantage of a customer's reasonable reliance on a provider to act in a customer's interest.

The CFPB has exercised its authority over abusive conduct to take action against companies that have inflicted significant harm on consumers, including:

- a credit card company that took advantage of their customers' misunderstanding of limited-time no-interest promotional offers;
- a lead-generator that steered customers to higher-cost loans;
- a student loan debt relief company that charged fees for worthless advice on applying to programs that borrowers did not qualify for; and
- a mortgage payment processing company that charged borrowers more than the amount the borrower would save by using its service.

H.R. 5112 purports to promote uniformity across agencies and industries. However, any genuine desire for uniformity could be achieved by extending consumer protections against abusive practices to all consumer products and all regulators rather than curtailing consumer protections for financial products.

H.R. 5112 would also effectively eliminate the CFPB's ability to write rules to implement the prohibition on unfair, deceptive, and abusive acts and practices by imposing unworkable "Magnuson-Moss" requirements that apply only to the Federal Trade Commission (FTC) and have never applied to any bank regulator. The bill would give every entity that would be subject to such a rule the right to demand the opportunity to make an oral presentation on the record before a single hearing officer and allow commenters to cross-examine other commenters. For certain rules, that would permit every one of the nation's more than 12,000 banks and credit unions to present oral testimony, thereby allowing the industry to indefinitely filibuster any proposed rule, including a proposed change to an existing rule.

It took the FTC nearly nine years, from 1975 to 1984, to finalize the only financial services rule ever promulgated under the Magnuson-Moss procedures, the two-page Credit Practices Rule.[1] Because of the impracticability of those requirements, the agency has not engaged in significant rulemaking subject to the Magnuson-Moss process for the last three decades.[2] For that reason, the FTC has called for the repeal of the Magnuson-Moss requirements,[3] which former FTC Chairman Jonathan Leibowitz has called “medieval” and “draconian.”[4]

The CFPB’s extensive notice-and-comment rulemaking process, which includes a separate small-business review process utilized by no other federal financial regulator, is more than sufficient to ensure consideration of public and industry input on every proposed rule. The bill’s attempt to subject the CFPB to these unnecessary and inappropriate processes is only a thinly-veiled effort to eliminate the CFPB’s capacity to make rules prohibiting unfair, deceptive, and abusive acts and practices.

Since the CFPB began its work less than five years ago, it 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.”[5] Through its rulemaking, supervision, enforcement, and consumer education and complaint system, the CFPB has made enormous progress in making the financial marketplace fairer to consumers. Its enforcement efforts alone have resolved more than 80 cases and secured $11.2 billion in relief for consumers. H.R. 5112 is part of an extraordinary industry attack on the agency and its success.

We urge you to oppose this bill and any similar proposals that would permit abusive acts and practices or undermine the CFPB’s rulemaking authority. For more information regarding this issue, please contact Brian Simmonds Marshall, Policy Counsel at Americans for Financial Reform, at brian@ourfinancialsecurity.org or 202-684-2974.

Thank you for your consideration,

National Signatories
Americans for Financial Reform
Center for Economic Development

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[1] Credit Practices Rule, 49 Fed. Reg. 7740 (March 1, 1984); Initial Notice of Rulemaking, 40 Fed. Reg. 16347 (Apr. 11, 1975). In that rulemaking process, 319 live witnesses testified, 49 Fed. Reg. at 7741, a number that would be dwarfed in any controversial CFPB rulemaking.

[2] Dee Pridgen, Hearing Before Senate Committee on Commerce, Science & Transportation, Subcommittee on Consumer Protection, Product Safety, and Insurance, at 5 (Mar. 17, 2010), available at http://1.usa.gov/1TznrsG.

[3] Jon Leibowitz, “Financial Services and Products: the Role of the Federal Trade Commission in Protecting Consumers,” Hearing Before the Senate Committee on Commerce, Science, and Transportation, at 13-14 (Feb. 4, 2010), available at http://1.usa.gov/1YkoLDN.

[4] *Id.* at 34.

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

Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
The Leadership Conference on Civil and Human Rights
Main Street Alliance
NAACP
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low income clients)
National Council of La Raza
National Fair Housing Alliance
People's Action Institute
Public Citizen
Southern Poverty Law Center
U.S. PIRG
United Auto Workers (UAW)
Woodstock Institute

State and Local Signatories

Baltimore Neighborhoods, Inc., MD
Arkansans Against Abusive Payday Lending, AR
Center for Economic Integrity, AZ
Consumers for Auto Reliability and Safety, CA
Center for California Homeowner Association Law, CA
California Reinvestment Coalition, CA
Connecticut Fair Housing Center, CT
Delaware Community Reinvestment Action Council, Inc., DE
Delaware Alliance for Community Advancement, DE
Florida Alliance for Consumer Protection, FL
Citizen Action/Illinois, IL
Woodstock Institute, IL
Massachusetts Consumers Council, MA
Maine Center for Economic Policy, ME
North Carolina Consumers Council, NC
North Carolina Justice Center, NC
New Jersey Citizen Action, NJ
MFY Legal Services, Inc., NY
Philadelphia Unemployment Project, PA
Tennessee Citizen Action, TN
Virginia Citizens Consumer Council, VA
WV Center on Budget and Policy, WV