

April 25, 2017

Dear Representative,

The Center for Responsible Lending writes to express its serious concerns with the revised and reintroduced Financial CHOICE Act and to urge you to oppose this extreme and dangerous legislation. The nearly 600-page bill is replete with destructive policies that roll back or eliminate the essential protections that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) put in place. Moreover, the bill eliminates regulatory powers that pre-date Dodd-Frank. Contrary to its stated purpose to create hope and opportunity, the bill would re-expose consumers, investors, and the public to a host of risky and abusive financial practices, including many of the practices that contributed to the last recession and massive foreclosure crisis.¹

The Bill Eviscerates the CFPB's Structure and Authority, Frustrating the CFPB's Ability to Fulfill any Part of its Mission.

The bill is aimed at obstructing the CFPB's ability to fulfill its mission to protect consumers from predatory financial products and practices. The bill eliminates the CFPB's ability to supervise and conduct examinations on most financial institutions, eliminates all market monitoring authority, and puts enormous constraints on the CFPB's rulemaking and enforcement. Additionally, the bill makes important statutorily-required offices "optional," including Research, Fair Lending, Financial Education, Community Affairs, Student Loan Ombudsman, Financial Protection for Older Americans, and Servicemember Affairs. Future directors could eliminate these offices and their staff. The bill further weakens the CFPB's structure and authority in the following ways:

- (1) diminishes the CFPB's independence by making the director and deputy director removable at-will, subjecting the agency to partisan politics;
- (2) eliminates independent funding of the CFPB, putting it at the mercy of an annual appropriations process and disregarding the long-standing practice of independent funding for banking regulators;
- (3) eliminates most supervisory authority,² making it impossible for the CFPB to detect abuses in lending;
- (4) eliminates the CFPB's supervisory and enforcement authority over all depository institutions and credit unions;
- (5) prohibits information in the consumer complaint database from being made

¹ This letter focuses on a subset of CRL's objections to the bill. For further detail, please refer to the letter issued by Americans for Financial Reform (AFR).

² The bill permits continued supervision over nonbank financial companies the CFPB *currently* examines. All other supervisory authority is returned to the prudential bank regulators, entities that systematically failed to stop predatory practices leading up to the financial crisis.

publicly available, eliminating the meaningful release of information about consumer complaints, an important public resource for understanding and avoiding consumer abuses;

- (6) eliminates the CFPB's market monitoring authority, and allows essential functional offices to be eliminated;
- (7) repeals the CFPB's authority to stop unfair, deceptive, and abusive acts and practices (UDAAP) in consumer finance;³
- (8) severely constrains CFPB rulemaking authority,⁴ putting more working families at risk to fall victim to the proliferation of forced arbitration clauses, debt trap products such as payday and car-title loans, and various other predatory lending schemes;
- (9) jeopardizes the CFPB's Home Mortgage Disclosure Act (HMDA) rule and the ability for the public to discern mortgage lending trends (including identifying critical problems such as redlining), by suspending data sharing requirements and prohibiting the CFPB from requiring depository institutions to publish any data that was not required to be published before Dodd-Frank took effect;
- (10) requires the CFPB to conduct a cost-benefit analysis of any administrative enforcement, civil lawsuit, or consent order, impeding enforcement aimed at stopping predatory practices and compensating victims;
- (11) diminishes enforcement authority to only include cease and desist or subpoena powers, which will not address the severe financial harm done to consumers or deter predatory financial actors; and
- (12) hamstring the CFPB's administrative enforcement process by giving industry defendants the option to appeal civil investigative demands directly to federal court.

The CFPB has returned nearly 12 billion dollars to 29 million consumers harmed by illegal practices of credit card companies, banks, debt collectors, mortgage companies, and other financial institutions. This relief includes monetary compensation to harmed consumers, principal reductions, canceled debts, and other remedies to address these abusive financial

³ The bill would eliminate all authority to stop abusive acts and would place unfair and deceptive acts and practices authority back with the prudential regulators – a set-up which splits consumer enforcement authority between various agencies, reminiscent of pre-financial crisis.

⁴ In addition to repealing the CFPB's UDAAP authority and banning the CFPB from regulating payday lending and forced arbitration, the bill adds a host of other requirements that will hamper CFPB rulemaking. The bill makes CFPB rulemaking subject to Office of Management and Budget Office of Information and Regulatory Affairs requirements and establishes a new Office of Economic Analysis that must conduct a multitude of new analyses and review each rule and regulation after 1, 2, 6, and 11 years. The Bureau is currently required to review rules after five years.

practices. CFPB enforcement actions help to ensure that bad financial actors are deterred from future predatory actions. Through its research, education, market monitoring, and the much-used consumer complaint database, the CFPB has been able to directly address problems in the market and issues that directly harm hardworking families.

The CFPB's recent 2016 consent order with Wells Fargo also highlights the necessity for and value of a robust consumer watchdog agency.⁵ The CFPB, Office of the Comptroller of the Currency (OCC), and Los Angeles City Attorney's office found that Wells Fargo was for years engaged in a widespread illegal practice of secretly opening unauthorized deposit and credit card accounts. Spurred by sales targets and compensation incentives, several thousand Wells employees opened more than two million fraudulent accounts. Egregious cases like this serve as a stark reminder for why the CFPB's ability to enforce the law and protect consumers must not be weakened. Under this extreme legislation, the CFPB would not have any of the tools required to bring this egregious abuse of power to light.

The Bill Undercuts CFPB Efforts to Protect Consumers in Key Areas.

Payday lending, arbitration, auto lending:

First, the bill strips the CFPB of its authority to enforce or regulate small dollar loans. This is a radical provision, particularly considering the debt trap and economic drain created by repeat triple digit interest payday and small dollar loans is widely recognized as unfair and deceptive. There is dire need to regulate this industry. Collectively, payday and car-title loans, often directly targeted to communities of color, military servicemembers, and seniors, drain billions of dollars a year in charges on unaffordable loans to borrowers with an average income of approximately \$25,000. Specifically, payday loans drain over \$4.1 billion in fees a year from people in the 35 states that allow triple-digit interest rate payday loans. Car title loans drain over \$3.8 billion in fees annually from people in 22 states. Together, these loans drain nearly \$8 billion in fees every year.⁶

The bill would allow local economies to continue to face fee drains with payday lending continuing unchecked by any laws or regulations. Research from the Insight Center for Community Economic Development has shown the broader cost that payday lending imposes on local economies. During 2011, the year of their study, payday lending resulted in a net loss in economic activity of \$774 million nationwide and a net loss of 14,094 jobs.⁷ This counters the narrative payday lenders have pushed, claiming payday lending was necessary for credit

⁵ Michael Corkery, Wells Fargo Fined \$185 Million for Fraudulently Opening Accounts, New York Times (Sept. 8, 2016), *available at* http://www.nytimes.com/2016/09/09/business/dealbook/wells-fargo-fined-for-years-of-harm-to-customers.html?ref=collection%2Ftimestopic%2FWells%20Fargo%20%26%20Company&action=click&contentCollection=business®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection.

⁶ Diane Standaert and Delvin Davis, Payday and Car Title Lenders Drain \$8 Billion in Fees Every Year (updated 2017), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_statebystate_fee_drain_may2016_0.pdf.

⁷ Tim Lohrentz, The Net Economic Impact of Payday Lending in the U.S., Insight Center for Community Economic Development (2013) *available at* <http://ww1.insightcced.org/uploads/assets/Net%20Economic%20Impact%20of%20Payday%20Lending.pdf>.

availability and job creation. Instead, the study proves that fees paid to payday lenders have a more positive economic impact if left in the pockets of consumers. The Alabama State Banking Department in particular noted that “every \$1 spent paying back a high-cost lender takes almost \$2 out of the local economy due to depleted consumer finances and increased bankruptcies.”⁸ These types of fee drains hamper future asset-building and economic opportunity in communities most impacted by these predatory lending practices. This industry must be regulated.

The bill also thwarts implementation of the CFPB’s proposed rule prohibiting forced arbitration clauses that contain class action bans. Class action bans routinely deny consumers their day in court to remedy financial abuses they have suffered. The importance of the arbitration rule is further illustrated by Wells Fargo shielding itself from a 2015 class action lawsuit alleging that Wells employees were engaging in fraud by opening unauthorized customer accounts, the very conduct that earned the bank a \$185 million dollar fine from the CFPB, OCC, and Los Angeles City Attorney’s office. The bank successfully raised forced arbitration clauses in its agreements as a defense in order to block the class action challenge.⁹ In addition, the bill seeks to stall the CFPB’s enforcement of anti-discrimination laws in the auto industry, allowing racial discrimination and discriminatory interest rate mark ups in auto lending to go uncontested. America’s consumers simply cannot afford these egregious yet preventable abuses.

Qualified Mortgage (QM) Rule:

Furthermore, several sections of the bill would exempt a wide range of mortgages from the CFPB’s QM rule. This is particularly disturbing, as the QM rule and ability-to-repay standard addressed the frontline abuses that led up to the 2008 financial crisis. These rules define bright line standards to move the market away from high-risk, unsustainable loans and ensure borrowers have an ability to repay the loans they receive. Irresponsible mortgage lending that ignored borrowers’ ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. QM and ability-to-repay promote product features that has helped reorient the housing market back toward safe, sustainable lending for all borrowers, lenders, and investors alike.

This radical bill contains several alarming provisions that weaken the QM rule and ability-to-repay standard. First, automatic QM status to loans held in portfolio should not be extended to larger institutions, as this presents significant risks to borrowers and is unlikely to meaningfully expand lending. Portfolio loans can be risky for consumers and taxpayers, as many homeowners have substantial equity in their homes and a significant number of those have no current home debt. Current information shows that the average loan-to-value for GSE loans is roughly 74

⁸ Lucy Berry, Alabama Leaders Shed Light on ‘Toxic’ Payday Lending Practices (2017), *available at* http://www.al.com/business/index.ssf/2017/04/sb284_payday_lending_alabama.html.

⁹ The federal district court overseeing the class action case granted Wells Fargo’s request to force plaintiffs to arbitrate their claims; plaintiffs appealed the decision to the Ninth Circuit Court of Appeals. Following the CFPB, OCC, and Los Angeles City Attorney’s action, Wells Fargo and plaintiffs reached a class action settlement. *See Ben Lane, Wells Fargo Increases Fake Account Class Action Settlement to \$142 Million, Housing Wire* (Apr. 21, 2017), *available at* <http://www.housingwire.com/articles/39927-wells-fargo-increases-fake-account-class-action-settlement-to-142-million>.

percent with many loans having much lower levels.¹⁰ With these loans, the borrower's equity absorbs the risk of loss rather than the lender, which protects the lender from even very risky loan terms. The rules must continue to ensure that lenders have an actual incentive to avoid risky, equity-stripping, and unnecessarily expensive products. Furthermore, lenders are already making and holding loans in portfolio. Portfolio loans accounted for 30.9 percent of all originations in 2016, approximating the pre-crisis share of originations for portfolio loans.¹¹ Expanding QM to all portfolio loans is unlikely to lead to an increase in volume. We also oppose the dangerous provision allowing depositories to steer consumers into non-QM loans yet still maintain safe harbor status, simply at the promise that the creditor will hold the loan on portfolio for the life of the loan. Provisions like this that grant outright legal immunity to lenders regardless of size and loan type are extreme and put the consumer and the economy at great risk.

Second, the bill would undermine already vulnerable homeowners in the manufactured housing market by stripping away consumer protections and enabling lenders to make costlier loans that are harder for consumers to repay. The current rules already accommodate differences in the manufactured housing market; weakening rules would further incentivize bad behavior such as steering, and financially harm consumers.

Third, the bill would exempt many more lenders from escrow requirements for loans held in portfolio. It would set a dangerous precedent by changing the definition of smaller creditor (exempt from escrow requirements) to one holding assets of less than \$10 billion, a much larger amount than the current definition of small creditor. Escrow accounts protect consumers by ensuring that they have funds for reoccurring homeownership-related expenses, such as property taxes and insurance premiums. Pursuant to the Dodd-Frank Act, the CFPB implemented clear rules establishing a minimum period of time for which escrows must be held for higher-priced mortgages. The Bureau also specified an exemption to the escrow requirement for small creditors operating predominately in rural and underserved areas. A significantly broader exemption threatens to upend current regulations designed to help consumers stay in their homes and avoid the likelihood of default—which happens all too often where escrow protections are weakened. It undermines this consumer safeguard by allowing larger and possibly less-community-focused lenders, with sufficient financial resources, to make higher-priced mortgages to rural and underserved borrowers.

Fourth, the bill would expand the CFPB's exemptions for small servicers from 5,000 loans to 20,000. The CFPB's regulations address many questionable practices that contributed to the collapse of the housing market. Such practices were widespread in the mortgage servicing industry. The Bureau's servicing rules apply across the board, while providing a scaled-back exemption for small servicers, including any affiliates, servicing 5,000 or fewer mortgage loans each year. This exemption minimizes the regulatory compliance burden on small and community banks. The bill would pry open the small-servicer exemption and provide a gateway for larger institutions to abuse it.

¹⁰ Fannie Mae 2016 Credit Supplement 6 (2017), *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2016/q42016_credit_summary.pdf.

¹¹ Laurie Goodman et al., *Housing Finance at a Glance: A Monthly Chartbook*, March 2017, *available at* http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017/view/full_report.

Fifth, the bill would allow many more risky, high-cost loans to qualify as QM loans by creating exceptions to the points and fees threshold. These exceptions would exclude fees paid to certain title companies affiliated with the lender. The points and fees definition is designed to include all compensation received by the lender. It is a reasonable standard that provides basic protections for homebuyers. The title insurance market is a broken market. In 2007, a GAO report¹² concluded that borrowers “have little or no influence over the price of title insurance but have little choice but to purchase it.” As a result, the fees are grossly inflated—recent studies have found that between five and 11 cents is paid out in claims for each \$1 of premiums. Almost the entirety of a title insurance premium (approximately 70%) goes to commissions, not insurance coverage. In contrast, loss ratios for health insurance are minimally 80% and ratios for auto insurance fluctuate between 50% and 70%. Borrowers already pay inflated title insurance costs. Including affiliated title insurance fees in the QM defined points and fees cap provides important market pressure to control costs for consumers.

Recent mortgage rules have helped, not hurt, the market:

The reforms of Dodd-Frank, including QM and ability-to-repay, have not hurt mortgage lending or access to credit, but rather have made the mortgage market more safe for consumers and reliable for lenders and investors. Three years have passed since the QM rule was implemented. Reports, including the HMDA report, show that QM has not negatively impacted mortgage lending or access to credit. In fact, (post QM) HMDA data is very much consistent with market trends immediately preceding the implementation of the QM rule and ability-to-repay standard. The Federal Reserve’s seasonally adjusted origination numbers show a slow overall increase in monthly originations from 2011 through 2015 with no discernable decrease when the rules were fully implemented in January 2014.¹³

Researchers have also looked carefully at mortgage lending after the implementation of QM and found no link to a reduction in credit. For example, researchers at the Urban Institute looked at loans that might reasonably have been affected by the QM standards (interest only or prepayment penalty loans, loans with debt-to-income “DTI” over 43 percent, or adjustable rate mortgages or “ARM” loans) and found no decline in these categories associated with QM.¹⁴ Researchers at the Federal Reserve similarly concluded: “The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability.”¹⁵ Researchers at the Federal Reserve also looked at both the origination and securitization of mortgages post-crisis and find that lender asset size has become a less important factor in explaining this lending activity and conclude “smaller banks have not been, on net, deterred from engaging in the sales and securitizations of mortgages, have become a more important part of the market and have

¹² U.S. Government Accountability Office, Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers 53 (2007), available at <http://www.gao.gov/new.items/d07401.pdf>.

¹³ Federal Reserve Bulletin, The 2014 Home Mortgage Disclosure Act Data (2015), available at https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

¹⁴ Bing Bai, Laurie Goodman, and Ellen Seidman, Has the QM Rule Made It Harder to Get a Mortgage? (2016), available at <http://www.urban.org/research/publication/has-qm-rule-made-it-harder-get-mortgage>.

¹⁵ Federal Reserve Bulletin, The 2014 Home Mortgage Disclosure Act Data, available at https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

profited from their activities.”¹⁶ The Urban Institute likewise found that QM rules had not adversely affected access to credit. While mortgage originations can and should expand, the Urban Institute attributes continued access problems to overcorrections in the post-crisis market that has resulted in constrained lending. This environment is most harmful to lower-wealth households with lower FICO scores and fewer resources for a down payment.¹⁷

The Bill Hampers Regulatory Agencies’ Ability to do Their Job.

The bill includes provisions that make it virtually impossible for regulatory agencies to engage in rulemaking to address critical financial matters. The bill contains a multitude of new analyses that an agency must complete to justify a rulemaking, some of which are so broad and vague that it is questionable whether they could ever be satisfied. For example, the legislation requires regulators to quantitatively measure all “anticipated direct and indirect” effects of a new regulation before it is implemented, and to perform an “assessment of all available alternatives to the regulation.” The bill also requires a duplicative and burdensome consultation process with state, local, tribal governments, and the private sector to provide input on rules that already go through public notice and comment. Compliance with these new requirements would be subject to judicial review. In addition, the bill would require explicit bicameral congressional approval of any major new financial regulation. This unprecedented new requirement would completely stymie regulatory oversight and agencies’ ability to address abusive financial practices.

Moreover, similar to the CFPB, the bill would diminish the Federal Housing Finance Agency’s independence by making the director removable at-will, subjecting the agency to partisan politics. The bill would also politicize many of the financial regulatory agencies, including the FDIC, FHFA, NCUA, OCC, and parts of the Federal Reserve, by putting them at the political mercy of the annual appropriations process.

Additionally, the bill would eliminate *Chevron* deference for CFPB’s actions. The *Chevron* doctrine is a longstanding Supreme Court precedent requiring courts to defer to a government agency’s reasonable interpretation of a statute it is charged with enforcing. This means that in any lawsuit claiming that a regulatory action was unjustified, the judge could automatically disregard the CFPB’s reasonable interpretation and substitute his or her views for that of the CFPB.

The bill would also prohibit a financial agency, the Department of Justice, the USDA Rural Housing Service, or HUD from entering into a settlement that provides any funds to a third party. For example, this would prevent consumer relief dollars from going toward housing counseling and legal aid organizations that help consumers receive mortgage modifications and remain in their homes.

¹⁶ William F. Bassett and John C. Driscoll, Post Crisis Residential Mortgage Lending by Community Banks (2015), available at https://www.communitybanking.org/documents/Session3_Paper4_Bassett.pdf.

¹⁷ Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), available at <http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf>, see also Laurie Godman et al., Tight Credit Standards Prevented 5.2 Million Mortgages Between 2009 and 2014, available at <http://www.urban.org/urban-wire/tight-credit-standards-prevented-52-million-mortgages-between-2009-and-2014>.

The bill also makes it easier for bad financial actors to ignore state interest rate caps that aim to protect consumers. The bill overrides the Second Circuit's *Madden v. Midland* decision, which held that a debt buyer purchasing debts originated by a national bank could not benefit from the National Bank Act and interest rate preemption. Rather, the Second Circuit found that the debt buyer was bound by state interest rate caps. The Supreme Court denied review, leaving the Second Circuit decision intact. Reversing the Second Circuit's decision would make it more difficult to ensure debt buyers, online lenders, fintech companies, and rent-a-bank deals comply with state interest rate caps.

In sum, this bill undercuts the essential reforms of Dodd-Frank and would inflict immense harm and exposure to consumers, investors, and the public. The failure to have a responsible regulatory environment has been very costly to the market, resulting in taxpayers paying \$7 trillion to bail out financial institutions through loans and according to some reports, an additional \$22 trillion through the federal government's purchase of assets.¹⁸ We simply cannot afford another financial crisis. We urge you to reject this extreme and dangerous bill.

Sincerely,

Center for Responsible Lending

¹⁸ John Carney, *The Size of the Bank Bailout: \$29 Trillion*, CNBC, (2011), available at <http://www.cnbc.com/id/45674390#>.