100 CONSUMER BANKERS ASSOCIATION CENTENNIAL

CBA

HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

October 11, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters and Ranking Member McHenry:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." We appreciate the House Financial Services Committee's continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

Legislative Recommendations to Improve the CFPB

Bipartisan Commission at the Consumer Financial Protection Bureau

Since its inception, the CFPB has been the center of political and legal debates about the legitimacy of its leadership structure. In fact, this hearing comes as the Supreme Court considers whether to hear a case challenging the structure of the CFPB and whether its single director leadership model is constitutional. We are concerned the Seila Law v. CFPB case[1] could result in a Supreme Court ruling that would create a governance structure where the director is removable at-will; inviting increased turmoil at the Bureau by further undermining the mission and operations of the CFPB.

We urge Congress to ensure the CFPB's independence and constitutionality by replacing the single director structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[2] It is crucial that appropriate protections, checks and balances are in place given the scope and importance of the CFPB. It is also important to insulate the Bureau from political shifts with each new director that could reduce its ability to impartially ensure a fair and competitive marketplace.

The CFPB director is currently a single officer responsible for leading the CFPB and is the chief decisionmaker on rulemakings, enforcement and supervisory actions that affect millions of Americans' everyday financial lives. A change in that position affects the entire CFPB and laws that affect all Americans. The potential of a court ruling that could install removeable at-will director would bring increased confusion to financial services providers who have been asking that Congress inject stability and transparency into the Bureau. An at-will Director, removable

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every four years, or sooner, would leave financial instructions with few assurances that the rules they are complying with today would remain in place. The financial services marketplace thrives in a stable regulatory environment. When regulatory stability is eroded by changing political dynamics, the consumer suffers from financial institutions' inability to rely upon a consistent regulatory environment.

The American people overwhelmingly favor a bipartisan commission at the Bureau. A Morning Consult poll found that by a margin of three to one, registered voters support a bipartisan commission over a sole director, with only 14 percent of those polled stating they prefer to keep the Bureau's current leadership structure.[3] Additionally, two dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this urgently needed.

Regulatory Actions

Enforcement and Supervision

Throughout her tenure, Director Kraninger has emphasized the need to use all of the CFPB's tools to prevent consumer harm. This includes properly educating consumers and establishing clear regulations in addition to ensuring compliance through supervision and holding bad actors accountable through enforcement. A directive to utilize all of the Bureau's facilities marks a departure from how the CFPB has historically emphasized the enforcement process as a regulatory tool and focused a large portion of industry interaction through enforcement actions. CBA appreciates Director Kraninger's charge to use all four of the Bureau's tools to better allow the financial services industry to serve customers while ensuring consumers are protected. However, CBA members continue to raise concerns that the new directive has not worked its way throughout the Bureau, as many CFPB examiners continue to present new issues on previously settled matters of law, lookback periods, and issues remediated by other government agencies through their supervision processes.

Sound supervision can prevent consumer harm while still allowing financial institutions the flexibility to develop new products and services to better serve customers. Examiners need to streamline procedures and work with other regulators to create an efficient supervisory regime that protects consumer interests and establishes clear rules of the road for financial institutions. CBA members still find examiner communication lacking as there seems to be a persistent disconnect from CFPB leadership. The result is more arduous, duplicative and inefficient exams for financial institutions that leave less time and resources to improve policies, procedures and serve our customers.

To this end, we strongly encourage the CFPB to ensure that coordination with other regulatory agencies remain a high priority and do more to streamline exam processes. CBA member banks are often supervised by multiple federal regulators (as well as the state regulatory bodies that supervise state-chartered banks). A single financial services company can be examined by the Federal Reserve, the OCC, the FDIC, and the CFPB, among others. In some cases, more than one agency is examining a bank for similar or related issues, each with a slightly different set of lenses. The same or substantially similar documents are often sought by multiple entities, and repetitive inquiries are often made to the same people inside supervised institutions, requiring additional time and effort to respond to each duplicative inquiry. Better interagency coordination is needed to minimize the cost and burden to financial institutions, allowing them to better serve their customers.

In a similar vein, enforcement can be a multiple agency process, with each agency taking on the same issue and imposing its own penalties for related violations. The Treasury Department, in its 2017 report on financial

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services, recognized this as problematic and recommended a single entity act as a traffic cop or coordinator to minimize wasted effort by both public and private entities. CBA supports this approach to increased regulatory coordination.

Remittance

In April of this year the CFPB issued a Request for Information Regarding Potential Regulatory Changes to the Remittance Rule ("Remittance RFI"). In the Remittance RFI, the Bureau sought comment on two aspects on its Remittance Transfer Rule, subpart B of Regulation E (the "Remittance Rule"): (1) the pending July 2020 expiration of a temporary exception that, if certain conditions are met, allows insured depository institutions to estimate the exchange rate and certain fees on remittance transfers, 12 CFR 1005.32(a) ("Temporary Exception"); and (2) the Remittance Rule's 100-transfer safe harbor that provides an exemption from the Remittance Rule for institutions that send 100 or fewer annual remittance transfers, 12 CFR 1005.30(f)(2). CBA appreciates the Bureau's willingness to work with industry participants to find a solution to this impending problem. Bank-provided remittance transfers are an important service for bank customers. Without action by the Bureau, the Temporary Exception expiration will have the perverse effect of reducing consumer choice, forcing bank customers to use less convenient or more expensive services, and leave some consumers without alternative means of sending transfers that they send today through their banks. Accordingly, CBA requests that the Bureau:

- Recognize the distinct segment of the remittance transfer market that is served by banks; and

- Utilize its existing authority to permit banks to provide estimated disclosures so that they can continue providing remittance transfer services to their customers with the same worldwide reach that their customers are accustomed to today.

The Remittance Rule implementing section 1073 of the Dodd-Frank Act (codified at section 919 of the Electronic Fund Transfer Act ("EFTA")) established a comprehensive consumer protection system for consumers sending remittance transfers from the United States to individuals and businesses in foreign countries. The Remittance Rule requires consumer disclosures that include the price of a remittance transfer (including most fees and the exchange rate), the amount of currency to be delivered to the recipient, and the date the funds will be available to the recipient.

Although disclosures are generally required to be exact, Congress included in section 1073 of the Dodd-Frank Act a time-limited exception allowing insured depository institutions that satisfy specified conditions to estimate certain fees and the exchange rate. The Remittance Rule incorporated this exception. Congress initially set the exception to last for five years, until July 2015, and authorized the Bureau to extend the exception further, to July 2020, if the expiration "would negatively affect the ability of [insured institutions] . . . to send remittances." In 2014, the Bureau made such a determination and extended the exception to July 21, 2020. In doing so, the Bureau explained insured institutions were, for some transfers, unable to disclose exact exchange rates or fees and that the Bureau did not expect solutions to this problem to emerge before July 2020.

Recently, the Bureau assessed the Remittance Rule ("Assessment"). The Assessment found that, in 2017, bank and credit union-initiated remittance transfers made up less than 5 percent of the total volume of remittance transfers but accounted for 28.2 percent of the total value of remittance transfers. The Assessment also found that, although the percentage of banks using the Temporary Exception dropped since the Remittance Rule took effect 11.6 percent of banks reported using the Temporary Exception in 2017 for 10.2 percent of their transfers (or 6.4 percent of all bank remittance transfers).

Small-Dollar Bank Lending

On February 6, 2019, the CFPB issued a proposed rule to revise its controversial November 2017 small-dollar loan rule (2017 Rule). The proposal would effectively rescind the 2017 Rule's requirement that lenders determine a borrower's ability to repay prior to extending small-dollar and certain other types of covered loans. The CFPB has also finalized a delay of the compliance date for the 2017 Rule's existing ability to repay provisions to November 19, 2020. According to the proposal, the CFPB believes that the 2017 Rule's ability to repay provisions would have the effect of eliminating lenders willing to participate in the market, thereby decreasing consumer's access to credit and competition in credit markets. We agree with the Bureau's assessment of the 2017 rule and applaud the proposal that will help depository institutions offer short term credit products.

The proposed rescissions would substantially decrease the significant burdens on lenders that would be imposed by the existing ability to repay requirement. The 2017 Rule would require lenders to obtain extensive information about a consumer's finances and use the information to project whether the consumer will be able to make payments for his or her existing payment obligations and the payments under the covered loan and still meet basic living expenses for a period of thirty days. The changes in the proposed rule may encourage lenders previously discouraged by the requirements under the 2017 Rule to engage in small-dollar, short-term loans.

Lenders would still be subject to the 2017 Rule's payment provisions, which require a lender to obtain a new customer authorization to attempt to withdraw funds from a consumer's account following two consecutive failed attempts to withdraw payments from that account. The provisions also require lenders to provide consumers with a written notice prior to a first attempt to withdraw payment from a checking, savings, or prepaid account and before subsequent attempts to withdraw payments if the payment amounts, dates, or payment channels differ from the first attempt.

We greatly appreciate the Bureau's interest in revisiting the rule to ensure consumers have options in the marketplace for small dollar credit needs. Because we expect the rulemaking will likely identify other problems with the Final Rule, we have urged the Bureau to grant an immediate extension of the compliance date for the entire 2017 Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

The Bureau's small dollar rule has greater impact on products outside of the short-term lending space. The Bureau should strongly consider exempting traditional consumer loan products, which do not raise consumer protection concerns, and which this rulemaking was not intended to address. In the 2017 Rule, the Bureau expansively defined "covered loans" — i.e., the loans subject to the Final Rule's restrictions — without regard to the loan's amount or duration. Consequently, the 2017 Rule captures many loans that are not short-term, small dollar loans, including some wealth management products and bridge loans just to give a few examples. To address this concern, the Bureau should also clarify the financing of any product or service in connection with a purchase money loan is included in the Rule's exemption for these loans and thus avoid restricting access to open-end lines of credit.

Separation of Ombudsman and Office of Students Role

For several years, the CFPB Student Loan Ombudsman also led the Office of Students. These are incompatible roles: an ombudsman should be impartial and serve in a confidential capacity, while a division leader is a policymaker, enacting rules and recommending enforcement by the agency. Combining these roles creates an inherent conflict of interest and CBA strongly recommends the Bureau separate the positions.

No-Action Letters & the Office of Innovation's Project Sandbox

Financial services innovation benefits consumers by promoting financial security, inclusion, and well-being. New and innovative financial products and services can greatly expand access to credit for all consumers, while providing improved access to important financial information, and increased customer safeguards. Congress recognized the great utility financial services innovation has for consumer protection in Title X of Dodd-Frank when it charged the CFPB with ensuring "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation".[4]

The Bureau's finalized innovation policies within the Office of Innovation are vital steps in ensuring financial institutions are able to best serve their customers innovative products and services require a flexible and accessible regulatory environment, of which the CFPB plays a key role in developing and regulating for adherence to consumer protection laws.

The recently finalized changes to the No-action letter (NAL) process will open the door for more financial institutions to innovate to better serve and protect their customers, as well as bring new, financially underserved customers into the fold. The CFPB's previous NAL process, established in 2016, did little to alleviate regulatory concerns many financial institutions have when developing new financial services, hence why only one firm has applied for no-action relief under the program. The Bureau's finalized changes to the NAL and trial disclosures policies, as well as its establishment of a Compliance Assistance Sandbox, will help more consumers attain financial security and stability by allowing financial institutions to develop new products and services that comply with well-established financial regulations. CBA also recognizes the Bureau's commitment to regulatory coordination through the creation of the American Consumer Financial Innovation Network (ACFIN), which is intended to enhance coordination among federal and state regulators to facilitate financial innovation.

CBA strongly supports the Bureau's finalized innovation policies and creation of ACFIN and believes this regulatory framework is absolutely necessary to the Bureau's commitment to increase innovation while better protecting consumers.

Debt Collection

CBA recognizes the important role the collection of debt plays in the proper functioning of the consumer credit markets, as it reduces creditors' losses from non-repayment and promotes the availability and affordability of consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing their loan agreements with borrowers. Congress clearly enacted the FDCPA to establish ethical guidelines for the collection of consumer debt by third-party debt collectors, and it never intended nor designed the Act to cover the collection practices of creditors. In that same vein, CBA strongly opposes placing FDCPA-like restrictions and requirements on creditors. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

[4] 12 U.S.C. § 5511(b)(5) (2012).

One example of why revisions to the FDCPA should apply only to third-party debt collectors are contact frequency limits. "One size fits all" call frequency limit could create significant consumer harms if applied to creditors collecting their own debts. Of chief concern, "one size fits all" call frequency limits do not recognize the differences between individual consumers and different portfolios and will negatively impact consumers that need financial assistance. "One size fits all" call frequency limits placed on creditors will likely result in late fees, negative credit reporting, account closure, repossessions, foreclosures, litigation, and fewer consumers benefitting from hardship programs, and as such, should not be applied to creditors.

We strongly urge Congress and the CFPB to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

Home Mortgage Disclosure Act

Our members are dedicated to responsibly and fairly serving the housing needs of their communities and are committed to the purposes of the HMDA, which are to: "1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[5]

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA's governing regulation. In 2015, then-Director Cordray used the Bureau's discretionary authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing the complexity and costs of HMDA reporting beyond those fields mandated by Dodd-Frank. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[6] Specifically, the expanded set of publicly available HMDA data provides ample data scraping opportunities for companies to piece together information related to the loan and borrower to "re-identify" the consumer and engage in unsolicited targeted marketing. There is no mechanism for consumers or lenders to opt-out of or protect disclosure of this sensitive personal and financial information from entering the public domain.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 pose privacy risks to consumers while also mandating extraordinarily high annual compliance costs. CBA applauds the CFPB's decision to revisit the 2015 rule to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to eliminate those discretionary data fields that are not required by statute, that are unduly onerous to collect and report, that provide present marginal value in furthering HMDA's objectives, and that create or contribute risk of consumer re-identification.

[5] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

[6] If a consumer wishes to purchase a home, he/she must provide confidential financial data that lenders in turn must report for HMDA purposes; most of which the CFPB releases to the public.

Complaint Database

CBA supports recent initiatives driven to make the CFPB complaint database more usable for the public and industry. Efforts to clearly disclose complaints which are unverified are a helpful first step in level-setting data contained in the database. Further, encouraging consumers to work with their financial institution prior to submitting a complaint will lead to more consumer issues resolved in a timely and efficient manner. Establishing tools to contextualize complaint data that recognizes the massive amount of complaints that are redressed by financial institutions will leave consumers informed while allowing financial institutions better positioned to combat consumer issues.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Our members have robust complaint management procedures outside of the CFPB's database to ensure they are resolving disputes as quickly as possible. Furthermore, every depository institution is examined regularly by the federal regulatory agencies to ensure a strong and effective complaint management system.

CBA urges the Bureau to continue its review of consumer complaint data for accuracy and validity before its publication. We believe this will help ensure consumer privacy and prevent the dissemination of misleading information.

Section 1071 Small Business Rulemaking

CBA strongly supports a cautionary approach to rulemaking under Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act ("ECOA") to require financial institutions to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. Under the section, every financial institution must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application to the CFPB. The information must be made public on request in a manner to be established by regulation and will be made public annually by the Bureau.

CBA and its member institutions strongly believe that the CFPB should keep top of mind that although Section 1071 mandates this rule, it is not as simple as data collection efforts undertaken on other lending products such as residential mortgages. The notion that business lending parallels residential mortgage lending is misplaced. The use of Home Mortgage Disclosure Act ("HMDA")-like reporting for business lending activity to ferret out potential discrimination is, in our opinion, a tremendously flawed premise because the two types of transactions differ inherently in many key aspects:

- Residential lending all shares the same type of collateral. Business lending may not be secured at all, and when secured, the type of collateral varies tremendously. Therefore, comparing terms between loans is problematic.

- Mortgage loan applicants reported under HMDA are all consumers. Business lending involves loans to all types of applicants, ranging from mom-and-pop businesses to sophisticated corporate structures; from sole-proprietors to corporations.

- Business loans are often renewals rather than new loans. These renewals are not akin to refinances in the residential world.

- Business loans often have much shorter and varied durations, where mortgages tend to be more uniform.

- The appropriate property address for a business loan to use for reporting and analysis can be debated with no easy or right answer.

- Capturing business loan applicants for reporting and analysis can be debated with no easy or right answer given the various ownership and structures.

We believe the CFPB must be keenly aware that the dissimilar nature of business lending when trying to construct this rule presents two-fold challenges:

1) Determining which data fields to require collection for, developing standard values to be reported, and proposing workable rules for collecting and reporting the data will be tremendously difficult, if the goal is to have a thoughtful, achievable rule that yields useful data.

2) Constructing fair lending analysis approaches that will yield meaningful and appropriate conclusions for business lending is even more challenging.

In light of these issues and the need to streamline the credit process in order to extend credit with greater speed to qualified applicants, CBA and its member institutions cannot stress enough the importance of well-balanced rules under Section 1071 in order to avoid overly burdensome data collection requirements that could stifle small business lending, greatly increase compliance costs for small business lenders, and open the door to costly litigation. Key to this rulemaking will be the ability for lenders to address 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act, FinCEN Beneficial Ownership Rules, etc.) in order to ensure as little disruption in the market at possible. These systems will need to be automated and accurate. Adherence to systems already in place will allow lenders streamline the collection process.

Consumer Advisory Boards

Dodd-Frank established various advisory boards at the Bureau to "provide information on emerging practices in the consumer financial products or services industry", and the Consumer Advisory Board (CAB) has often been the leader on many of these initiatives. However, despite its mission outlined Dodd-Frank and under the CAB's charter, very few financial institutions serve on the CAB. Financial institutions are often the experts on emerging consumer financial practices, products and services, yet their voice is often muted at these important CAB functions. For the advisory boards to live up to their statutorily mandated purpose, more financial institution representation is necessary to give a more rounded and full opinion on the vital issues the CAB attempts to address.

Similarly, the Taskforce on Federal Consumer Financial Law announced on Friday, October 11, 2019, presents a good opportunity for the Bureau to conduct an objective, holistic review of consumer financial laws and eliminate outdated, redundant and wasteful red tape. This would allow the CFPB to focus its resources where consumer protections are most needed and remain alert for new and emerging threats. For this process to succeed it is essential that the Bureau engage retail banking experts within the taskforce, and we look forward to working with the Director on this promising initiative.

Qualified Mortgage

CBA appreciates the Bureau's reconsideration of the Qualified Mortgage ("QM") rules in a data-driven way. We agree current underwriting policies and maintaining a customer's ability to replay should be closely reviewed as the Bureau considers updating this rule.

CBA and its member institutions strongly believe the Bureau should be extremely careful not to disrupt the mortgage market or limit a credit-worthy borrower's access to mortgage credit with the expiration of the QM Patch. The current version of QM rules needlessly restrict access to credit for qualified borrowers. We encourage the Bureau to review its current definition of QM and the accompanying Appendix Q to identify a more reasonable method of providing mortgage access to qualified consumers.

With the patch set to expire January 2021, CBA supports the Bureaus continued efforts to make appropriate adjustments to the QM rule and ensure a smooth introduction to the home loan market.

Conclusion

Improving the financial lives of consumers is a goal that unites lawmakers, regulators and industry. Achievement of this shared goal occurs when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road to protect consumers and allow for a robust financial services market.

Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple stakeholders with diverse experiences and expertise. A bipartisan commission of five, Senate-confirmed commissioners would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress and the CFPB to implement the suggested legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association

October 11, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
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Recently, the Bureau assessed the Remittance Rule ("Assessment"). The Assessment found that, in 2017, bank and credit union-initiated remittance transfers made up less than 5 percent of the total volume of remittance transfers but accounted for 28.2 percent of the total value of remittance transfers. The Assessment also found that, although the percentage of banks using the Temporary Exception dropped since the Remittance Rule took effect 11.6 percent of banks reported using the Temporary Exception in 2017 for 10.2 percent of their transfers (or 6.4 percent of all bank remittance transfers).

Small-Dollar Bank Lending

On February 6, 2019, the CFPB issued a proposed rule to revise its controversial November 2017 small-dollar loan rule (2017 Rule). The proposal would effectively rescind the 2017 Rule's requirement that lenders determine a borrower's ability to repay prior to extending small-dollar and certain other types of covered loans. The CFPB has also finalized a delay of the compliance date for the 2017 Rule's existing ability to repay provisions to November 19, 2020. According to the proposal, the CFPB believes that the 2017 Rule's ability to repay provisions would have the effect of eliminating lenders willing to participate in the market, thereby decreasing consumer's access to credit and competition in credit markets. We agree with the Bureau's assessment of the 2017 rule and applaud the proposal that will help depository institutions offer short term credit products.

The proposed rescissions would substantially decrease the significant burdens on lenders that would be imposed by the existing ability to repay requirement. The 2017 Rule would require lenders to obtain extensive information about a consumer's finances and use the information to project whether the consumer will be able to make payments for his or her existing payment obligations and the payments under the covered loan and still meet basic living expenses for a period of thirty days. The changes in the proposed rule may encourage lenders previously discouraged by the requirements under the 2017 Rule to engage in small-dollar, short-term loans.

Lenders would still be subject to the 2017 Rule's payment provisions, which require a lender to obtain a new customer authorization to attempt to withdraw funds from a consumer's account following two consecutive failed attempts to withdraw payments from that account. The provisions also require lenders to provide consumers with a written notice prior to a first attempt to withdraw payment from a checking, savings, or prepaid account and before subsequent attempts to withdraw payments if the payment amounts, dates, or payment channels differ from the first attempt.

We greatly appreciate the Bureau's interest in revisiting the rule to ensure consumers have options in the marketplace for small dollar credit needs. Because we expect the rulemaking will likely identify other problems with the Final Rule, we have urged the Bureau to grant an immediate extension of the compliance date for the entire 2017 Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

The Bureau's small dollar rule has greater impact on products outside of the short-term lending space. The Bureau should strongly consider exempting traditional consumer loan products, which do not raise consumer protection concerns, and which this rulemaking was not intended to address. In the 2017 Rule, the Bureau expansively defined "covered loans" — i.e., the loans subject to the Final Rule's restrictions — without regard to the loan's amount or duration. Consequently, the 2017 Rule captures many loans that are not short-term, small dollar loans, including some wealth management products and bridge loans just to give a few examples. To address this concern, the Bureau should also clarify the financing of any product or service in connection with a purchase money loan is included in the Rule's exemption for these loans and thus avoid restricting access to open-end lines of credit.

Separation of Ombudsman and Office of Students Role

For several years, the CFPB Student Loan Ombudsman also led the Office of Students. These are incompatible roles: an ombudsman should be impartial and serve in a confidential capacity, while a division leader is a policymaker, enacting rules and recommending enforcement by the agency. Combining these roles creates an inherent conflict of interest and CBA strongly recommends the Bureau separate the positions.

No-Action Letters & the Office of Innovation's Project Sandbox

Financial services innovation benefits consumers by promoting financial security, inclusion, and well-being. New and innovative financial products and services can greatly expand access to credit for all consumers, while providing improved access to important financial information, and increased customer safeguards. Congress recognized the great utility financial services innovation has for consumer protection in Title X of Dodd-Frank when it charged the CFPB with ensuring "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation".[4]

The Bureau's finalized innovation policies within the Office of Innovation are vital steps in ensuring financial institutions are able to best serve their customers innovative products and services require a flexible and accessible regulatory environment, of which the CFPB plays a key role in developing and regulating for adherence to consumer protection laws.

The recently finalized changes to the No-action letter (NAL) process will open the door for more financial institutions to innovate to better serve and protect their customers, as well as bring new, financially underserved customers into the fold. The CFPB's previous NAL process, established in 2016, did little to alleviate regulatory concerns many financial institutions have when developing new financial services, hence why only one firm has applied for no-action relief under the program. The Bureau's finalized changes to the NAL and trial disclosures policies, as well as its establishment of a Compliance Assistance Sandbox, will help more consumers attain financial security and stability by allowing financial institutions to develop new products and services that comply with well-established financial regulations. CBA also recognizes the Bureau's commitment to regulatory coordination through the creation of the American Consumer Financial Innovation Network (ACFIN), which is intended to enhance coordination among federal and state regulators to facilitate financial innovation.

CBA strongly supports the Bureau's finalized innovation policies and creation of ACFIN and believes this regulatory framework is absolutely necessary to the Bureau's commitment to increase innovation while better protecting consumers.

Debt Collection

CBA recognizes the important role the collection of debt plays in the proper functioning of the consumer credit markets, as it reduces creditors' losses from non-repayment and promotes the availability and affordability of consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing their loan agreements with borrowers. Congress clearly enacted the FDCPA to establish ethical guidelines for the collection of consumer debt by third-party debt collectors, and it never intended nor designed the Act to cover the collection practices of creditors. In that same vein, CBA strongly opposes placing FDCPA-like restrictions and requirements on creditors. They are unwarranted and

[4] 12 U.S.C. § 5511(b)(5) (2012).

incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

One example of why revisions to the FDCPA should apply only to third-party debt collectors are contact frequency limits. "One size fits all" call frequency limit could create significant consumer harms if applied to creditors collecting their own debts. Of chief concern, "one size fits all" call frequency limits do not recognize the differences between individual consumers and different portfolios and will negatively impact consumers that need financial assistance. "One size fits all" call frequency limits placed on creditors will likely result in late fees, negative credit reporting, account closure, repossessions, foreclosures, litigation, and fewer consumers benefitting from hardship programs, and as such, should not be applied to creditors.

We strongly urge Congress and the CFPB to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

Home Mortgage Disclosure Act

Our members are dedicated to responsibly and fairly serving the housing needs of their communities and are committed to the purposes of the HMDA, which are to: "1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[5]

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA's governing regulation. In 2015, then-Director Cordray used the Bureau's discretionary authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing the complexity and costs of HMDA reporting beyond those fields mandated by Dodd-Frank. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[6] Specifically, the expanded set of publicly available HMDA data provides ample data scraping opportunities for companies to piece together information related to the loan and borrower to "re-identify" the consumer and engage in unsolicited targeted marketing. There is no mechanism for consumers or lenders to opt-out of or protect disclosure of this sensitive personal and financial information from entering the public domain.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 pose privacy risks to consumers while also mandating extraordinarily high annual compliance costs. CBA applauds the CFPB's decision to revisit the 2015 rule to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to eliminate those discretionary data fields that are not required by statute, that are unduly onerous to collect and report, that provide present marginal value in furthering HMDA's objectives, and that create or contribute risk of consumer re-identification.

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[5] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

[6] If a consumer wishes to purchase a home, he/she must provide confidential financial data that lenders in turn must report for HMDA purposes; most of which the CFPB releases to the public.

Complaint Database

CBA supports recent initiatives driven to make the CFPB complaint database more usable for the public and industry. Efforts to clearly disclose complaints which are unverified are a helpful first step in level-setting data contained in the database. Further, encouraging consumers to work with their financial institution prior to submitting a complaint will lead to more consumer issues resolved in a timely and efficient manner. Establishing tools to contextualize complaint data that recognizes the massive amount of complaints that are redressed by financial institutions will leave consumers informed while allowing financial institutions better positioned to combat consumer issues.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Our members have robust complaint management procedures outside of the CFPB's database to ensure they are resolving disputes as quickly as possible. Furthermore, every depository institution is examined regularly by the federal regulatory agencies to ensure a strong and effective complaint management system.

CBA urges the Bureau to continue its review of consumer complaint data for accuracy and validity before its publication. We believe this will help ensure consumer privacy and prevent the dissemination of misleading information.

Section 1071 Small Business Rulemaking

CBA strongly supports a cautionary approach to rulemaking under Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act ("ECOA") to require financial institutions to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. Under the section, every financial institution must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application to the CFPB. The information must be made public on request in a manner to be established by regulation and will be made public annually by the Bureau.

CBA and its member institutions strongly believe that the CFPB should keep top of mind that although Section 1071 mandates this rule, it is not as simple as data collection efforts undertaken on other lending products such as residential mortgages. The notion that business lending parallels residential mortgage lending is misplaced. The use of Home Mortgage Disclosure Act ("HMDA")-like reporting for business lending activity to ferret out potential discrimination is, in our opinion, a tremendously flawed premise because the two types of transactions differ inherently in many key aspects:

- Residential lending all shares the same type of collateral. Business lending may not be secured at all, and when secured, the type of collateral varies tremendously. Therefore, comparing terms between loans is problematic.

- Mortgage loan applicants reported under HMDA are all consumers. Business lending involves loans to all types of applicants, ranging from mom-and-pop businesses to sophisticated corporate structures; from sole-proprietors to corporations.

- Business loans are often renewals rather than new loans. These renewals are not akin to refinances in the residential world.

- Business loans often have much shorter and varied durations, where mortgages tend to be more uniform.

- The appropriate property address for a business loan to use for reporting and analysis can be debated with no easy or right answer.

- Capturing business loan applicants for reporting and analysis can be debated with no easy or right answer given the various ownership and structures.

We believe the CFPB must be keenly aware that the dissimilar nature of business lending when trying to construct this rule presents two-fold challenges:

1) Determining which data fields to require collection for, developing standard values to be reported, and proposing workable rules for collecting and reporting the data will be tremendously difficult, if the goal is to have a thoughtful, achievable rule that yields useful data.

2) Constructing fair lending analysis approaches that will yield meaningful and appropriate conclusions for business lending is even more challenging.

In light of these issues and the need to streamline the credit process in order to extend credit with greater speed to qualified applicants, CBA and its member institutions cannot stress enough the importance of well-balanced rules under Section 1071 in order to avoid overly burdensome data collection requirements that could stifle small business lending, greatly increase compliance costs for small business lenders, and open the door to costly litigation. Key to this rulemaking will be the ability for lenders to address 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act, FinCEN Beneficial Ownership Rules, etc.) in order to ensure as little disruption in the market at possible. These systems will need to be automated and accurate. Adherence to systems already in place will allow lenders streamline the collection process.

Consumer Advisory Boards

Dodd-Frank established various advisory boards at the Bureau to "provide information on emerging practices in the consumer financial products or services industry", and the Consumer Advisory Board (CAB) has often been the leader on many of these initiatives. However, despite its mission outlined Dodd-Frank and under the CAB's charter, very few financial institutions serve on the CAB. Financial institutions are often the experts on emerging consumer financial practices, products and services, yet their voice is often muted at these important CAB functions. For the advisory boards to live up to their statutorily mandated purpose, more financial institution representation is necessary to give a more rounded and full opinion on the vital issues the CAB attempts to address.

Similarly, the Taskforce on Federal Consumer Financial Law announced on Friday, October 11, 2019, presents a good opportunity for the Bureau to conduct an objective, holistic review of consumer financial laws and eliminate outdated, redundant and wasteful red tape. This would allow the CFPB to focus its resources where consumer protections are most needed and remain alert for new and emerging threats. For this process to succeed it is essential that the Bureau engage retail banking experts within the taskforce, and we look forward to working with the Director on this promising initiative.

Qualified Mortgage

CBA appreciates the Bureau's reconsideration of the Qualified Mortgage ("QM") rules in a data-driven way. We agree current underwriting policies and maintaining a customer's ability to replay should be closely reviewed as the Bureau considers updating this rule.

CBA and its member institutions strongly believe the Bureau should be extremely careful not to disrupt the mortgage market or limit a credit-worthy borrower's access to mortgage credit with the expiration of the QM Patch. The current version of QM rules needlessly restrict access to credit for qualified borrowers. We encourage the Bureau to review its current definition of QM and the accompanying Appendix Q to identify a more reasonable method of providing mortgage access to qualified consumers.

With the patch set to expire January 2021, CBA supports the Bureaus continued efforts to make appropriate adjustments to the QM rule and ensure a smooth introduction to the home loan market.

Conclusion

Improving the financial lives of consumers is a goal that unites lawmakers, regulators and industry. Achievement of this shared goal occurs when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road to protect consumers and allow for a robust financial services market.

Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple stakeholders with diverse experiences and expertise. A bipartisan commission of five, Senate-confirmed commissioners would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress and the CFPB to implement the suggested legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association