

May 21, 2019

Dear Members of Congress:

The Consumer Bankers Association (CBA) submits the following comments on H.R. 1500, the Consumer First Act and select proposed amendments. 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.

CBA's primary position remains that Congress should depoliticize CFPB operations by replacing the single director with a bipartisan multi-member Senate confirmed commission with staggered terms in office and a Chair of the Commission to be appointed by the President. A commission of individuals with diverse experience and expertise related to consumer financial products and services would elevate CFPB functions and transparency by providing an open debate of differing ideas, viewpoints, and solutions, encouraging all sides to contribute to carefully conceived and lasting solutions for consumers.

In Congress, bipartisan legislation establishing a commission has passed the House Financial Services Committee six times and passed the House of Representatives four times, with both Democrats and Republicans voting in favor each time. When Dodd-Frank passed the House in 2009 under the leadership of then-House Financial Services Committee Chairman Barney Frank (D-MA), it included a provision that would establish a five-member commission at the Bureau.

Importantly, the American people are supportive of a bipartisan commission at the Bureau. A Morning Consult poll found that by a margin of three to one, registered voter's 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.¹ Additionally, two-dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this needed change.

Separation of Ombudsman and Office of Students Role

CBA opposes the formal consolidation of the roles of the CFPB Student Loan Ombudsman and Assistant Director of the Office of Students in H.R.1500. For several years, the CFPB Student Loan Ombudsman also led the Office of Students. These are incompatible roles as they create a conflict of interest. An ombudsman should be impartial and serve in a confidential capacity, while a division head at the agency is a policy maker, enacting rules or recommending enforcement by the agency. CBA strongly recommends the Bureau separate the positions.

CFPB Arbitration Rule

CBA opposes the Green Amendment (#29) to reinstate the CFPB's flawed rule on arbitration agreements which Congress voted to disapprove in 2017. Returning to this flawed rule would undermine the ability of our organizations to continue to offer arbitration, which is a convenient, simple, and efficient dispute resolution process for our customers. Arbitration can ensure that consumers receive faster, more cost-effective, and

¹ Morning Consult Poll, May 3, 2017.

higher recovery resolutions than offered by class action litigation favored by trial attorneys and it will be harmful to them if this dispute resolution process is eliminated.

Arbitration is up to 12 times faster than litigation in providing consumers with a resolution to their dispute. The CFPB's arbitration study found the average cash relief for consumers in arbitration is a notable \$5,400 and for consumers in class action a meager \$32. Consumers in class actions receive pennies on the dollar while trial lawyers have collected approximately \$424 million in fees over the period studied, an average of more than \$1 million per case. The CFPB's study also found the rule would lead to a rise in litigation costs, which would be passed through to consumers either through higher prices or reduced quality of products or service. Put simply, the CFPB's rule would harm the consumers it purports to help, instead enriching trial attorneys at their expense. Congress agreed and in 2017 it passed a resolution of disapproval to repeal the flawed rule.

Student Loan Servicing Reporting

CBA opposes the DeSaulnier Amendment (#22) which creates new burdensome reporting requirements for all student loan servicers and grants broad authority to the CFPB to require the reporting of any information it deems necessary to the Office of Students.

CBA members make the majority of private student loans today, playing an important role in making the American dream of a college education possible. Our members spend tremendous resources in designing loan products tailored to meet their customers' needs, and they are careful to make loans to customers who are judged highly likely to repay them. The result has been excellent performance across the marketplace – in fact, 98% of private student loan borrowers are successfully repaying their loans. This performance is documented by comprehensive, voluntary data reporting regularly available to the public and policymakers through the organization MeasureOne.

CBA believes that the proposed new information collection would be duplicative of the private sector's voluntary reporting and would offer few benefits while creating major unnecessary costs for our members. CBA members have demonstrated great performance in the private student loan marketplace, and the collection of new data will only disrupt our members who have seen continuing improvements in their loan portfolios.

Complaint Database

CBA supports the Burgess Amendment (#11) to strike the provision in H.R. 1500 which requires the CFPB's complaint database to be made public. Dodd-Frank did not explicitly call on the Bureau to publicly share complaints. The purpose of the complaint database was to provide the Bureau with information to allow them to target problem areas, which does not require the database to be publicly released.

The legitimacy or accuracy of the information provided by the consumers to the Bureau through the complaint database is largely unverified. The CFPB's only duty is to ensure the consumer is in fact a customer of that company, and the company is a covered financial service provider. With the CFPB's database exceeding one million complaints, and the unsubstantiated nature of the complaints, the Bureau has effectively created a Government sponsored "YELP" like database where comments are publicly shared with little proof of validity.

Banks maintain robust compliant management procedures and work diligently to resolve disputes quickly, in order to maintain a positive customer relationship. Depository institutions are also examined on a regular basis by federal regulators to ensure strong and effective complaint management. CBA is concerned about the potential for compromising consumer privacy. A publicly shared database erodes consumer privacy by impairing the confidential nature of the exchange between customer and their financial institution.

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 these views.

Sincerely,

A handwritten signature in black ink that reads "Richard Hunt". The signature is written in a cursive style with a large, prominent "R" and "H".

Richard Hunt
President and CEO
Consumer Bankers Association