March 12, 2019

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

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Development
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

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 Banking 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.

In 2010, Congress passed the Dodd-Frank Act creating the CFPB and granting it rulemaking, supervisory, and enforcement authority over a $3 trillion dollar financial services industry. In addition to supervisory authority over each depository institution with over $10 billion in assets, the CFPB has supervisory authority over all those in the business of origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; private education loans; and short term liquidity products. In short, the director of the CFPB has the most discretionary authority of all the financial depository regulators combined.

In the years following the passage of the Dodd-Frank Act, the financial regulators – the CFPB included – spent considerable time and effort implementing the legislation and writing rules affecting a wide array of bank products and services. Now more than eight years after the Bureau was stood up and numerous final rules later, both Congress and the Bureau have the opportunity to evaluate the Bureau's operations and ensure its rules are working well for consumers.

The American financial markets are healthy and banks are well-capitalized. However, there remain examples of overly prescriptive rules, some hardwired into statute, that are impeding the availability of consumer credit. It is prudent for Congress to examine these provisions of Dodd-Frank and subsequent rules promulgated by the CFPB as well as their impact on consumer access to credit and the ability for lenders to innovate and develop products. The financial marketplace is considerably safer for consumers and investors since the depths of the financial crisis and is constantly evolving to meet consumer demand. Legislation and rules governing the marketplace need to be reviewed through this lens to ensure the current regulatory regime fosters a competitive marketplace that can provide consumers access to affordable products and services.

Legislative Recommendations to Improve the CFPB

Bipartisan Commission at the Consumer Financial Protection Bureau

The current director, who is removable only for cause, is responsible for the management of the Bureau and is the chief decision-maker on all rulemakings, enforcement and supervisory actions – leaving little room for alternative views to be considered. It is crucial that appropriate checks and balances are in place given the scope and importance of this agency. 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.

Replacing the sole director model with a bipartisan, Senate confirmed, five-person commission would depoliticize the CFPB while increasing stability, accountability and transparency for all consumers and industry stakeholders. A lack of certainty and long-term consistency in leadership at the Bureau adversely affects consumers, our economy, and the financial services industry. As we saw after the departure of Director Cordray, the CFPB's current governance structure is subject to dramatic political shifts and strains with each change in presidential administration. Unpredictable political shifts make it difficult for the financial services industry to plan for the future, which ultimately stifles innovation, limits access to credit, and hurts consumers. As demonstrated by other government regulators, a bipartisan commission would bring more certainty and stability so banks can properly plan for the future and better serve consumers.

A commission would also bring much-needed transparency to the CFPB by providing an open forum for dissenting voices and viewpoints from multiple stakeholders. A sole director can unilaterally make decisions, oftentimes behind closed doors and without public debate. Alternatively, a commission structure would require open debate of opposing ideas, viewpoints, and solutions, encouraging both sides to work together to come to moderated rulemakings that can better stand the test of time.

Furthermore, the concept of a commission has historically shared bipartisan support. Under President Obama, the Department of Treasury issued a report stating, "The CFPA [Consumer Financial Protection Agency] should be structured to promote its independence and accountability. The CFPA will have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences."[1] Under the Trump Administration, Acting Director Mulvaney testified, "…A five person commission could help smooth out some of the variations from one director to another, Mr. Cordray and I are very different people and we plan to run the agency very differently, and a five person commission might bring some stability."[2] Treasury Secretary Steve Mnuchin testified he does "support the concept of a board to oversee [the Bureau]" in a recent House Appropriations Subcommittee hearing.[3]

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. And just last Congress, the House Financial Services Committee passed on a bipartisan basis, legislation that would establish a bipartisan, five-member commission at the CFPB.

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 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

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[1] Department of Treasury, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*, p. 58.
[2] Senate Banking Committee, BCFP Semi-Annual Hearing, April 12, 2018.
[3] House Appropriations Subcommittee Hearing, FY19 Budget Hearing, Department of Treasury, March 6, 2018.

structure.[4] Additionally, two dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this needed change.

Independent Inspector General

CBA supports legislation that would establish an independent Inspector General at the CFPB, as opposed to sharing one with the Federal Reserve. This would be an appropriate step to provide independent oversight of the Bureau. The adoption of an independent Inspector General will ensure the operations of the agency are audited by an independent and impartial entity. Most financial services regulatory agencies, and more than 30 other federal agencies, have their own dedicated Inspector General. Having a third-party auditor will bring increased accountability to the Bureau and provide Congress with important information on the internal workings of the CFPB.

Clarifying Guidance

CBA supports previously introduced legislation known as the GUIDE Act, which would provide greater clarity to what constitutes guidance, improve compliance with consumer financial protection laws, and bring predictability to the Bureau's rulemaking.

The Bureau has been historically slow to issue guidance, which has created an environment of uncertainty in the financial services industry. The bill would require the Bureau to issue guidance necessary or appropriate to comply with consumer protection laws. It would provide for public notice and a comment period for the issuance, amendment, or revocation of guidance, with clear timelines for industry. It would provide liability protection for acting in good faith in accordance with guidance. The bill would also create a penalty matrix that would require the Bureau to publish penalty guidelines that determine the size of any civil monetary penalties issued by the Bureau based on the severity of the violation of Federal consumer law. By requiring the Bureau to issue clear guidance and rules, the practice of regulation through enforcement could be reduced.

Harmonizing UDAP Authority

The Federal Trade Commission Act prohibits Unfair and Deceptive Acts or Practices (UDAP) in commerce, and this concept has been developed and refined over many decades by regulation and case law. The FTC employs UDAP in its enforcement of consumer financial service providers. The bank regulatory agencies—including the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and Federal Reserve Board, examine the banks under their authority for compliance with UDAP.

By granting the Bureau authority to regulate unfair, deceptive and "abusive" acts or practices (UDAAP), the Dodd-Frank Act created an anomaly within the existing and well-documented regulatory regime. In addition, Congress did not provide clarity as to why an additional and seemingly redundant "abusive" violation was created, which has placed all companies under the Bureau's jurisdiction at risk of inadvertent noncompliance because it is unclear how an "abusive" standard will be applied or how it is different from unfair or deceptive. Many depository institutions are supervised by the CFPB for UDAAP violations and by their prudential regulator for UDAP violations, creating an overlapping and potentially confusing supervisory regime. We encourage Congress to eliminate the term "abusive" to provide regulatory harmony between the CFPB and other Federal regulatory agencies.

[4] Morning Consult Poll, May 3, 2017.

Regulatory Actions

Enforcement and Supervision

The CFPB has historically used the enforcement process as a regulatory tool. Former Director Richard Cordray stated on numerous occasions that companies should draw their understanding of the compliance and legal requirements of federal law by studying consent orders and other enforcement actions by the CFPB. The result is not in the best interest of either industry or consumers. This policy, which is often called "rulemaking by enforcement," appealed to the CFPB because it was swifter and did not require as much substantiation. The rulemaking process, as mandated by the Administrative Procedure Act and the Dodd-Frank Act, is time consuming for a reason: it demands the CFPB adhere to a strict process that invites those who are affected by a proposal to have a say in the creation of the rule. Enforcement actions do not; and if they are negotiated consent orders, they may not even be a very fair representation of the regulator's compliance expectations of others. Under a "regulation by enforcement" process, in order to understand and comply with the law, one has to hire a team of expensive lawyers to decipher the tea leaves. We believe this is simply bad public policy and leads to nothing more than excess legal cost and a lack of clear guidance.

The absence of regulatory agency coordination is also a concern. CBA member banks are often supervised by multiple federal regulators (not to mention 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. 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 documents can be requested or variations can be sought, and similar inquiries can be made to the same people. Better coordination is needed to minimize the cost and burden to the financial institutions, permitting 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. At times this appears to be driven by a desire to demonstrate its regulatory authority and not defer to any other regulatory body, but this duplication is an unnecessary cost that ultimately reduces the effectiveness of the entire enforcement process. The Treasury Department, in its 2017 report on financial services, recommended a single entity act as a kind of traffic cop or coordinator. CBA would support this approach to increased regulatory coordination.

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 also proposed to delay 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 also urge the Bureau to grant an immediate extension of the Compliance Date for the entire Final Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

Further, the Bureau should exempt 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, in fact, short-term, small dollar loans, including some wealth management products. To address this concern, the Bureau should also clarify that 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.

Know Before You Owe Federal Student Loans

Absent Congressional action to improve federal student loan disclosures, CBA recommends the CFPB coordinate with the Department of Education (the Department) to implement a "Know Before You Owe" initiative for federal student loan borrowers. With $1.4 trillion in federal student debt outstanding and more than one in five federal borrowers in repayment seriously delinquent or in default, there is clearly a federal student loan crisis. Financial education is at the core of the CFPB's mission, and we encourage the CFPB to work with the Department to make sense of the current opaque federal student loan disclosures by offering a clear, personalized, plain-language disclosure similar to those already provided to borrowers of all private consumer loans.

For many students and families, a college education will be one of the most important investments they ever make. Thus, access to information about the true cost of a loan is critical to making an informed decision about how much debt to take on. A recent CBA poll of 1,000 registered voters echoed the importance of borrower disclosures as 90 percent of those surveyed felt borrowers should receive disclosures detailing costs and terms before taking out an education loan. More than 90 percent felt such disclosures should always provide specific monthly payment amounts.

Unfortunately, federal borrowers must currently weed through more than a dozen pages of disclosures and squint to read fine print to unearth some of the key loan terms. These disbursement disclosures fail to provide terms specific to individual borrowers, instead offering broad categories of interest rates and fees and ranges of estimated monthly payments. The ironically named Plain Language Disclosure, for instance, provides users of federal student loan products six pages of legal jargon in fine print to show only generic loan costs and repayment terms.

Alternatively, private lenders are required by the Truth in Lending Act (TILA) to provide customers with clear and conspicuous disclosures of loan costs and terms three times before the loan is disbursed: at loan application, approval, and closing. The interest rate, loan fees, annual percentage rate (APR), monthly payment amount, and total cost of the loan, among other important terms specific to the individual borrower, are boldly displayed.

CBA has long advocated for the best possible information to be provided to students and their families before they borrow large sums of money for higher education. While we recognize some improvements to current disclosures may require amendments to the Higher Education Act, we recommend the CFPB and the Department work together to develop, at the least, one overarching and meaningful disclosure of key loan terms so borrowers can more clearly understand their loan obligations before signing on the dotted line. An initiative similar to the CFPB's successful Know Before You Owe initiative on mortgage disclosures would improve transparency and help prevent over-borrowing. An improved federal student loan disclosure process should:

1. Include the key terms of the loan, such as the interest rate, fees, projected monthly payment and projected total cost of the loan, and provide a clear view of the true cost of the loan by displaying the APR (which accounts for the origination fees of 4.3 percent for PLUS and 1.1 percent for Direct Loans);
2. Provide these improved disclosures at application and in coordination with the financing letter; and
3. Specify that parents are responsible for Parent PLUS loan repayment regardless of whether the student completes their program of study.

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 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.

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 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".[5]

The Bureau's proposed reforms to its 2016 No-Action Letter (NAL) process, and establishment of a "Project Sandbox" within the Office of Innovation are vital steps in ensuring financial institutions are able to best serve and protect their customers with new and innovative financial services and programs. The development of these innovative services and programs 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 proposed changes to the 2016 NAL 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 current NAL process, established in 2016, does 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 burdensome amount of information currently required under the NAL process leaves institutions vulnerable to increased scrutiny and litigation from regulators and private actors, ultimately barring them from establishing new services and products that can greatly benefit consumers. The Bureau's

[5] 12 U.S.C. § 5511(b)(5) (2012).

proposed changes to the NAL, as well as its establishment of "Project 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 strongly supports the Bureau's proposed changes to the 2016 NAL process and establishment of "Project Sandbox" and feels these programs are 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.

CBA is also concerned by the overly restrictive communication standards set out in the Bureau's Outline of Proposals issued ahead of its small business panel hearing for third-party debt collections. We believe setting communication barriers too high between collectors and borrowers has the potential to significantly harm consumers. Based on our members' experience, consumers facing financial hardship are best served if they are able to freely communicate with collectors and their creditors. Doing so helps consumers avoid late fees, minimize negative impacts to their credit report, avoid account closures, and allows them to take advantage of loss mitigation or other workout programs. As a result, we firmly believe it is essential that any new rules promote, not inhibit, consumer engagement with collectors and 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.

Privacy Implications of the 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."[6]

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

[6] 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

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[7] 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. Re-identification provides a vehicle for unsolicited targeted marketing, and in some cases can distort access to credit.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 deserve closer scrutiny. CBA applauds Director Kraninger's decision to revisit the rule in May 2019 to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to take all necessary measures to ensure the personal financial data consumers are required to provide to their lenders remains private and protected.

Complaint Database

CBA supports policy that would limit the public dissemination of unsubstantiated information submitted through the CFPB complaint database. There was no language in Dodd-Frank that explicitly called for the Bureau to publicly share complaints. In fact, plain reading of the statute demonstrates that Congress did not intend for it to be made public. Under previous leadership, the Bureau went far beyond its statutory authority to establish the database by publishing the data publicly, adding unverified narratives, and proposing a subjective consumer survey on resolution satisfaction that has no proven benefit.

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 made public. Additionally, a public, Government-sponsored, "YELP"-like database where comments are shared publicly has not been shown to be of any value and indeed can do more harm than good.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. This is why 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.

With the CFPB's database exceeding one million complaints, CBA is strongly concerned about the potential for compromising consumer privacy. In addition, the database erodes consumer privacy by impairing the confidential nature of the exchange between customer and banker.

The Bureau does not verify the legitimacy or accuracy of the information provided by the consumers, except to ensure the consumer is in fact a customer of that company, and the company is a covered financial service provider. While this is stated on the database website, this fact alone does not give consumers adequate information to draw conclusions about the data. If the Bureau is releasing the complaint data, consumers can be excused for believing the information is legitimate, notwithstanding any disclaimer to the contrary. The releasing of narrative information on each complaint only makes this worse and does not give enough information for the public to draw any information on the validity of the complaints.

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

CBA urges the Bureau to continue its review of consumer complaint data and its publication. We believe this will help ensure consumer privacy and prevent the dissemination of misleading information. Congress too has an important role to ensure future releases of consumer data is safeguarded.

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.

Cost Benefit Analyses

CBA is supportive of clear and rational regulations that promote the industry's ability to comply and provide consumers access to credit. We believe these twin objectives would be best served by a robust public comment process, a firm adherence to the formal rulemaking process, and a flexible implementation process following the issuance of a final rule. Indeed, the Dodd-Frank Act's standards for rulemaking require the Bureau to consider, among other things, "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumer to consumer financial products or services resulting from such rule." Under this framework, we would encourage the Bureau to not focus solely on policy-based rulemaking and to base new regulations on real-world data and rigorous economic cost-benefit analysis, as required by the Act.

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 provide consumer protections 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 leaders 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