



**HOUSE COMMITTEE ON FINANCIAL SERVICES**

Hearing on:

Perspectives on the Consumer Financial Protection Agency

Wednesday, September 30, 2009

WRITTEN TESTIMONY OF BILL HIMPLER

EXECUTIVE VICE PRESIDENT

THE AMERICAN FINANCIAL SERVICES ASSOCIATION

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Mr. Chairman, Ranking Member Bachus, and Members of the Committee, my name is Bill Himpler and I am the Executive Vice President of the American Financial Services Association (AFSA). AFSA's 350 member companies include consumer and commercial finance companies, "captive" auto finance companies, credit card issuers, mortgage lenders, industrial banks and other financial service firms that lend to consumers and small businesses. I appreciate the opportunity to give our member companies' perspective on the proposal to create a Consumer Financial Protection Agency (CFPA).

Chairman Frank, in light of the revisions for the CFPA that you put forth last week, I'd like to thank you for your willingness to listen and consider different perspectives on this very important proposal. At the same time, we noted that many of the revisions focus on nonbanks.

In addition, some committee members may have seen *The Washington Post's* front-page article on September 27<sup>th</sup> that defined consumer finance companies more narrowly than we do. Before I present our views on the CFPA, I'd like to take a minute to set the record straight regarding consumer finance companies and how they're currently regulated.

Finance companies come in many shapes and sizes – some are independently owned lenders that specialize in providing personal loans to consumers and small business owners; others are “captives” that provide financing for vehicles or other products manufactured by their parent companies. While I cannot speak for other institutions that may fall under the proposal’s definition of nonbanks, I can assure this committee that finance companies are already heavily regulated.

In addition to being subjected to federal consumer protection laws, such as the Truth in Lending Act (TILA), Fair Credit Reporting Act (FCRA) and the Equal Credit Opportunity Act (ECOA), finance companies are licensed and regulated by the states and abide by consumer protection statutes in all of the states in which they do business.

Like banks, finance companies undergo regular and vigorous examination by state regulators. These companies have been successful at meeting the credit needs of communities in part because they are subject to oversight by state regulators who have a familiarity with local and regional situations and issues faced by lenders. This knowledge, along with their proximity, means state regulators frequently are among the first to identify emerging issues, practices or products that may need further investigation. Though the state system has not been perfect, no one can argue that states have not aggressively fought abusive lending. In 2008 alone, state regulators took more than 7,000 mortgage enforcement actions.

After a careful review of the proposed revisions, AFSA remains opposed to the CFPA proposal. While some critics have equated our stance as being opposed to any changes to consumer protection regulations, this is not the case. To the contrary, AFSA strongly supports efforts by the Obama Administration and others to improve consumer protections for financial services customers – but we do have philosophical differences as

to how to go about achieving this goal. We also have concerns that the revised language for the proposal could reduce – and perhaps eliminate – a critical source of consumer credit. I'll discuss this in more detail later.

To begin, let me outline four fundamental reasons for our position on the CFPA.

First, because it's based on the premise that the entire financial services industry is broken, the CFPA would try to "fix" what's still working.

Second, the CFPA is still likely to mean higher prices and reduced product choice for financial services customers even if the "plain vanilla" requirement was eliminated.

Third, we believe that more government intervention in the form of a vast, new regulator won't necessarily result in better consumer protection.

And fourth, the creation of another separate regulator would bifurcate the consumer protection and safety and soundness functions of financial regulation.

### If Isn't Broke, Don't Fix It

The CFPA is based upon the notion that the entire financial services system is broken based upon what occurred in the housing market. In addition, the bill's intent is to use a "one-size-fits-all approach" and treat all financial services products the same. For instance, it makes no sense to compare terms, such as APR, for a 30-year fixed mortgage with those of a short-term installment loan used to buy a new washer and dryer.

It's important to recognize that mortgages are just one of many products within the expansive consumer lending marketplace. Many of the companies that would be

subject to intensified requirements, greater restrictions and higher compliance costs under the CFPA would be those that didn't contribute to the mortgage crisis – i.e., those offering auto financing, personal loans and other types of products that enable consumers and small businesses to meet their everyday needs.

To put it another way, the lenders that weren't part of the problem will be left holding the bag. The financial crisis took a toll on many of these institutions, such as the auto finance companies that are now struggling to obtain access to capital. Some of them may decide the compliance costs and risks associated with the CFPA are untenable, causing them to exit the market and leaving borrowers with fewer credit options.

#### More Government Doesn't Mean Better Consumer Protection

Supporters of the CFPA have attempted to portray it as a government watchdog that would be better able to weed out bad practices in the financial services sector than the existing federal agencies. Yet there's no guarantee this will happen – and policymakers should not be “tricked and trapped” into thinking that more bureaucracy is what's needed to improve consumer protection.

Even if it were scaled back in accordance to last week's revisions, the proposed agency still would require an immense amount of resources - as well as a restructuring of existing regulatory personnel - before it could become operational. Such an approach seems ill-advised when we already have several federal regulators with the expertise and experience to do the job.

What's more, putting an untested, inexperienced agency in charge of consumer protection for the entire financial marketplace could exacerbate existing problems, rather

than reduce them. A public opinion survey conducted this summer found that 79% of Americans believe that “before creating a new agency, we should make sure we understand how it will impact the economy. Rushing to create it may cause more harm in the long run.”

### Consumers and Small Businesses Will Have Fewer, More Expensive Borrowing Options

If the CFPA were to become a reality, financial services customers are likely to have less borrowing flexibility even with the elimination of the “plain vanilla” requirement. The new regulator would still retain expansive rulemaking authority and the ability to determine allowable products and services, which will greatly influence the options that will be available to consumers. Financial institutions falling underneath the CFPA’s jurisdiction will face considerable compliance costs that will get passed on to borrowers. In essence, this would impose a new tax on consumers at a time when they are least able to afford it.

### Splitting the Prudential and Consumer Protection Functions Won’t Yield Better Results

AFSA supports, and believes consumers will be better served by, a regulatory structure where prudential and consumer protection oversight is housed within a single regulator. Congress tried to separate these two intertwined functions with the Government Sponsored Enterprises (GSEs). Federal Housing Finance Agency Director James Lockhart recently cited this separation of functions as one of the primary reasons for the failure of Fannie Mae and Freddie Mac. Today, no evidence shows that a

separation of prudential and consumer protection regulation will offer better results in the financial services arena – in fact, indications are to the contrary. We urge Congress to support a regulatory structure that does not separate financial products and services from the viability of the companies that offer them.

Indeed, given that the agency would be required only to “consult” with prudential regulators, it is all too likely that the agency would embark on a mission to severely restrict sound business and financial practices it perceives as not “consumer friendly.”

#### CFPA – ECONOMIC RAMIFICATIONS

For the reasons I’ve just explained, AFSA believes the creation of a CFPA will not fulfill the goal of improving consumer protection for financial services customers. It most certainly is not in the consumer’s best interest to add layers of bureaucracy, reduce credit choices and raise prices for financial services.

In addition, I’d also like to point out that, if the proposal were to focus on nonbanks, it could reduce – and perhaps eliminate – many finance companies, which are a critical source of credit for consumers and small businesses.

While banks play a vital role in the economy and the consumer credit market, Federal Reserve Board statistics show that the majority of non-mortgage consumer credit is provided by finance companies and others who raise funds through securitization. Finance companies have a long history of meeting the credit needs of consumers – from buying a car to get to work, to paying college costs for a son or daughter.

Today’s installment lenders are a key element in supporting the country’s economic health. People turn to installment lenders for a multitude of reasons. Key

among these, however, is the need to access small sums to deal with unforeseen circumstances.

Take for example, an unanticipated car repair. Keeping one's vehicle in good repair is essential to allow transportation to work. Absent access to small sums over and above a wage, the repairs necessary for such transportation may not be possible, resulting in job loss. Many less-advantaged citizens in our country do not have access to the kinds of credit cards and financial offerings available to the more fortunate, and have long relied on access to small-sum installment loans to meet their credit needs. And they have proven that they can and do make good use of borrowed money, even if they sometimes struggle to demonstrate their creditworthiness to lenders.

In addition to installment lenders, auto finance companies are vitally important, especially in an economy where preserving or finding employment is foremost on the minds of many Americans. Vehicles play a critical role in sustaining employment because the majority of Americans still use them to get to work. A 2007 U.S. Census Bureau American Community Survey found that close to nine out of 10 workers drove to work in 2005, with 75% of the commuters driving alone.

It's worth noting that, while the proposed revisions to the CFPB legislation would exempt car dealers, this will be of little consequence to them. These dealers, after all, will need finance companies to provide their customers with a means to acquire cars.

Consumers are not the only ones who will feel the effects – millions of small businesses will as well. According to a September 2009 report from the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, most of the 26.7 million businesses in the United States, including the self employed, rely on credit cards, home equity loans and other sources of consumer lending to finance their business. Among

the report's conclusions is that "the CFPB credit squeeze would like result in business closures, fewer startups and slower growth."

If installment, auto and other finance companies were required to shoulder much of the compliance burden resulting from a CFPB, it undoubtedly would affect their ability to provide safe, convenient and affordable loans – just as the economy is starting to show signs of recovery.

### A More Effective Approach

AFSA does not oppose consumer protections – it embraces them. We support rational consumer protection that is regulated and enforced in a manner that allows financial services providers to plan and price for risk, to operate their businesses efficiently and safely, and promote access to a full range of credit products for Americans.

To that end, we offer the following suggestions:

1. Improve Consumer Disclosures

We agree with Elizabeth Warren and others who have cited the need for clear, easy-to-understand disclosures for consumer credit products – but it makes no sense to create another agency when we already have an alphabet soup of regulators that can do the job.

2. Consider alternatives to the CFPA

The CFPA is not the only option we have for changing consumer protection. Representative Minnick, for example, is working on an alternative proposal that would have existing federal and state regulators work together on a “consumer financial protection council.” Given the importance of this issue, we urge this committee to avoid rushing into solutions that, in the end, could create more harm than good.

3. Pursue a regulatory structure that does not separate financial products and services from the viability of the companies that offer them.

All prudential agencies should work together to coordinate on consumer protection regulation for financial products and services with the goal that the regulations be consistent and uniform.

4. Step up enforcement of existing consumer protection laws.

This is not to say we advocate the status quo. While the current financial regulators already have many enforcement tools at their disposal, changes are needed to enable these regulators to fully utilize these tools. This includes allocating sufficient resources and other support.

5. Continue efforts to improve financial education.

The President’s Advisory Council on Financial Literacy and the U.S. Treasury’s Office of Financial Education play important roles in working with

the financial services industry and others in the private sector on financial literacy initiatives. Ultimately, an educated consumer is the best defense against fraud and unscrupulous practices.

As I said at the outset, we fully support the goal of the administration and this committee to improve the quality and effectiveness of consumer protection for all Americans. I appreciate the opportunity to testify here today and am happy to answer any questions Members may have.