



**Americans for Financial Reform**  
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May 21, 2014

Dear Representative:

On behalf of Americans for Financial Reform, we are writing to express our serious concerns about the bills and proposals being discussed in today's hearing, misleadingly titled "Legislative Proposals to Improve Transparency and Accountability at the CFPB." The measures under discussion would weaken the Consumer Financial Protection Bureau (CFPB) and make it harder for the agency to do its job.

The CFPB was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and opened its doors as the nation's only financial regulator completely devoted to consumer protection in July 2011. Since then, the CFPB has been protecting consumers by ensuring that markets work in an open, transparent, and fair way. The Bureau's mission is to hold financial companies accountable for being up front about the costs of, and risks associated with, their products, and also to ensure that consumers are treated with dignity and respect, rather than set up to fail. The Bureau has successfully gone to bat for consumers, delivering results that are making markets work more fairly and putting a stop to fraud and abuse.

The proposals being considered today will not protect the public or increase accountability appropriately; instead they are part of a continuing pattern of mischaracterizing the CFPB's organization and processes. These proposals would hobble the agency and interfere with its ability to fulfill its mission. Unfortunately, opponents of consumer protection—including portions of the financial services industry that opposed the creation of the Bureau, have opposed its consumer protection efforts at every step, and possess a narrow self-interest in preventing effective consumer regulation—seem now to be pursuing a strategy of 'death by a thousand cuts.' Because more transparent efforts to gut the Bureau have failed, opponents have now turned to a series of procedural maneuvers that they hope will weaken it over time. In addition to these more procedural efforts, the package of legislation to be considered also includes a frontal attack on the Bureau's authority to consider the impact of forced arbitration clauses on consumers. The bills, described in the summary below, represent the latest in a continuing effort to tie the agency's hands, and we urge you to oppose them.

- The "Bureau Arbitration Fairness Act" would completely repeal the CFPB's authority to ban or regulate the use of arbitration provisions in contracts for consumer financial products or services. Forced arbitration clauses eliminate consumers' access to courts, instead forcing them into a rigged and secretive system to settle disputes. The Dodd-

Frank Act required the CFPB to conduct a study on the use of forced arbitration; the preliminary data released by the agency showed that the prevalence of forced arbitration clauses and class-action bans provide corporations with a license to break the law. Repealing the agency's authority to restrict the practice of forced arbitration provisions would weaken consumers' ability to hold wrongdoers accountable.

- H.R. 4262, the “Bureau Advisory Commission Transparency Act,” would apply the provisions of the Federal Advisory Committee Act (FACA) to the CFPB, which would require that advisory committee meetings all be made public. The CFPB has already implemented much of the FACA voluntarily, and recently the CFPB increased its longstanding substantial conformance with the FACA further, announcing changes to the format of its Board and Council meetings. It is important, however, that the agency retain the flexibility to determine when information is preliminary; for example, this bill could have the unintended consequence of creating a disincentive for Academic Research Council researchers and academics to share preliminary data and methodologies with each other. It is also worth noting that the FACA currently does not apply to a number of agencies beyond the CFPB, including the Federal Reserve, the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, the National Academy of Sciences, and the National Academy of Public Administration.
- H.R. 4383, the “Bureau of Consumer Financial Protection Small Business Advisory Board Act,” would establish a Small Business Advisory Board to meet at least twice a year, comprised of at least twelve representatives of the small business community. This proposal is unnecessary and duplicative because the CFPB is already specifically—and to a greater extent than most other regulatory agencies—required to take small business concerns into account when issuing rules. Small business representatives already have a unique first look at CFPB rules under Section 1100G of the Dodd-Frank Act, which requires the CFPB to convene a small business review panel and collect advice and recommendations from representatives of small entities on potential economic impacts of proposed rules under consideration, and to report on their review.
- H.R. 4539, the “Bureau Research Transparency Act,” would require that research papers the Bureau makes available to the public be accompanied by all related studies, data, and analyses. This bill would burden staff with demands that would be impractical to comply with, could force the CFPB to release trade secrets or other materials specifically protected by contracts with companies providing data, and could potentially require the release of confidential supervisory information. Alternatively, this bill could prevent the CFPB from using or collecting the data it needs to understand markets and make wise regulatory decisions. With regard to concerns about data integrity, the Data Quality Act already provides safeguards, making further requirements unnecessary.
- H.R. 4604, the “CFPB Data Collection Security Act,” would require an opt-out list for consumers who do not want the CFPB to collect personally identifiable information (PII) about them. This bill is unnecessary and misleading, as the CFPB does not collect PII, unless it is voluntarily provided with affirmative consent. The Bureau collects much of its information from commercial vendors, in which PII is not included. Furthermore, the

CFPB already protects consumer privacy, both when consumers submit PII and when the agency studies datasets that do not include PII.

- H.R. 3389, the “CFPB Slush Fund Elimination Act of 2013,” would eliminate the Bureau’s Civil Penalty Fund, instead directing the Federal Reserve to transfer existing funds and future penalties to the Treasury. The CFPB’s Civil Penalty Fund is based on a rulemaking, and its activities are both narrow and statutorily based. The fund is intended to help consumers who have been harmed. One use has been to provide remediation to consumers when the company that defrauded them is insolvent. A secondary use of funds is for financial literacy, a task given to the CFPB by Congress. This bill would make it harder for the CFPB to protect vulnerable and targeted populations, and would weaken the agency’s work on financial literacy issues.
- H.R. 3770, the “CFPB-IG Act of 2013,” would create a separate, independent inspector general (IG) for the CFPB and would require the IG to appear at semi-annual hearings of the House Financial Services Committee and the Senate Banking Committee. This legislation is unnecessary because the CFPB already has an IG, shared with the Federal Reserve, within which the CFPB is housed: the Dodd-Frank Act of 2010 established that the Federal Reserve’s Office of Inspector General has oversight authority for Bureau, conducting audits, investigations, and other necessary reviews. We have seen no evidence that the existing structure is inadequate, and are concerned that this bill is designed simply to convey the message that the Bureau lacks oversight, when in fact proper oversight systems are in place.
- H.R. 4662, the “Bureau Advisory Opinion Act,” would establish a process by which covered persons can submit inquiries concerning the conformance of prospective products and services with consumer financial law, and must then receive a confidential opinion from the Director. While some agencies do provide limited advisory committee processes in limited circumstances, this bill would create an unprecedented and impractical procedural requirement—one that is not imposed anywhere else in the government.
- The “Bureau Guidance Transparency Act” would require the CFPB to provide a public notice and comment period before issuing any guidance in final form. It also would require that the Bureau make public any studies, data, and analyses it relied upon for preparing and issuing the guidance. Guidances are not currently subject to the Administrative Procedures Act (APA), so this bill would radically revise the APA with regard to the CFPB alone. A guidance is intended to provide regulated entities with clarity on the regulator’s expectation with regard to existing laws; attaching a notice and comment period would hinder the CFPB’s ability to make compliance expectations clear to market participants, and to act in a timely way to facilitate compliance with the law.
- The “Preventing Regulatory Abuse Act of 2014” would require the CFPB to go through a formal rulemaking in order to publish a final rule that gives guidance on the agency’s definition of an “abusive” act or practice; would enact a moratorium on any enforcement action using the CFPB’s “abusive” authority until the final rule is published; and would

repeal the CFPB’s authority to prohibit “abusive” acts or practices if it fails to conform to specified rulemaking timelines. In fact, the Dodd-Frank Act already provides parameters as to what constitutes an “abusive” practice. And because ‘abusive’-- like ‘unfair’ and ‘deceptive’ – is a fact-specific concept designed to be flexible to reach unknown future abuses, it would be impractical to construct a rule that could effectively apply to all industries and possible circumstances of abuse. . In addition, this bill imposes timelines that would not be realistic for agency staff to meet. Enacting this proposal would hurt the Bureau’s ability to fulfill its mission.

- The “Bureau Examination Fairness Act” would prohibit the CFPB from including enforcement attorneys in examinations, regulate data requests, and place time limitations on the completion of examination field work and the issuance of exam reports. This bill is somewhat redundant as the CFPB has already removed enforcement attorneys from examination practices. This bill would, however, ban this practice absolutely. An effective supervision and enforcement benefit would include the flexibility to call an experienced attorney if necessary. Furthermore, the bill would impose a number of requirements on the Bureau regarding coordination, data sampling, and cost benefit requirements. This bill’s restrictions on the length of examinations and its limits on the costs of data collection would harm the CFPB’s ability to conduct necessary and adequate supervision.

The bills before the committee today are message pieces in a campaign to portray the CFPB as a too-powerful agency that threatens consumer freedom and privacy. We have not seen any evidence that this is the case. What we see is an agency seriously and responsibly doing the job Congress gave it: making consumer financial markets fairer and more transparent; putting money back in the pockets of members of the public who were fleeced by illegal conduct, and policing rules of the road that make the financial system work better for responsible businesses and responsible consumers alike. Obstructing reasonable regulation only serves the interests of the worst elements of the financial industry, and encourages law breaking. We urge the committee to use its time to explore ways to move forward on making sure that the U.S. financial system supports people’s ability to save, transact, and borrow prudently.

Sincerely,

Americans for Financial Reform  
Center for Economic Justice  
Consumer Action  
Consumer Federation of America  
Consumers Union  
National Association of Consumer Advocates  
National Consumer League  
U.S. PIRG  
Woodstock Institute

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*List of State and Local Partners*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC

- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending



- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

***Small Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

