Consumer Federation of America

September 12, 2016

The Honorable Jeb Hensarling
Chairman
Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

**Re: Oppose the Financial CHOICE Act**

Dear Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

This week the Committee is scheduled to mark up the "Financial CHOICE Act" (H. R. 5983), which purports to offer a Republican alternative approach to reforming the financial system. We are writing on behalf of the Consumer Federation of America[1] to urge you to oppose this dangerous and misguided bill. It is by and large a deregulatory wish-list that repeals many of the significant achievements in the Dodd-Frank Act and other critical laws designed to ensure consumers and investors are appropriately protected from harm in the marketplace. Without such protections, consumers and investors will be exposed to greater risk of being harmed in concrete ways and the financial system will be exposed to greater risk of instability and crises.

The provisions discussed below are among the sections that raise the most serious concerns. They do not, however, represent all of the concerns that CFA has with this legislation.

## I. This bill would force devastating changes to the leadership, funding, structure and authority of the Consumer Financial Protection Bureau, which would put consumers at risk of abusive financial practices.

First, the bill would weaken the Consumer Financial Protection Bureau's (CFPB's) ability to protect consumers from abusive financial practices. For five years, the CFPB has proven itself to be a transparent, deliberative, and data-driven agency. The CFPB has worked closely with consumers and the financial services industry to develop sensible safeguards against harmful and discriminatory products and practices like abusive payday lending and aggressive debt collection tactics that have harmed consumers and servicemembers. To date, the CFPB has returned $11.7 billion in relief to more than 27 million harmed consumers.[2]

[1] Consumer Federation of America (CFA) is a national organization representing approximately 300 organizations at the state, local and national level that conducts public education and policy analysis on behalf of consumers, with a particular focus on low- and moderate-income consumers.

[2] "Consumers Count: Five Years Standing up for You," July 14, 2016. http://www.consumerfinance.gov/about-us/blog/consumers-count-five-years-standing-you/.

In Title III, the bill would weaken the leadership structure of the CFPB by eliminating the single director structure and replacing it with a commission, a structure that by its nature is destined for paralysis. The CFPB's confirmed Director, Richard Cordray, was nominated by the President and confirmed by the Senate. He is fully accountable to Congress and the public and regularly appears before Congressional committees to provide details about its rule-writing, supervision and enforcement strategies. While there are financial regulators that are led by five-member boards, there is no evidence that this structure is more effective and we oppose this change in section 311. The bill also eliminates the CFPB's independence from the Congressional appropriations process. Subjecting the CFPB to the appropriations process would give the worst elements of the financial services industry endless lobbying opportunities to deny the CFPB the funding to do its job.

The bill also significantly limits the ability of the CFPB to protect consumers by providing defendants with the ability to move proceedings from the administrative adjudication process of the CFPB to federal court, in section 314. This will hamstring the CFPB's enforcement authority. In addition, the bill undermines the current organization of the Bureau by duplicating and complicating the structure in section 316.

The bill eliminates the CFPB's authority in significant ways. The bill, in section 327, weakens the important release of information about consumer complaints in CFPB's consumer database. The bill repeals examination and enforcement authority for more than half the banks it currently supervises in section 328. Section 333 similarly undermines the CFPB's ability to address predatory lending by giving states authority to block and preempt the implementation of payday loan rules. Section 334 thwarts the CFPB's authority to enforce anti-discrimination laws in the auto industry. Section 337 entirely eradicates the CFPB's authority to protect consumers in the financial marketplace by repealing the agency's authority to stop abusive acts and practices and section 338 thwarts the implementation of the CFPB's proposed rule against forced arbitration clauses. These sections eviscerate critical authority that the CFPB has used effectively and continues to need to make our financial marketplace effective and fair.

## II. This bill would undermine financial regulators' ability to protect the public.

Title VI of the bill broadly curtails the regulatory authority of financial regulators. The subtitles include numerous new analytic requirements that will have the result of thwarting agency action and will provide more opportunities for opponents of consumer protection to litigate and enjoin action by agencies. Subtitle B requires the approval from both Houses of Congress of any significant rule without changes. This hurdle would be virtually impossible for agencies to overcome. By design, this subtitle strips away the authority of agencies that Congress created to develop expertise on specific financial matters. Subtitle C contradicts extensive Supreme Court precedent of court deference to the expertise of agencies by undermining the *Chevron doctrine* and permitting judges to substitute their perspectives for agency expertise. These provision, alone and in combination will have the effect of stopping critical agency efforts in their tracks.

## III. This bill would increase the threat that nonbank financial institutions become too big to fail, actually fail, and their failures wreak havoc on the financial system.

Among other imprudent provisions that are likely to increase financial instability, Title II of this bill would repeal the Financial Stability Oversight Council's (FSOC's) authority to designate non-bank financial companies or particular financial activities as systemically important financial institutions (SIFIs) and subject them to heightened oversight and prudential standards. This attack on FSOC's authority is entirely without merit. In exercising its designation authority, the FSOC has undertaken a rigorous, careful, and deliberative process and used this authority judiciously, designating only four financial institutions as SIFIs after determining that their material financial distress or the nature, scope, size, scale, concentration, interconnectedness, or mix of their activities could pose a threat to U.S. financial stability. Furthermore, FSOC has shown a willingness to rescind a SIFI designation when a financial institution no longer poses a threat. The provisions in this bill, however, would effectively allow firms like Lehman Brothers and AIG, companies whose failure during the 2008 financial crisis caused widespread panic and devastating losses throughout the financial system, to operate without sufficient supervision and regulation. In fact, this bill would retroactively repeal the FSOC's current SIFI designations, including that of AIG, which received the largest taxpayer bailout in U.S. history during the financial crisis. Removing this critical oversight function would reopen the possibility of a repeat scenario of 2008.

In addition, Title II of this bill would abolish the Office of Financial Research (OFR), which was established in Dodd-Frank to help promote financial stability and inform the FSOC's deliberations by looking across the financial system to measure and analyze risks, perform essential research, and collect and standardize financial data. Abolishing OFR would put a blindfold back on regulators when they should be encouraged to examine all aspects of the financial system that could foster financial instability.

## IV. This bill would expose investors to increased harm and financial markets to increased instability.

Section 441 of this bill would repeal one of the most significant improvements in protections for retirement investors in decades, the Department of Labor's (DOL's) fiduciary rule, which requires financial advisers to provide retirement investment advice that's in their clients' best interest rather than their own self-interest. That rule was the result of an extraordinarily open and inclusive regulatory process and extensive economic analysis documenting the harm to retirement savers under the existing standards. This bill doesn't just stop at killing the DOL rule, however. It also incorporates the misnamed "Retail Investor Protection Act,"[3] blocking the DOL from promulgating another rule on the matter until after the Securities and Exchange Commission (SEC) exercises its own authority under the securities law. There is no timetable setting out when or even if the SEC will move forward on its own rulemaking, and the bill makes it more difficult for the agency to do so. For example, it would impose new, burdensome requirements on the agency to engage in economic analysis, including study requirements that duplicate the extensive analysis that the SEC has already conducted on

[3] http://consumerfed.org/wp-content/uploads/2015/10/10-26-15-Wagner-Bill-Opposition_Letter.pdf; http://www.huffingtonpost.com/barbara-roper/wagner-bill-gets-it-backw_b_8215732.html

the issue. This bill is a clear attempt to kill the DOL rule and ensure both regulators never are able to protect investors from the harmful impact of conflicts of interest, both in the retirement and non-retirement markets.

Title X of this bill also incorporates a slew of so-called capital formation bills that would further erode important aspects of the securities laws that have helped to foster the transparency and investor protection that have long made our markets the envy of the world. It includes the "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act,"[4] the "Encouraging Employee Ownership Act,"[5] the "Small Company Disclosure Simplification Act,"[6] the "Accelerating Access to Capital Act,"[7] the "Fostering Innovation Act,"[8] the "Micro Offering Safe Harbor Act,"[9] the "the Private Placement Improvement Act"[10] the "Supporting America's Innovators Act,"[11] the "Fix Crowdfunding Act,"[12] the "Fair Access to Investment Research Act,"[13] the "Corporate Governance Reform and Transparency Act,"[14] and the "National Securities Exchange Regulatory Parity Act."[15] As we have outlined in previous letters opposing these measures, the bill includes these provisions despite a complete lack of evidence that any of them would be effective at increasing the amount of capital raised, as opposed to simply shifting capital raising into progressively less well-regulated areas of the markets. The likely result of these bills is that the providers of capital in the less well-regulated areas of the market will fair extraordinarily poorly, the cost of capital will increase, and our securities markets will become much less vibrant.

## V. The bill's elimination of the Federal Insurance Office halts four years of progress to make the insurance industry more transparent and accountable.

The bill repeals Section 313 of the Dodd-Frank Act, which created the Federal Insurance Office (FIO) and gave it the authority "to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products."[16] Dodd-Frank also gave the FIO the ability to collect data to carry out this mission. The Office has already completed a working definition of affordability for the auto insurance market, a necessary first step to protecting consumers that often face prohibitively high premiums.[17] Recent CFA research found that more than a third of lower income communities do not have access to affordable, state-mandated auto insurance and that a driver in a predominately African American community pays, on average, 70 percent more for state-mandated auto insurance than a similarly-situated driver in a predominately white

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[4] http://consumerfed.org/wp-content/uploads/2016/02/2-3-16-Oppose-HR-1675_Letter.pdf
[5] Id.
[6] Id.
[7] http://consumerfed.org/wp-content/uploads/2016/09/9-8-16-Vote-No-on-HR-2357_Letter.pdf
[8] http://consumerfed.org/pdfs/140609_capitalformation_letter.pdf
[9] http://consumerfed.org/wp-content/uploads/2016/06/6-14-16-HFSC-Oppose-8-Capital-Markets-Bills_Letter.pdf
[10] Id.
[11] Id.
[12] Id.
[13] http://consumerfed.org/wp-content/uploads/2016/02/2-3-16-Oppose-HR-1675_Letter.pdf
[14] http://consumerfed.org/wp-content/uploads/2016/09/7-12-16-Vote-No-on-HR-5421_Letter.pdf
[15] Id.
[16] 31 U.S. Code § 313
[17] 81 Fed. Reg. at 45372 (July 13, 2016)

community.[18] Eliminating the Federal Insurance Office and replacing it with a new office that lacks the authority to monitor the insurance market and collect the necessary information to explain these and other affordability challenges rolls back four years of progress to improve the transparency and accountability of the insurance market.

## VI. This bill would undermine progress on housing finance reform.

Section 652 of this bill would replace the current Federal Housing Finance Agency (FHFA) organizational model from a single director to a board of directors, whose chair would be appointed by the President. This structure would significantly weaken the FHFA's ability to carry out its mandated purpose, particularly with regard to the conservatorship of Fannie Mae and Freddie Mac. In addition, Section 662 of this bill would require congressional appropriations for all FHFA expenses. Current law finances FHFA operations through assessments on its regulated entities without appropriations approval. This provision will weaken FHFA's oversight ability and constrain its ability to fully discharge its responsibilities in a timely and efficient manner.

This bill creates significant exemptions to the CFPB's Qualified Mortgage rule. Section 1102 would weaken protections for purchasers of manufactured housing who are already routinely more subject to high-pressure sales tactics and higher costs than other housing consumers. The current protections, which are designed to discourage predatory lending by manufactured housing dealers and their affiliated finance companies, provide important consumer protections that should be maintained. Section 1116 would exempt any loan held by a depository lender in its portfolio from the basic consumer protections in Title XIV of Dodd-Frank, including the basic requirement that creditors base a loan decision on a reasonable expectation that the consumer can repay the loan. Documented review of the most important factors is essential in this process. Creditors should not be subject to different standards of care or diligence in considering and approving credit decisions based simply on where the loan ultimately will be held. This provision would exempt *any* depository without regard to asset limits from the basic ability to repay requirements that have been so important in reestablishing appropriate alignment of interests between creditors and mortgage applicants.

Section 1131 would exempt institutions with less than $10 billion in assets from the escrow requirements for mortgage loans in current law. Failure to properly account for and assure timely payment of required tax and other amounts typically escrowed by mortgage lenders can be very injurious to consumers.

Section 1176 would exempt institutions originating fewer than 100 closed end residential mortgage loans from the mortgage data collection and reporting requirements of HMDA.

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[18] See Feltner, Tom, Stephen Brobeck, and J. Robert Hunter. "The High Price of Mandatory Auto Insurance for Lower Income Households: Premium Price Data for 50 Urban Regions." Washington, DC: Consumer Federation of America, September 2014. http://consumerfed.org/pdfs/140929_highpriceofmandatoryautoinsurance_cfa.pdf and Feltner, Tom, and Douglas Heller. "High Price of Mandatory Auto Insurance in Predominantly African American Communities." Washington, DC: Consumer Federation of America, November 2015. http://consumerfed.org/wp-content/uploads/2015/11/151118_insuranceinpredominantlyafricanamericancommunities_CFA.pdf.

Current law and pending regulations provide sufficient flexibility for smaller creditors to disclose pertinent information.

## VII. Conclusion

This bill is based upon the false premise that it is "growth-strangling regulation that slows the economy and harms consumers." In keeping with that premise, this bill removes critical authority from regulatory agencies and entrusts the nation's financial wellbeing to financial institutions, which have shown time and time again they are incapable of self-monitoring and self-policing. As such, it opens the door to a renewed round of financial crises that have in recent years been the real culprits in slowing growth and harming consumers. This bill is a recipe for disaster that will increase harm to consumers and investors and foster instability in the financial marketplace. We urge you to oppose this bill.

Sincerely,

Barry Zigas
Director of Housing Policy

Micah Hauptman
Financial Services Counsel

Rachel Weintraub
Legislative Director and General Counsel

Tom Feltner
Director of Financial Services

Barbara Roper
Director of Investor Protections