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Hearing on Legislative Proposals to Reform the Consumer Financial Protection Bureau

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Good morning, Chairman Capito and Ranking Member Meeks. My name is Damon Silvers, I am the Policy Director of and Special Counsel to the American Federation of Labor and Congress of Industrial Organizations. In addition, my testimony today is given on behalf of the Americans for Financial Reform, a coalition of more than 250 national, state and local organizations whose membership in total is close to 50 million people. On behalf of the AFL-CIO and AFR, I want to express my appreciation for being invited to testify today before the Subcommittee.

Today's hearing addresses the structure and funding of the Consumer Financial Protection Bureau ("CFPB"). Congress created the CFPB as part of the Dodd-Frank Act, a comprehensive set of reforms designed to address the causes of the financial crisis of 2008, which cost the world economy in excess of $60 trillion according to the Bank of England.

The origins of the CFPB lie in extensive efforts to understand how it was possible that consumer lending by the nation's largest banks, directly, and through a variety of business fronts, went essentially unregulated during the period from 2003-2008, particularly in the area of home mortgages, the world's largest single financial market. This question was addressed in numerous hearings in both houses of Congress, by the Congressional Oversight Panel for TARP as part of its mandate from Congress to make recommendations for regulatory reform, by the Congressionally mandated Financial Crisis Inquiry Commission, and in numerous academic and think tank studies.

A clear consensus emerged from this body of work that consumer protection regulation was fragmented and essentially a stepchild within the various bank regulatory agencies that had jurisdiction over it. In addition, there was a general consensus that there was not a level regulatory playing field as between banks and non-bank providers of consumer financial services, which both endangered consumers and created regulatory loop holes that threatened the safety and soundness of the financial system.

In particular, a great deal of attention was focused after the fact on the failure of the Board of Governors of the Federal Reserve System to listen to the warnings of then-Governor Ned Gramlich that the sub-prime mortgage market was a threat both to homeowners and to the financial system, and that the Federal Reserve should use the powers it had to regulate that market. The Federal Reserve did not do so because of the belief of its then Chairman, Alan Greenspan, that financial markets were efficient in the sense economists mean by that term, and that nothing could go wrong in that best of all possible worlds. Chairman Greenspan later acknowledged he had made a mistake.

Chairman Greenspan's mistake was really the product of not one, but two mistaken beliefs. The first was the belief that financial markets were efficient. The second was the belief that bank regulators could be successful at their jobs by focusing solely on safety and soundness, and not on consumer protection. It turned out that the lack of interest on the part of bank regulators in consumer protection not only led to more than ten million families losing their homes, it led to the virtual collapse of the U.S. financial system in the fall of 2008.

In response to these events, and the conclusions of those who examined them on behalf of Congress, Congress created the Consumer Financial Protection Bureau. The Bureau was designed to unify the consumer protection work of the federal government in one government body, and to clearly define that body as part of the overall bank regulatory system. It was also designed to create a single standard of consumer protection for both banks and non-bank providers of consumer financial services.

The CFPB's key structural features evidence Congress' intent. The Bureau is located within the Federal Reserve System, one of the three federal bank regulators. The Bureau, like the other bank regulators and the FHFA, has a budget that is not set through the Congressional appropriations process. The CFPB, like the other bank regulators, is able to hire at salaries above the General Schedule for Federal Employees, in recognition of the need to offer salaries that are at least somewhat competitive to people with experience in the banking sector. Finally, the CFPB, like the Comptroller of the Currency and regional Federal Reserve Banks, is headed up by a unitary executive, who is appointed by the President and may be removed by him.

These features of the CFPB were put in place by-Congress in the Dodd-Frank Act to ensure that consumer protection would no longer be the stepchild of financial regulation. This was done both to protect consumers and to protect the financial system and the global economy from another catastrophe driven by selling consumers harmful financial products.

At the same time, in response to some of the concerns that appear to motivate this hearing, Congress placed a number of unique constraints on the CFPB. The CFPB is the only financial regulatory agency whose rules may be overturned by a vote of the Financial Stability Oversight Council, or FSOC. The CFPB must consult with other bank regulators when engaging in rulemaking, and there is no requirement for reciprocity. The other bank regulators have access to CFPB inspection reports, the CFPB is subject to mandatory cost-benefit analysis in doing rulemaking, with a particular requirement to assess the effect of its rules on small banks, credit unions and rural consumers. Compared to other bank regulators, the CPFB is substantially more accountable to Congress and to its fellow regulators.

Since its establishment, the CFPB has succeeded in making a clear place for itself as an effective financial regulator. The CFPB has succeeded in returning over $700 million dollars to consumers in improperly assessed fees and charges to consumers, including over $300 million dollars from JP Morgan Chase alone. The CFPB has also established standards of conduct leading to greater transparency and more consumer friendly financial markets, including in the critical mortgage market. These rules have been hailed by industry leaders, such as David Stevens, President and CEO of the Mortgage Bankers Association, who said of the mortgage rule that it accomplished Congress and the CFBP's goal of eliminating "the risky products and features that once plagued our industry."

The CFPB has been particularly effective in counteracting a fundamental imbalance in the consumer financial markets. Large financial institutions have access to large data sets that enable them to model and effectively predict consumer behavior. As a result, they can offer products with fees that they know will be incurred by unwary consumers at levels that will add to bank profitability while providing nothing of value to consumers. No individual consumer, nor even most consumer advocates, has the data or the analytic capacity to counteract the banks' information edge. However, the CFPB, with its resources, its mandate to examine specific financial products, and its ability to look at the same data the banks use, is in a position to act as the consumer's advocate.

Today, this Subcommittee takes up a series of measures – I believe nine bills – each of which is designed to weaken the CFPB, to deprive the CFPB of its status as a genuine bank regulator, and to effectively subordinate the CFPB to the too big to fail banks that dominate the markets the CFPB regulates.

Since the bills under consideration today are substantially duplicative, I will address the ideas under consideration today as the Subcommittee staff requested, ordered conceptually rather than by bill number.

I. Changing the Leadership Structure of the CFPB, e.g. replacing the director with a five member Commission, and/or reducing the majority of the FSOC needed to overturn a CFPB rule from a two-thirds majority to a simple majority.

Both these measures are designed to weaken the CFPB.

While there are financial regulators with five member boards, there is no evidence I am aware of that these agencies are more effective than those led by directors. To the contrary, people as diverse as Senator Tom Coburn, JP Morgan Chase CEO Jamie Dimon, and Richard Hunt, President and CEO of the Consumer Bankers Association, have commended CFPB Director Richard Cordray on the way he has managed the Bureau.

The predominant form for bank regulators is single director or CEO, if one takes into account that bank regulation in the Federal Reserve System largely takes place at the regional bank level. Five member boards tend much more toward gridlock, as, regardless of which party is in power, the regulated entities tend to be able to muster the political power to exercise a veto over the agencies' functioning. This is true even in contexts of a strong Chairman, as has recently been shown in the difficulties the CFTC has had in approving cross border derivatives regulation in the face of too-big-to-fail bank opposition.

As noted above, the CFPB is the only financial regulator whose rules are potentially subject to override by the FSOC. The existing provision is mistaken, strengthening it would have the effect of further subordinating consumer protection to safety and soundness, the very mistake that led to the creation of the CFPB in the first place as a corrective measure.

II. Changing the Funding Mechanism of the CFPB, including moving CFPB employees to the General Schedule for Federal Employees.

Bank regulators—the Federal Reserve, the OCC, and the FDIC-- are generally not subject to the regular appropriation process. Subjecting the CFPB to the regular appropriations process would essentially deprive it of its independence and its status as a bank regulator. Such a move would profoundly weaken the CFPB, making it significantly less able to fulfill its mission of protecting consumers and the financial system.

Bank regulators have always been independent of the regular appropriation system for reasons related to the danger of political pressures being brought to bear on bank regulators to look the other way on a variety of issues relating to safety and soundness. The events of the last decade showed the same dangers are present with the same possible larger consequences in the area of consumer protection.

Other agencies involved in protecting the public in financial markets—the SEC and the CFTC, have long sought independent funding. The history of those agencies strongly suggests that in the absence of independent funding, federal bodies designed to protect the public in financial markets will be underfunded except in the immediate aftermath of crises.

The proposals to require the CFPB to operate within the General Schedule for Federal Employees are, like the other proposals we are discussing today, designed to both prevent the CFPB from functioning like a bank regulator and to cripple the CFPB's capacity to hire knowledgeable and experienced people. All of the other bank regulators are able to offer more competitive compensation packages than those provided under the General Schedule in appropriate circumstances. Ironically, among those who would be harmed by this idea are the companies the CFPB regulates, who have benefited from being able to deal with CFPB staff who are knowledgeable about market dynamics. For example, Camden Fine, the CEO of the Independent Community Bankers Association said, "It's refreshing that the CFPB seems to understand that when you are dealing with certain products those products are high risk and therefore the bank needs to be compensated."

III. Addressing Concerns about the CFPB's efforts to collect consumer data

These measures remind one of the definition of the Jewish term chutzpah—the man who murders his parents and then seeks mercy from the court as an orphan. The banking industry is using consumers' private data, which they have access to in all cases, to design products which will cause consumers to overpay for financial services. The only way to protect consumers from this power imbalance is for the CFPB to look at the same data. But the banks, which are already looking at the data with an eye toward exploiting their customers, complain the CFPB might violate their customers' privacy. The reality is that the banks want to be free to exploit the public by violating their customers' privacy, and are seeking to enlist Congress to help them. Congress should decline to do so.

In conclusion, each of the bills before this Subcommittee has no merit. The AFL-CIO and AFR strongly oppose all nine of these bills. Each is an effort to weaken the CFPB, and each will make America's consumers more vulnerable, will benefit too big to fail banks at the expense of the public interest, and will make our financial system more vulnerable to systemic crises.

I appreciate being invited to testify today, and I look forward to your questions.