

Financial Services and General Government Subcommittee Testimony  
Bill Himpler, Executive Vice President, American Financial Services Association  
Re: Consumer Financial Protection Bureau

Chairwoman Capito, Ranking Member Coons, Members of the Subcommittee:

My name is Bill Himpler, and I am the Executive Vice President of the American Financial Services Association (AFSA). AFSA was founded in 1916 and is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, payment cards, and credit for non-vehicle retail customers. Thank you for the opportunity to comment on the FY18 Financial Services and General Government Appropriations legislation.

AFSA believes that the unusual degree of autonomy granted to the Consumer Financial Protection Bureau (CFPB) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) has produced less than optimal outcomes. Six years after its establishment, the CFPB has proven to be an agency that is neither accountable to Congress nor transparent to industry stakeholders and the general public. As the Committee considers its FY18 requests, we respectfully ask that you include provisions in the legislation that limit the scope and authority of the CFPB.

First and foremost, the CFPB should be funded by Congress through the appropriations process rather than acquiring funding from the Federal Reserve. Appropriators should have power over the CFPB's funding and should change the Bureau from a single director to a bipartisan commission. The financial services industry is too vital to the health and welfare of the nation's economy to be left in the hands of a regulator led by a solitary individual able to tap the public purse with virtually no oversight. The current single director who unilaterally determines his agency's budget, priorities, and policies has not yielded optimal results; the Bureau should instead be reconstituted as a bipartisan five-person commission.

The CFPB's supervisory authority over financial institutions should also be eliminated, returning it to prudential regulators and the states. The compliance standards the CFPB is using to examine its regulated entities are far-reaching and not well grounded in comparison to audit examinations that state regulators conduct on financial institutions. A company's compliance status is judged by the whim of the examiner rather than by express and objective statutory law. The Bureau makes it impossible for companies to style compliance models that ensure examination passage. Appropriators should return authority to state examiners who know the market and consumers and can better strike a balance between appropriate access to affordable borrowing options while still protecting consumers from harmful products and services.

Appropriations legislation should also repeal the CFPB's enforcement authority over unfair, deceptive, and abusive acts or practices (UDAAP). The Bureau's use of "abusive" and "unfair" practices has stifled innovation in the marketplace through its ambiguity; this has also created a catch-all authority that the CFPB and attorneys general may cite in prosecuting any business practice they find disagreeable. "Abusive" is actually not a standard at all; it is an ill-defined tool

that singularly expands the scope of regulators' power to determine which financial products and services are acceptable. The CFPB's UDAAP authority should be removed in the FY18 language.

Furthermore, the CFPB should be prohibited from exercising rulemaking or enforcement authority over small-dollar credit. The Bureau's proposed rule for payday, vehicle title, and other similar loans (small-dollar rule) would substantially restrict consumer access to traditional installment loans, which are one of the simplest, most predictable, time-tested sources of credit available to consumers. Traditional installment loans are already successfully regulated at the state level, and legislation should be included in the appropriations package so that states are not undermined by an overly restrictive federal regulator.

The CFPB should also be precluded from using any Annual Percentage Rate (APR) other than that found in the Truth in Lending Act or Regulation Z (TILA APR). For nearly 50 years, TILA has provided a clear standard for creditors, and it should be preserved. The traditional TILA APR calculation makes sense because only fees imposed by a creditor are included in the calculation, not fees for services or products that may or may not be selected by the consumer on an optional basis. This helps consumers shop for credit by being able to compare APRs across loan products and creditors. By including optional products sold in conjunction with the loan in the APR, an "all-in APR" inhibits or eliminates credit comparison shopping and access to financial protection for consumers, because it creates an inaccurate cost of credit, artificially inflates the cost of credit, and thwarts protection options for consumers. The FY18 appropriations package should ensure the Bureau uses a TILA APR and cannot create and use an APR variant, preventing consumers from effectively shopping for all forms of consumer credit.

Finally, the CFPB's explicit authority to regulate arbitration clauses in financial services contracts should be removed under the FY18 appropriations package. The Bureau has proposed restricting pre-dispute arbitration agreements, which would deprive financial institutions and their customers of an efficient process to resolve contractual disputes. This could also substantially increase the costs of providing financial services due to the potential for greater legal expenses need to litigate disputes. The CFPB's own research suggests that litigation is likely to reduce the monetary relief for consumers, and the appropriations committee should therefore ensure that arbitration remains a method for resolving disputes amicably.

AFSA urges Congress to reform the CFPB by: 1) Subjecting the Bureau to the Congressional appropriations process and reconstituting it as a bipartisan commission; 2) Eliminating the CFPB's supervisory authority; 3) Removing the Bureau's UDAAP authority; 4) Prohibiting the Bureau from regulating small-dollar credit; 5) Precluding the CFPB from using an APR other than that found in the Truth in Lending Act or Regulation Z; and 6) Preventing the Bureau from regulating pre-dispute arbitration agreements. We look forward to working with the Appropriations Committee to address these important issues. Thank you in advance for your consideration.