

August 1, 2012

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velázquez:

Thank you for holding the hearing, “Know Before You Regulate: The Impact of CFPB Regulations on Small Business.” The undersigned small business organizations believe that small business provisions in the Dodd-Frank Act (P.L. 111-203) are critically important, and we have serious concerns about the CFPB’s application of this important regulatory tool. We are grateful that the Small Business Committee is focusing on holding the Consumer Financial Protection Bureau (CFPB) accountable for its attention to those provisions.

During passage of the Dodd-Frank Act, we supported the Snowe-Pryor amendment, which puts a process into place to require the CFPB to consider the impact of costly regulations on small businesses¹. The Snowe-Pryor amendment applies the Small Business Regulatory Enforcement Fairness Act (SBREFA) to CFPB rulemakings in order to guarantee that the Bureau is sensitive to how its regulations impact small business. That language in Dodd-Frank Act contains two important provisions: 1) requiring the CFPB to publicly consider how rules will impact the cost of credit for small firms; and 2) requiring the CFPB to conduct Small Business Advocacy Review (“SBAR”) panels on rules that will impact small businesses.

Embracing the small business provisions in Dodd-Frank can allow for the CFPB to draw a careful balance between providing consumers with added protections while at the same time making sure rules are not overly burdensome and do not negatively impact the cost of credit for small businesses. Unfortunately, we are concerned that the CFPB views SBREFA as a burden rather than as a means of improving their regulations. In some cases, CFPB chooses to skip the process altogether, and in other cases they choose to convene panels on compressed timelines, making it difficult for small companies to prepare and gather industry information.

The CFPB published its Semiannual Regulatory Agenda this past spring and the Bureau listed 25 rules that it has completed or is working on. Of those, the CFPB has convened 3 SBREFA panels. We believe that the larger participant rule, the remittance transfer rule, the ability to repay rule, and other proposals would have benefitted from input from small businesses through SBAR panels. Additionally, despite a clear requirement in the statute to separately consider how its regulations impact small business access to credit, the CFPB has performed no such analysis. We fear that the CFPB's decision not to convene SBAR panels or assess indirect regulatory impacts on credit access may result in rules that have unintended, but avoidable negative consequences for the small business community.

¹ Pub. L. No. 111-203, Section 1100G, *Small Business Fairness and Regulatory Transparency*, (July 21, 2010).

Lastly, we are concerned with CFPB's practice of keeping the completed panel report, that is part of the SBREFA process, secret until the Bureau issues the corresponding proposed rule. We believe that this policy by CFPB contradicts the Bureau's efforts to make stakeholder input a transparent process. The Occupational Safety and Health Administration (OSHA) releases SBAR reports immediately upon their completion, regardless of whether the report's publication coincides with the corresponding proposed regulation's publication. OSHA's policy of releasing the SBAR report upon completion allows for the small business community to coalesce around the panel's recommendations and promotes openness and transparency to the broader universe of stakeholders. We believe that the CFPB should make the SBAR report available immediately upon the completion of the SBAR panel.

Many of the undersigned small business trade and membership organizations have communicated these concerns directly to the CFPB and we are encouraged that these issues are the subject of a hearing before your Committee. We strongly supported language during the crafting of Dodd-Frank that brought the CFPB into the SBREFA process. We believe that if the CFPB implements SBREFA correctly, the process will allow the Bureau to present small business-friendly options for comment during a full notice and comment rulemaking. This approach treats small business stakeholders as partners who share the goal of ensuring that any final regulation maximizes benefits while minimizing costs.

Thank you for considering these views. We would be happy to meet with you to discuss any of these items further.

Sincerely,

Air Conditioning Contractors of America
American Financial Services Association
American Land Title Association
American Trucking Associations
Associated Builders and Contractors
Association of Kentucky Fried Chicken Franchisees
Community Mortgage Lenders of America
Heating, Air-Conditioning & Refrigeration Distributors International
Illinois Association of Mortgage Professionals
Independent Electrical Contractors
Institute for Liberty
National Association for the Self-Employed
National Association of Home Builders
National Association of Independent Housing Professionals
National Association of Mortgage Brokers
National Association of the Remodeling Industry
National Association of Wholesaler-Distributors
National Association of Women Business Owners
National Federation of Independent Business
National Funeral Directors Association
National Kitchen & Bath Association

National Lumber and Building Material Dealers Association
National Retail Federation
National Roofing Contractors Association
NJ-Association of Professional Mortgage Originators
Plumbing-Heating-Cooling Contractors – National Association
Small Business & Entrepreneurship Council
Small Business Investor Alliance
Snack Food Association
Society of American Florists
The Latino Coalition
Truck Renting and Leasing Association
U.S. Chamber of Commerce
Women Construction Owners & Executives, USA

cc: The Members of the Committee on Small Business