

February 28, 2011

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

Our organizations represent businesses in a wide range of sectors of the American economy. We firmly support sound consumer protection regulation that weeds out fraudulent and predatory actors and ensures consumers receive clear and concise disclosures about financial products.

Building a new Consumer Financial Protection Bureau (CFPB) from the ground up presents a significant challenge for regulators who must construct a nimble, effective, transparent, and fair new agency that fulfills its consumer protection mandate while ensuring that consumers and small businesses continue to have access to affordable credit from a wide range of sources.

To that end, we believe the CFPB should aim to establish an effective and efficient structure, empower consumers through appropriate disclosure, and prevent duplicative regulation through coordination with state, federal, and prudential regulators. This letter presents some of our priority recommendations. We look forward to working with the team developing the new Bureau to help achieve these objectives.

Develop an Effective and Efficient Structure to Facilitate Protection of Consumers and Promotion of Economic Growth

One of the critical lessons of the recent financial crisis is that the laws and regulations already on the books often gave enforcement agencies the power to act against abuses, but those agencies failed to act appropriately. In large part, this failure has been attributed to substantial flaws in the organization of these agencies and their enforcement functions, and because of weaknesses in the sharing of information and expertise within and among the agencies. A significant challenge facing the new Bureau, therefore, is to put in place a structure that will avoid the mistakes of the past and promote effective, efficient supervision and enforcement, with the goal of

identifying and punishing true wrongdoers without stifling innovation and competition by deterring companies from engaging in legitimate business activities for fear that they might trigger unjustified enforcement attention. The structure must be communicated to the public in a way that inspires confidence in how the agency will protect consumers in a uniform and understandable manner.

For example, in light of its broad objective and responsibilities, we are pleased to see the Bureau will have a Chief Operating Officer (COO). We hope this individual will have authority to coordinate the activities of the various divisions and offices to ensure the Bureau itself is operating efficiently and in accordance with its own regulatory priorities. In addition, an effective COO can foster communication across divisions and offices to avoid the siloing effect—an accompanying inefficiency and duplicative burden placed on regulated business—that has plagued so many other federal agencies.

Empower Consumers by Rationalizing Disclosure Requirements

A widely recognized problem in consumer protection is the confusing, overlapping, and often inconsistent disclosure obligations imposed by various federal and state laws. Rather than providing consumers the information they need to make informed decisions, the current regulatory regime more often hides the most important information in a forest of forms and jargon. This condition may make it difficult for businesses to include contract provisions spelling out both parties' obligations. We support the Bureau's early efforts to improve disclosure and seek industry input and urge that disclosure simplification across products be among the first of the Bureau's priorities. Of course, disclosure obligations cannot and should not be used as a means to prevent inclusion within a contract of the necessary and appropriate terms of a transaction, including alternative dispute resolution provisions that are permitted under applicable state and federal laws—provisions that courts have found to reduce cost and increase consumers' ability to obtain fair resolution of disputes.

Recognizing the importance of consumer choice, Congress specifically prohibited the Bureau from requiring businesses to offer products with characteristics specified by the Bureau—for example, so called “plain vanilla” products. Thus, while the Bureau can and should ensure that consumers have the facts they need to make informed decisions, it should not make those decisions for consumers by requiring the offering of some financial products and prohibiting the offering of others. The credit market will remain vibrant only if informed consumers are free to make those decisions for themselves.

Prevent Duplicative and Inconsistent Regulation of Main Street Businesses

The potential scope of regulatory, supervisory, and enforcement authority granted to the Bureau is extremely broad. The Bureau's jurisdiction extends to businesses that engage in any of ten broadly-defined activities *and* some companies that are service providers to businesses that engage in those activities, consequently encompassing a significant number of businesses and sectors outside the financial services industry. Further, the drafting of certain exemptions included in the statute creates additional uncertainty about the scope of the Bureau's authority.

The Bureau's broad jurisdiction beyond financial firms is particularly problematic because all of these "Main Street" businesses are already subject to robust regulation by the Federal Trade Commission (FTC). Imposing regulation by the Bureau on top of the FTC's oversight would subject businesses that generally are not primarily in the business of consumer finance to duplicative and inconsistent regulation and disproportionate costs, and would restrict their ability to create the jobs that our economy needs.

Although the statute is drafted broadly, the Bureau has the power to eliminate burdensome, duplicative, inconsistent, and ambiguous regulations. Compliance clarity is critical and should be a high priority in order to ensure that a statute designed to protect consumers does not thwart job growth and stall economic growth. The Bureau should undertake the following steps to accomplish this goal:

- Coordinate with the FTC. The Dodd-Frank Act requires the Bureau to negotiate an agreement with the FTC to coordinate enforcement activities (Section 1024(c)(3)). The Bureau should fulfill this obligation by agreeing to allocate to the Bureau responsibility for enforcement with respect to companies principally engaged in the financial services business and allocate to the FTC enforcement responsibility with respect to all other businesses (*i.e.*, companies that are principally engaged in other lines of commerce that are subject to the Bureau's jurisdiction because of peripheral engagement with respect to consumer financial products or services). This elimination of duplicative—and potentially inconsistent—enforcement and oversight at the federal level will focus the Bureau's resources on the firms that are primarily engaged in consumer finance. The Bureau and the FTC should make such a coordination agreement a priority to provide needed clarity and guidance to businesses. The Bureau and FTC should make the document available for public comment before it becomes final.
- Exempt businesses with *de minimis* involvement in consumer financial products or services. The Dodd-Frank Act empowers the Bureau to exempt any category of

businesses from coverage under the Act (Section 1022(b)(3)). The Bureau should exercise this authority to relieve from regulation under the Act Main Street businesses with a minimal, and tangential, involvement in the activities that trigger the Act's coverage—as well as to clarify the scope of the Act's exemptions. This authority should be exercised with respect to businesses that would remain subject to oversight by the FTC under the Federal Trade Commission Act, so that there would be no gap in federal regulation. All that would be eliminated would be duplicative regulation under both federal statutes.

- Issue guidance for state Attorneys General (AG) enforcement. The Dodd-Frank Act requires the Bureau to issue rules regarding coordination with State enforcement efforts and authorizes the Bureau to provide guidance to coordinate enforcement with state AGs and other regulators (Section 1042(c)). The Bureau should issue rules that promote consistent, nationwide interpretations of the statutory and regulatory requirements and provide for automatic intervention by the Bureau in any case in which a state proposes an interpretation of federal law not previously endorsed by the Bureau. Such an approach is essential to avoid the fragmentation of the national credit market as a result of the application by different state AGs of inconsistent legal standards. We also recommend that the Bureau consider establishing an office or otherwise designating staff within the Bureau that will have the authority and responsibility for monitoring and coordinating the activities of state AGs.
- Require coordination between the Office of Small Business, Community Banks & Credit Unions with the Research, Markets, and Regulations Division. The Dodd-Frank Act requires the Bureau to assess the impact upon regulated small business, and upon the availability of credit for small business, of any Bureau rulemaking (Section 1100G). While the Office of Small Business should be an advocate for small business within the Bureau, similar to the duties and responsibilities of the SEC's Investor Advocate, it must also develop the expertise necessary to conduct regulatory analyses as an embedded participant in the CFPB's regulatory process. Its role should include providing the Bureau, as well as the Congress, with an analysis of the economic consequences on small business of rules and enforcement policies undertaken or envisioned by the Bureau. This office also should be consulted before the Bureau decides to advocate a particular standard in an enforcement action, because enforcement rulings—like regulations—can have an immediate impact on all regulated businesses, and a potentially disproportionate effect on the small business community.
- Defer any expansion of the categories of businesses subject to supervision and examination. The Dodd-Frank Act requires the Bureau to issue a rule defining the

categories of nondepository businesses subject to supervisory oversight under the Act (Section 1024(a)(2)). The Bureau is not obligated to extend supervision and examination to include new categories of businesses and it should not do so for several reasons. First, the Bureau faces a huge task in establishing an effective and efficient supervision function for the varied categories of businesses already subject to this oversight by operation of the statute. Adding to that burden at the outset could well overwhelm the Bureau. Second, the Bureau should take time to consider the extent to which such oversight is in fact needed for any additional category of business, which would require gathering information regarding existing federal and state regulatory regimes as well as the frequency of violations of consumer protections by such businesses and the extent to which new federal oversight, as opposed to other approaches, would provide a cost-effective increment of protection for consumers. Third, deferring an expansion of supervision and examination requirements would allow businesses to devote resources to job creation rather than save them to cover what might well be unnecessary regulatory compliance costs.

Certainly to the extent the Bureau considers extending oversight to additional categories of businesses, the Bureau should focus on large businesses whose principal activities fall squarely within the financial services sector, so that small businesses and Main Street businesses will not have to bear the costs associated with this oversight.

- Carefully consider impact of new regulations on Main Street businesses. Given the broad scope of the Bureau's jurisdiction and rulemaking and enforcement authority, any rules that the Bureau promulgates and enforcement decisions that the Bureau will affect a large number of companies that are not principally engaged in the provision of financial services. It is critical that the Bureau coordinate with the U.S. Small Business Administration and its Office of Advocacy to assess carefully the economic impact of its actions on these businesses, including through the Small Business Regulatory Fairness Act (SBREFA) process, recognizing that small businesses often will be situated differently than the financial services businesses likely to be the Bureau's principal focus. This coordination would help ensure that the Bureau would take steps to protect Main Street businesses against unnecessary and burdensome regulation.
- Clarify data collection requirements. The Dodd-Frank Act provides the Bureau broad power to require any business falling within its jurisdiction to provide information to the Bureau (Section 1022(c)(4)) and to consumers (Section 1033). The Bureau should issue regulations expeditiously making clear that these obligations—to the extent they apply at all—will be limited to businesses whose

principal activities fall within the financial services sector and will not apply to Main Street businesses. Such a rule would free up financial resources for use in creating jobs and expanding the economy. The Bureau's regulations should also ensure full protection of confidential proprietary information.

Preserve Small Business Access to Credit

Large numbers of small business owners use consumer credit products—credit cards, mortgages on personal property, auto loans, etc.—to provide the capital that their businesses need. It is essential that the Bureau recognize this reality when considering regulations that may decrease the availability or increase the cost of consumer credit, and ensure that such regulations do not have the effect of eliminating, or making impractical, the very credit products on which small businesses rely and thereby deprive small businesses of the credit that is essential for their survival and expansion.

Ensure Coordination with Federal and State Prudential Regulators

There is broad consensus that consumer regulations can impact the safety and soundness of financial institutions. In addition, federal prudential regulators retain substantial authority with respect to consumer protection matters. It is therefore essential that the Bureau establish a close working relationship with prudential regulators – at both the federal and state levels. The Bureau should establish by regulation procedures that require it to involve prudential regulators early in the process of considering whether to propose a new rule or take a new position in enforcement actions. Disagreements between staff should be escalated to more senior officials of their respective agencies in order to ensure a consistent regulatory approach that is cost-effective and protects the safety and soundness of our financial system.

Defer Rulemaking Until After Confirmation of a Director

The Bureau combines extremely broad rulemaking authority with an unusual absence of meaningful checks on the exercise of that authority. Unlike other regulatory agencies, it is overseen by a single director rather than a multi-member bipartisan commission; and unlike other agencies it is exempt from the appropriations process. For that reason, the confirmation of a director provides Congress with one of its few opportunities to exercise its oversight over the Bureau. Issuing proposed or final rules, or engaging in enforcement actions designed to define terms of the statute, prior to the Senate confirmation of a director would prevent Congress from exercising the one avenue for oversight that it expressly retained in crafting the design

of the Bureau. Neither the Treasury Secretary nor another official exercising the power of the director should take that step.

The decisions made over the next several months, both before and after the handoff to the new CFPB, will shape the consumer financial regulatory environment for years to come, and we look forward to working with the Administration to provide context and data as this process unfolds. In addition, we would welcome the opportunity to meet and talk through each of these suggestions and areas of concern addressed in this letter with you and your staff.

Sincerely,

American Escrow Association
Direct Marketing Association
Financial Services Institute
Financial Services Roundtable
Insured Retirement Institute
International Franchise Association
Manufactured Housing Institute
National Association of Wholesaler-Distributors
The Association of Settlement Companies
The Center for Association Leadership
United States Organizations for Bankruptcy Alternative
U.S. Chamber of Commerce
U.S. Chamber Institute for Legal Reform

cc: The Honorable Spencer Bachus
The Honorable Barney Frank
The Honorable Tim Johnson
The Honorable Richard Shelby