Statement of the U.S. Chamber of Commerce

ON: Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence

TO: House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit

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The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Chairman Neugebauer, Ranking Member Clay, and Members of the Committee, my name is Jess Sharp and I am managing director for the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. Thank you for the opportunity to testify before the Subcommittee today on behalf of the hundreds of thousands of businesses that the Chamber represents.

The bills under consideration by the Subcommittee today reflect the broad range of its efforts to make financial markets stronger and more competitive to meet the needs of the American consumer. Today, I will discuss one goal on which the Subcommittee rightly continues to focus: ensuring that consumers have access to the products they want through safe and competitive marketplaces.

The Chamber firmly supports sound consumer protection that deters and punishes financial fraud and predation and ensures that consumers receive clear, concise, and accurate disclosures about financial products. Legitimate businesses, as well as consumers, benefit from a marketplace free of fraud and other deceptive and predatory practices. But consumer protection, like every other government function, must be carried out in a consistent, fair, and transparent manner. Unfortunately, the Consumer Financial Protection Bureau (the "Bureau") too often has failed to maintain those basic standards.

Every day, I hear from companies big and small, banks and non-banks that struggle to understand the Bureau's directives, or that offer a product that the Bureau appears to have targeted for elimination either through regulation or enforcement. The experiences of these businesses have emphasized five simple principles:

- Companies and consumers benefit from clear rules of the road;
- Rationing credit does not protect consumers;
- The Bureau must respect clear limits on its authority;
- The Bureau must be transparent to consumers and Congress; and
- If everyone is in charge, no one is in charge.

These principles likewise can inform Congress' oversight of the Bureau and its legislative response. Indeed, many of the proposals under consideration at today's hearing would help address the problems businesses wrestle with every day in the consumer financial services marketplace.

I want to first draw attention to H.R. 1266, the Chairman's Financial Products Safety Commission Act of 2015. That bill would bring the CFPB in line with other independent agencies by codifying the commission structure that was originally proposed by this Committee. The Chamber strongly supports this legislation and believes that by incorporating the controls and oversight that apply to other federal regulatory agencies, Congress will ensure far greater stability over the long-term for those who provide and rely on consumer credit. In addition, the inclusion of a variety of viewpoints and a more structured decision making process will help to better inform complex policymaking and cure some of the transparency and jurisdictional issues that have emerged in the Bureau's development, many of which are described in more detail in my testimony.

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1. Companies and Consumers Benefit from Clear Rules of the Road

Businesses work hard to comply with applicable government regulations, including through substantial investments in their compliance systems. These efforts are frustrated, however, when government agencies prioritize getting the job done quickly over getting the job done right.

Indirect Auto: As this Subcommittee knows, the Bureau has created enormous uncertainty in the indirect auto lending market by issuing guidance without notice and comment and undertaking enforcement and supervisory actions based upon post hoc statistical models—but has failed to share its analysis and assumptions, thus depriving lenders of the ability to anticipate the Bureau's analysis and to comply accordingly.

- H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, would bring much-needed transparency to the indirect auto lending market. It would require the Bureau to put any guidance regarding indirect auto lending on a solid footing by eliminating any legal effect of the Bureau's 2013 guidance, and then imposing reasonable conditions on any future guidance on this topic. H.R. 1737 thereby would help bring clear rules of the road to the indirect auto lending market.

Integrated Mortgage Disclosure Rule: The Bureau's TILA-RESPA Integrated Disclosure (TRID) rule will significantly change the documentation used in a mortgage closing. These substantial changes create significant compliance challenges, as financial services companies have yet to develop experience with its requirements or to work through the questions that inevitably arise when first seeking to comply with a new regulation. As a result, numerous stakeholders have asked the Bureau to establish a grace period in which they will not be punished for their good faith compliance efforts. The Bureau so far has declined to do so. Rather, it has indicated that it will be "sensitive" to company compliance efforts in its enforcement activities.

- H.R. 2213 would provide a very short safe-harbor period with respect to the new TRID rule until January 1, 2016 (the TRID rule has an August 1, 2015, compliance date). It thereby would allow companies and the Bureau to understand the rule in context and to work out the inevitable remaining ambiguities.

Abusiveness: As this Subcommittee is well-aware, the Bureau has not explained the contours of "abusiveness" liability through a public notice and comment process. Instead, the Bureau has continued to force financial services companies to try to discern the meaning of "abusiveness" from enforcement actions brought by the Bureau. It is hard to overstate the confusion and concern that this preference for regulation of "abusiveness" by enforcement has caused.

Service Provider Liability: The Bureau has repeated its preference for regulation by enforcement with respect to companies' liability for the acts of their service providers. The Bureau only has provided vague guidance on this topic rather than issuing an interpretive rule or otherwise undertaking a public notice and comment process.

No-Action Letter Policy: Numerous industry stakeholders have called upon the Bureau to adopt a process for clarifying controlling legal requirements through advisory opinions and no-action letters. The Bureau has not adopted any meaningful version of such a process, however. Instead, it has crafted a no-action letter policy that is so constrained that it will be of no meaningful use to financial services companies. By the Bureau's own calculation, it will only be used one to three times a year.[1] The combined effect of the confusion surrounding "abusiveness" and the lack of a functional process for companies to consult and get written feedback is certain to inhibit innovation in financial services.

2. Rationing Credit Does Not Protect Consumers

Consumers must be protected, but they must also be served. In creating the Bureau, Congress sought to empower informed consumers to pick the products that are right for them. The Bureau likewise should focus on facilitating informed consumer choice in the credit card market rather than imposing new restrictions that reduce access to credit.

[1] *See* CFPB, Policy on No-Action Letters, 79 Fed. Reg. 62118, 62119 (Oct. 16, 2014).

Qualified Mortgage Rule: The Bureau drew a bright line on mortgage eligibility in its Qualified Mortgage (QM) rule. In doing so, it effectively adopted a one-size-fits-all approach that the market is still grappling with. This rule thus may benefit some consumers who will avoid getting a mortgage they clearly cannot afford, but will also deprive many worthy, responsible borrowers of the dream of homeownership. Compounding these problems, numerous ambiguities in the rule have made compliance even harder for lenders, particularly community banks.

- H.R. 1210, the Portfolio Lending and Mortgage Access Act, would provide regulatory certainty to lenders—particularly small lenders such as community banks and credit unions—by allowing loans held on the books of a lender to be eligible for the safe harbor provided under the QM rule. This provision would facilitate a robust underwriting process by lenders and would also help qualified borrowers obtain mortgages by alleviating some of the uncertainty that currently exists under the QM rule.

Military Lending Act: The Bureau has partnered with the Department of Defense on this rulemaking, which would subject all manner of consumer credit extended to all Americans to rules that were intended to protect service members from predatory lending. While the Chamber supports strong protections for our service members, this proposal takes a broad and unworkable approach to a narrow problem. For example, the proposed rule would require every application for a credit card by any American consumer to be checked against a military database that has proven unreliable. The inevitable result will be delay or denial of credit to consumers to whom the Act should not apply. The Bureau should work with the Defense Department to revise this proposal, including by ensuring that the rule does not go into effect until the database is reliable and may be accessed in real time by credit card issuers and other businesses that extend consumer credit.

Payday Lending: The Bureau has proposed a rule that it acknowledges will put many payday lenders out of business. The Bureau separately has made clear its concerns about deposit advance products and overdraft protections. Thus, if the payday lending rule goes forward as proposed, many consumers will find themselves without access to credit at their time of greatest need. To-date, the Bureau has not explained what consumers should do in that event.

3. The Bureau Must Be Transparent to Consumers and Congress

The Bureau repeatedly has declared its commitment to transparency. Its track record, however, has been mixed.

Supervision: The Bureau's failure to close supervisory examinations in a timely manner has been the subject of significant congressional oversight as well as study by the Bureau's Inspector General.[2] Until this problem is fixed, the Bureau will continue to leave companies uncertain of their compliance status.

- H.R. 1941, the Financial Institutions Examination Fairness and Reform Act, would help eliminate these ambiguities and delays by requiring better communications between bank examiners, including the Bureau, and financial institutions. It would also create an Office of Independent Examination Review ("OIER") within the Federal Financial Institutions Examination Council that would hear appeals of material supervisory determinations contained in a final examination.

  The Chamber supports the ability of an institution to appeal an examination to an independent body and has supported similar efforts to empower an ombudsman with similar rights of appeal. This would help to create due process and streamline a process to allow exams to be reviewed, mistakes corrected, or for issues discovered in an exam to be dealt with in a more efficient manner. H.R. 1941 would help Main Street businesses access the liquidity and capital resources needed to grow in a timely and efficient manner.

Arbitration: The Bureau pursued its congressionally mandated task of studying arbitration agreements without engaging the public in a meaningful way. The Bureau issued only one Request for Information—in April 2012—which sought public comment on the topics that it should address in the arbitration study. The Bureau never informed the public of the topics it had decided to study and sought public comment on them—even though a number of commenters suggested that the Bureau utilize that procedure. The Bureau never convened public roundtable discussions on key issues, as many other agencies routinely do. And the Bureau never sought public input on its tentative findings. The Bureau now has issued its study. We have joined other stakeholders in asking that the Bureau finally provide a meaningful opportunity to participate in its rulemaking process.

Data Collection and the Paperwork Reduction Act: Members of this Subcommittee repeatedly have raised concerns about the Bureau's harvesting of consumers' financial data. Likewise, on September 24, 2014, the Government Accountability Office

[2] *See, e.g.*, Mark Bialek, Inspector General, Memorandum: The OIG's List of Major Management Challenges for the CFPB (Sept. 30, 2014) (listing improving the efficiency of supervisory process as the Bureau's number one management challenge), *available at* http://oig.federalreserve.gov/reports/cfpb-management-challenges-sept2014.pdf.

released a report that analyzed the Bureau's data collection practices.[3] That report explained that the Bureau and the OCC had agreed to collect credit from nine financial institutions each (the limit prior to triggering the obligations of the Paperwork Reduction Act) and then to share that information with each other. In response to this apparent violation of at least the spirit of the Paperwork Reduction Act, the OCC gave notice in the Federal Register and solicited comment on its proposal to continue this information collection. According to the GAO, the Bureau, in contrast, committed only to "consult again with [the Office of Management and Budget] about whether [Paperwork Reduction Act] requirements apply to the Bureau's collection of certain credit card data" and to "document this further consultation." To our knowledge, the Bureau has not undertaken any further public engagement on this topic.

4. The Bureau Must Respect Clear Limits on its Authority

The Bureau should adhere scrupulously to the limits of its substantial authority in all its work. Unfortunately, it has failed to do so on multiple occasions.

- *Indirect Auto Lending*: Congress clearly chose to exclude auto dealers from the Bureau's authority. As this Subcommittee knows, however, the Bureau has not respected this clear limit on its authority.

- *Suitability Requirements*: When this Committee considered its version of the Dodd-Frank Act, it specifically decided *not* to allow the Bureau to require companies to determine whether a product was "suitable" for a particular consumer. The Bureau, however, has ignored this decision and has used its various authorities to stop companies from offering certain products to certain consumers—or to punish those companies that do offer such products. For example, it has pursued litigation against for-profit colleges on the apparent theory that the education provided by those colleges does not justify the debt that certain students take on.

5. If Everyone is in Charge, No One is in Charge

Confusion reigns when multiple regulatory agencies assert authority over the same subject: if everyone is in charge, no one is in charge. The Bureau should recognize—and avoid—the risks to consumers that such confusion causes.

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[3] *See* GAO, Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced (Sept. 2014) ("GAO Report"), *available at* http://www.gao.gov/assets/670/666000.pdf.

- *Indirect Auto Lending*: As mentioned above, Congress chose to exclude auto dealers from the Bureau's authority, but that has not stopped the Bureau from attempting to regulate these businesses through indirect means. The Bureau has attempted to use pressure on lenders to change dealers' business practices even when sister agencies could take action against dealers directly (but have not done so). Going forward, the Bureau should focus on collaborating with its fellow agencies and agreeing on a coherent regulatory strategy.

- *Telecom*: Not satisfied with its extensive authority within the consumer financial services market, the Bureau has taken on the role of telecom regulator, bringing enforcement actions against both Sprint and Verizon wireless companies. In doing so, the Bureau injected itself into a field where the FTC and the FCC already had asserted authority.

- *Housing*: Too many regulators, including the Bureau, have a stake in regulating the housing market. These regulators do not seem to be able to get on the same page about whether we need more or less lending. They variously encourage lending broadly to enable more consumers to share the dream of home ownership but also attack lenders who lend to consumers who subsequently default. This regulatory chaos is bad for the market and bad for consumers.

- *FDIC Insurance*: The Bureau should not use the Consumer Financial Protection Act to enforce the organizing statutes of other regulators. While that might sound obvious, the Bureau recently alleged that a subprime credit card issuer—Continental Finance Company—engaged in deceptive practices by misrepresenting that certain funds used to secure credit lines were FDIC insured. The Bureau thus transformed a violation of the Federal Deposit Insurance Act[4] into a violation of the Consumer Financial Protection Act.

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The Chamber also supports a number of other bills under consideration by the Committee that would increase the transparency of other banking regulators, provide regulatory relief to community banks, and limit the ability of regulators to cut off lawful businesses from the banking system.

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[4] *See* 12 U.S.C. § 1828(a)(4)(B) (prohibiting any person from knowingly misrepresenting status as an FDIC insured entity).

H.R. - 2287 NCUA Budget Transparency Act

The Chamber supports the National Credit Union Transparency Act introduced by Mr. Mulvaney. Credit unions play an important role in the diverse capital markets that have made the United States economy the most productive in the world. Having effective regulators creates the level playing field needed for efficient capital markets to operate. Accordingly, it is important for any regulator to develop a strategic plan and have the managerial apparatus needed to implement it in a constructive and positive manner. H.R. 2287 would assist the National Credit Union Administration to create such a vision, have stakeholders provide input, and then to execute it. H.R. 2287 would help the National Credit Union Administration to fulfill this role and allow credit unions to operate with appropriate levels of oversight and transparency.

H.R. - 1553 Small Business Exam Cycle Reform Act of 2015

Small financial institutions are critical providers of credit for individuals and small businesses all across the United States, and the Chamber strongly supports measures that would provide them with regulatory relief. H.R. 1553 simply allows more of our small banks to be examined on an 18-month cycle, reducing the cost and burden of supervision, and allowing them to redirect those resources into serving their communities.

H.R. - 766 Financial Institution Customer Protection Act of 2015

The Chamber strongly supports H.R. 766, legislation to establish clear standards that the Federal banking agencies must abide by when using their leverage as prudential regulators to effectively shut down lawful businesses by denying them banking services—a program called Operation Chokepoint.

Government agencies have the tools to root out fraud, predation, and even national security threats, and the Chamber supports their efforts to do so, but under Operation Chokepoint government officials strongly discourage financial institutions from providing banking services to entire categories of lawful businesses and industries that are lawful, but disfavored by these agencies, based on "reputational risk." This has left banks with little choice but to terminate longstanding relationships with customers because of explicit or implicit threats from their regulator or the DOJ.

Markets function best when there are clear rules, a level playing field, and targeted enforcement. Operation Chokepoint is an end run around each of these principles, and H.R. 766 would ensure that the government's power to terminate banking relationships is used only when there is a material reason for doing so.

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Thank you again for the opportunity to testify before the Subcommittee today. The Chamber looks forward to working with Congress as these legislative proposals move forward. I am happy to answer any questions you may have.