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Thank you, Chairman Rush and Ranking Member Radanovich, for providing me with this opportunity to testify about the Administration's proposal to establish a new, strong financial regulatory agency charged with just one job: looking out for consumers across the financial services landscape. Last week, the Administration sent legislative language to Congress to create the new agency, and in the coming weeks, we will continue to transmit legislation to implement other core proposals to strengthen regulation of financial institutions and markets and lay the foundation for a safer, more stable financial system.

As Secretary Geithner has said, protecting consumers is important in its own right and also central to safeguarding the system as a whole. We must restore honesty and integrity to our financial system, in order to restore trust and confidence. A key step to doing so is to establish clear federal accountability for protecting consumers and the authority necessary to carry out the job.

That is why the President is proposing the Consumer Financial Protection Agency.

We will have one agency for one marketplace with one mission – to protect consumers. It will have the authority and resources it needs to set consistently high standards and a level playing field across the financial services sector—for banks and non-bank financial services providers alike. Its market-wide jurisdiction will put an end to regulatory arbitrage and unregulated corners that inevitably weaken standards across the board. Structures and mechanisms in our legislation will ensure the agency remains accountable for its mission, yet independent. The Agency could choose from a wide range of tools to promote transparency, simplicity, and fairness. The breadth and diversity of these tools will enable it to adopt the most effective and proportionate, and least costly, approach to any problem. It will have the tools and resources to maintain expertise, and the incentives to act in a balanced manner that protects consumers from abuse while ensuring their access to innovative, responsible financial services. At the same time, the Federal Trade Commission would retain key powers and gain new ones, including streamlined rulemaking procedures and heightened penalties for violations.

The Current System for Consumer Financial Protection Regulation is Fundamentally Flawed

A dedicated consumer protection agency for financial services is the only effective response to inherent weaknesses in our existing oversight regime. The financial crisis revealed the alarming failure of this regime to protect responsible consumers – and keep the playing field level for responsible providers. The federal government has failed in its most basic regulatory responsibility: to protect consumers. And no provider should be forced to choose between keeping market share and treating consumers fairly. The states do their best with limited resources but they look to the federal government for leadership, and there is no federal agency with the structure and authority to lead.

Instead of leadership and accountability, there is a fragmented system of regulation designed for failure. Bank and non-bank financial service providers often compete vigorously in the same consumer markets but are subject to two different and uncoordinated federal regimes – one based on examinations and supervision, the other based on after-the-fact investigations and enforcement actions. The lack of federal supervision of non-bank providers is an open invitation to the less responsible actors that seek darker corners to ply their dubious practices. These actors are willing to gamble that the FTC and state agencies lack the resources to detect and investigate them. This puts enormous pressure on banks, thrifts, and credit unions to lower their standards to compete – and on their regulators to let them. Fragmentation of the supervision of banks and thrifts only makes this problem worse: a banking institution can choose the least restrictive among several different supervisory agencies. Despite best intentions, "regulatory arbitrage" inevitably weakens protections for consumers and feeds bad practices.

This is precisely what happened in the mortgage market. Independent mortgage companies and brokers grew apace with little oversight. They peddled subprime and exotic mortgages – such as "option ARMs" with exploding payments and rising loan balances – in misleading ways to consumers least able to handle their complex terms and hidden, costly features. The FTC and the states took enforcement actions, but their resources were no match for rapid market growth, and they could not set rules of the road for the whole industry or supervise institutions to prevent bad practices from spreading. To compete over time, banks and thrifts and their affiliates came to offer the same risky products as their less regulated competitors and relaxed their standards for underwriting and sales. Lenders of all types paid their mortgage brokers and loan officers more to bring in riskier and higher-priced loans, with predictable results. Bank regulators were slow to recognize these problems, and even slower to act. The consequences for homeowners were devastating, and our economy is still paying the price.

Our system allowed this to take place even entirely within the highly-regulated, closely-supervised world of banks and thrifts. Take credit cards. Some banks found they could boost fee and interest income with complex and opaque terms and features that most consumers would not notice or understand. These tricks enabled banks to advertise seductively low annual percentage rates and grab market share. Other banks found they could not compete if they offered fair credit cards with more transparent pricing. So consumers got retroactive rate hikes, rate hikes without notice, and low-rate balance transfer offers that trapped them in high-rate purchase balances. A major culprit, once again, was fragmented regulation: one agency held the pen on regulations, another supervised most of the major card issuers. Each looked to the other to act, and neither acted until public outrage reached a crescendo.

The list goes on. A wide range of credit products are offered—from payday loans to pawn shops, to auto loans and car title loans, many from large national chains—with little supervision or enforcement. Closely regulated credit unions and community banks with straightforward credit products struggle to compete with less scrupulous providers who appear to offer a good deal and then pull a switch on the consumer. For instance, overdraft policies are a form of credit but are not disclosed or regulated as such.

The problem with our system is not just the gaps and overlaps between regulators. Our federal agencies do not have missions, structures, and authorities suited to effective consumer protection in financial markets. The FTC has a broad mission to protect consumers in all markets, of which the financial services market is just one; and it has no jurisdiction over banks. The agency has brought important cases against some of the worst financial abusers, but these cases often take a long time and the damage is already done. The agency does not have the supervisory and examination authority or expertise needed to detect and prevent problems before they spread throughout the market.

Bank regulators have supervisory powers over banks, but their primary mission is to ensure banks are safe and sound, not to protect consumers. Consumer supervision does not fit comfortably within these agencies, and it will never share the front seat with safety and soundness. Too often, consumer compliance supervision focused on “checking boxes” – is the annual percentage rate on this loan calculated as prescribed? Is it displayed with a large enough type size? That often meant missing the forest for the trees.

It was thought that supervising the banks for their effective management of “reputation risk” and “litigation risk” – aspects of a safe and sound institution -- would ensure the banks treated their customers fairly. It didn’t. It did not prevent our major banks and thrifts from retroactively raising rates on credit cards as a matter of policy, or from selling exploding mortgages to unwitting consumers as a business expansion plan. Managing a bank’s reputation and litigation risk does not and cannot protect consumers because this approach judges a bank’s conduct toward consumers by its effect on the bank, not its effect on consumers.

We Need One Agency for One Marketplace with One Mission – to Protect Consumers – and the Authority to Achieve It

Tinkering with the consumer protection mandates or authorities of our existing agencies cannot solve the fundamental problem that they are organizationally ill-designed to protect consumers, and too fragmented to maintain high and consistent standards across the consumer financial marketplace. There is only one solution that can work. We need one agency for one marketplace with one mission – to protect consumers of financial products and services – and the authority to achieve that mission. A new agency with a focused mission, comprehensive jurisdiction, and broad authorities is also the only way to ensure consumers and providers high and consistent standards and a level playing field across the whole marketplace without regard to the form of a product – or the type of its provider.

That is the agency we are proposing to create. The CFPA will have the sole mission of protecting consumers; it will be the agency that sees the world through their eyes. It will write regulations, supervise institutions and providers for compliance, and lead enforcement efforts – for the whole marketplace. The implications of our proposal for consumer protection and fair competition are enormous. It will bring higher and more consistent standards; stronger, faster responses to problems; the end of regulatory arbitrage; a more level playing field for all providers; and more efficient regulation.

Let me start with rule writing. The CFPA will be able to write rules for all consumer financial services and products and anyone who provides these products. It will assume existing statutory authorities – such as the Truth in Lending Act and Equal Credit Opportunity Act. New authorities we propose – to require transparent disclosure, promote simple choices, and ensure fair terms and conditions and fair dealing – will enable the agency to fill gaps as markets change and to provide strong and consistent regulation across all types of consumer financial service providers.

For example, our proposal gives the CFPA the power to strengthen mortgage regulation by requiring lenders and brokers to clearly disclose major product risks, and offer simple, transparent products if they decide to offer exotic, complex products. The CFPA will also be able to impose duties on salespeople and mortgage brokers to offer appropriate loans and meet a duty of best execution, and prevent lenders from paying "yield spread premiums" that pay brokers more if they deliver loans with higher rates than consumers qualify for. Lenders and consumers would finally have an integrated mortgage disclosure: the CFPA will continue the work of the Federal Reserve and the Department of Housing and Urban Development to create and maintain a single, federal mortgage disclosure.

Comprehensive rule writing authority would improve other markets, too. For example, the CFPA could adopt consistent regulations for short-term loans – establishing disclosure requirements and banning unfair practices – whether these loans come in the form of bank overdraft protection plans or payday loans or car title loans from non-bank providers. The agency also could adopt standards for licensing and monitoring check cashers and pawn brokers.

Combining these robust rule writing authorities with supervision and enforcement authorities in one agency will ensure faster and more effective rules. For example, the CFPA will both implement the new Credit CARD Act of 2009 – to ban retroactive rate hikes and rate hikes without notice – and will supervise the credit card banks for compliance. So the agency will have a feedback loop from the examiners of the banks to the staff who write the regulations, allowing staff to determine quickly how well the regulations are working in practice and whether they need to be tightened or adjusted. That feedback loop is broken today because rule writing and supervision are divided between two agencies. Consolidated supervisory authority would also allow faster action on mortgages to prevent irresponsible practices that undermine responsible lenders. It took the federal banking agencies two years to reach final consensus on supervisory guidance on option ARMs and subprime mortgages after evidence of declining underwriting standards emerged publicly. A single agency could act within months and save many more consumers and communities from significant harm.

Our proposal for comprehensive jurisdiction will also make regulatory arbitrage a thing of the past. Providers will not have a choice of regulators. So, by definition, they will not be able to choose a less restrictive regulator. The CFPA will not have to fear losing "market share" because our legislation gives it authority over the whole market. Ending arbitrage will prevent the vicious cycles that weaken standards across the market.

Consolidating consumer protection in an agency with comprehensive jurisdiction will also protect consumers no matter with whom they do business, and level the playing field for all institutions and providers. Consumers do not care what legal form their service provider takes; nor should they. A short-term loan can be made by a bank, a bank affiliate, a finance company, or a payday lender. The CFPA could apply to non-bank providers the tools of supervision that regulators now apply to banks – including setting compliance standards, conducting compliance examinations, reviewing files, obtaining data, issuing supervisory guidance and entering into consent decrees or formal orders. The CFPA would have the ability to send examiners into the large, fast-growing independent mortgage companies that caused most of the damage during the mortgage boom to review loan files and interview salespeople. With these tools, the Agency would be able to identify problems before they spread, stop them before they cause serious injury, and relieve pressures on responsible providers to lower their standards.

The CFPA is not a new layer of regulation; it will consolidate existing regulators and authorities. This will bring efficiencies for industry. It will have a clear address for concerns about regulatory burden, and it can expect speedier responses to legitimate claims of unwarranted burdens. Moreover, responsible industry actors will worry less about unfair competition from irresponsible actors, since all providers will be under this agency's jurisdiction.

Of course, even with a strong supervisory and enforcement staff, no agency can oversee tens of thousands of financial service providers on its own. The FTC and the states will continue to play critical roles. The FTC will retain authority to investigate and prosecute financial-related frauds under its FTC Act authority to prevent unfair or deceptive practices. The states will continue to license and bond non-bank service providers, with authority for the CFPA to set strong new federal standards and directly and forcefully to act, by sending in supervisors and examiners when risks are warranted. The CFPA will be able to coordinate closely with the FTC and the states to share information and shore up weaknesses.

The CFPA Will be Held Accountable While Remaining Independent

The public deserves accountability for consumer protection, and creating the CFPA will, finally, give them that accountability. Consumers and their elected representatives will have a place to bring their consumer protection concerns, and one agency to hold accountable for results. Clear accountability will, therefore, produce better results.

Our legislation contains specific measures to help ensure better regulation and prevent agency inertia or backsliding. The CFPA will maintain a unit to analyze consumer complaints across the full range of providers – banks and non-banks – and markets. Its analysis will be published annually. The agency also will maintain a research unit to track changes in markets, products, and consumer behavior and assess risks to consumers – and their understanding of these risks. The agency will give particular consideration to monitoring fast-growing providers and products – such as independent mortgage companies and subprime loans during the housing boom – where risks are often higher. The CFPA will publish significant findings of these monitoring activities at least once each year, and report annually to Congress on its regulatory, enforcement, and supervisory activities.

Accountability must be balanced with independence. The agency will have a stable funding stream in the form of appropriations and fee assessments akin to those regulators impose today. Stable funding is a necessary, but not sufficient, ingredient for true independence. Sustained independence also depends on expertise and respect. The agency will be able to hire a top notch and diversified staff. Our legislation would provide the agency's attorneys, economists, finance experts, examiners, and other professionals the same salaries on average as professionals of the banking agencies. The agency would absorb the banking agencies' teams of consumer compliance examiners, and hire and train new examiners for non-bank providers.

The CFPA Will Be Effective Because it will be Expert, and its Actions Will be Balanced and Proportionate

We are proposing the CFPA be given broad authorities. Our legislation is designed to ensure the agency uses these authorities effectively and with expertise, balance, and proportion – qualities that will ensure the agency remains effective and independent.

Deep and sophisticated understanding. Our legislation assures the CFPA will have the deep understanding of consumers, providers, and products it will need to write rules that are effective, balanced, and proportional.   As mentioned above, a research unit, consumer surveys and testing, complaint tracking and compliance examiners will help ensure that the CFPA is up-to-date with developments in the market. As they do today, examiners for the largest and most complex institutions, whether banks or non-banks, will reside on-site so they fully understand products and operations. These mechanisms will provide the agency critical information to craft effective, tailored regulations that do not impose unnecessary costs, and to determine when regulations should be expanded, modified, or eliminated.

Balanced regulations. When it adopts and reviews regulations, the agency will be required to balance a range of competing objectives. Its four-fold mission includes (1) protecting consumers from abusive or unfair practices; (2) ensuring that they have the information they need to make responsible choices; (3) ensuring markets are efficient and have ample room for innovation, and (4) promoting access to financial services. The CFPA will have to balance these potentially competing goals. Our legislation also explicitly requires the CFPA to consider the costs, not just the benefits, of regulations to consumers and financial institutions – including any potential reduction in consumers' access to financial services. Moreover, the agency will be able to adopt appropriate exemptions from its rules for providers or products where necessary to fulfill the four objectives. Once it adopts a major regulation, the agency will have to review it within five years to make sure it remains consistent with these objectives

Flexible approaches and tailored solutions. Comprehensive authority over the whole market will give the agency a range of options for setting standards so it can choose the most effective, least-cost option. When flexibility is at a premium, the agency can issue supervisory guidance and use examination reports and other techniques to foster change. Today, supervisory guidance usually must be agreed to by four or more federal agencies and fifty states, which causes considerable delays and dilutes effectiveness. One agency for one market will make guidance a much more effective tool than it is today. When a stricter approach is appropriate, the agency can adopt regulations and impose penalties for violations.

Moreover, diverse rule writing authorities will ensure the agency can tailor its regulations to the underlying problem with the least cost to consumers and institutions. The agency will have ample authority to harness the benefits of market discipline by improving the quality of, and access to, information in the marketplace. For example, it will have authority for principles-based, non-technical standards to ensure marketing materials and sales pitches are reasonable and include clear disclosure of product risks in balance with advertised benefits. We have included authority for the agency to permit providers to pilot new disclosure approaches. The agency will also be able to adopt new, more concrete disclosures that highlight for consumers the consequences of their decisions – akin to the minimum payment warning on credit card periodic statements under the Credit CARD Act of 2009. Consumers, themselves, will be able to access their financial information in a usable, electronic format so they can conduct their own assessments of decisions they have made or are planning to make. Increasing the quality and accessibility of product information will make it easier for consumers and providers alike to understand the marketplace and make better choices.

The agency will also be able to encourage providers to offer simple products to help comparison shopping. For example, providers that offer exotic, complex, and riskier products would need to offer at least one standard, simple, less risky product. In the mortgage market, a lender or broker that peddles mortgages with potentially exploding monthly payments, hidden fees and prepayment penalties, and growing loan balances – such as the "pay option ARMs" of recent years – might also be required to offer consumers 30-year, fixed-rate mortgages or ARMs with straightforward terms. The point is to make it easier for consumers to choose simpler products, which should limit the need for costlier restrictions on terms and practices.

The agency will also have the ability to align incentives, which can sometimes be more effective than outlawing particular terms or practices and chasing down the inevitable circumventions. It will have authority to impose duties on frontline salespeople and middle men and regulate the form, manner, or timing – but not amount – of their compensation as needed to promote fair dealing. If they give financial advice and consumers reasonably rely on it, the agency will be able to ensure their advice meets a minimum standard of care. The agency will also be able to ensure salespeople and middle men are not paid more to take advantage of consumers' trust or inexperience. For example, the agency might decide to prohibit mortgage lenders from paying salespeople or brokers higher bonuses for delivering loans with higher interest rates than borrowers qualify for, with hidden costly fees, since this creates a perverse incentive to mislead consumers into taking out costlier loans.

With a broad range of supervisory and regulatory tools, the agency will be able to choose the most effective, least costly solution for each problem. Let me give you an example of how this might work. In response to the strong protections of the Credit CARD Act of 2009, credit card issuers will substantially change their terms and practices. New terms or practices may raise new questions of fairness. If that happens, the CFPA will be able to proceed deliberately and in stages. For example, it could begin by asking card issuers to produce evidence that consumers understand the new terms or practices and can avoid the risks they pose. If this evidence seems inadequate, the agency could conduct its own testing with consumers. If this testing showed widespread lack of consumer understanding, the agency could consider a range of options, from improving disclosure to providing stronger incentives to offer simpler products to further restricting unfair terms and practices.

Respect for safety and soundness. When it uses these authorities, the CFPA will respect the safety-and-soundness imperatives of bank regulation. When conflicts do arise, structures for compromise will facilitate resolution. A safety and soundness regulator will have one of five board seats, and the agency must consult with safety and soundness regulators before adopting rules. In addition, the CFPA can work with the banking agencies to ensure bank consumer compliance examiners are trained to understand safety and soundness, as they are today.

In short, the comprehensive authority we propose will not increase regulatory burden or lead to unreasonable regulations. It will do the opposite. It will ensure the agency has a deep understanding of products and providers. And it will enable the agency to choose from among a wide range of tools and authorities to find the most effective, least-cost solution. This will save consumers – and financial service providers – significant costs over the long term.

Our Legislation Will Respect and Strengthen the Core Functions of the Federal Trade Commission

Our legislation does not affect the jurisdiction of the FTC over the vast array of non-financial markets and actually strengthens its ability to police those markets. To increase the FTC's ability to protect consumers, we propose that the FTC be able to (1) adopt rules to prohibit unfair or deceptive acts or practices with standard notice-and-comment rulemaking; (2) obtain civil penalties when companies use unfair or deceptive practices; and (3) pursue those who substantially aid and abet providers that commit unfair or deceptive practices. The Administration also supports increased resources in the 2010 President's Budget for the FTC so that consumers can be better protected across all markets.

As for financial markets, the FTC will continue to have authority under the FTC Act to pursue financial fraud without delay, including foreclosure rescue and loan modification scams. The FTC would simply be required to consult and coordinate with – but not refer these cases to – the CFPA. The CFPA would also have authority under the proposed legislation to pursue fraud and deceptive practices by financial service providers. The consultation requirement ensures there will be coordination, much like the coordination that occurs informally between the states and the FTC today in pursuing fraud. The FTC will also retain authority for writing rules under the Telemarketing Sales Act and concurrent responsibility for enforcing them over financial products and services.

The CFPA will have substantial authority over mortgages under other statutes, so it will assume the rulemaking authority recently granted to the FTC over mortgage loans. This assures consumers and providers a consistent and consolidated approach to regulating mortgages throughout the whole life of the loan, from sale and origination to payoff, modification, or foreclosure.

With respect to rules or statutes other than the FTC Act, the FTC will have "backstop" authority to enforce the same consumer credit statutes that it can enforce now. Under that authority, if the FTC – or a bank regulator – becomes aware of a possible law violation of those statutes, it may send a written recommendation that the CFPA take action, stating its concerns, and proceed itself on the matter after 120 days if the CFPA does not take action. The Administration is proposing to apply the same referral requirement to the bank regulators. This requirement will help ensure a consistent federal approach to interpreting and enforcing consumer protection statutes such as the Truth in Lending Act, while leaving the FTC and the banking agencies the ability to act if the CFPA does not. The approach is flexible enough to permit the agencies to agree to practical arrangements for referrals and appropriate use of the FTC's backstop authority.

The FTC would retain primary authority in the area of data security for nonbank entities. It would continue its current role of enforcing, as to nonbank financial service providers, Section 5 of the FTC Act as it applies to data security practices and its Safeguards Rule, which implements Section 501(b) of the Gramm-Leach- Bliley Act. [1] Consistent with the CFPA's exclusive authority over consumer disclosure in other areas, however, the CFPA would have primary authority under the "front end" privacy provisions of GLBA (e.g. privacy notice and related provisions) for all financial institutions (banks and nonbanks), and as well as its own authority under the proposed legislation that parallels Section 5 of the FTC Act.

Conclusion

Our proposal will ensure the financial regulator community includes one agency with the single mission of protecting consumers. It is time to put consumer protection responsibility in an agency with a focused mission and comprehensive jurisdiction over all financial services providers, banks and non-banks. It is time for a level playing field for financial services competition based on strong rules, not based on exploiting consumer confusion. It is time for an agency that consumers – and their elected representatives – can hold fully accountable. And it is

[1] Because of its relationship to data security, the FTC would also retain its rulemaking and enforcement authority for the Red Flags Rule under Section 615(e) and the Disposal Rule under Section 628 of the FCRA.   The remainder of rulemaking and enforcement authority under the FCRA would transfer to the CFPA.

long past time for a stronger FTC. The Administration's legislation fulfills these needs. Thank you for this opportunity to discuss our proposal, and I will be happy to answer any questions.