

**Testimony of Prentiss Cox
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**Before the United States House of Representatives
Committee On Energy and Commerce**

**“The Proposed Consumer Financial Protection Agency:
Implications for Consumers and the FTC”**

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I am very grateful to have the privilege of testifying at this hearing on the historic proposal to create a Consumer Financial Protection Agency (“CFPA”). The sale of needlessly complex and abusive consumer credit products was a disaster for millions of Americans long before these problems were recognized as a primary cause of the financial crisis. While countless families experienced loss and too often financial ruin from ill-suited consumer finance products, our nation’s regulatory system was thoroughly dominated by the thinking and needs of lenders and sellers of these products. The establishment of the CFPA would mark a turning point in returning the needs of American families to a central position in our consumer finance regulatory system.

Prior to joining the University of Minnesota Law School faculty in 2005, I had the opportunity to work for many years as an Assistant Attorney General and Manager of Consumer Enforcement in the Minnesota Attorney General’s Office. I was a lead attorney starting in 1998 in a consumer fraud suit against First Alliance Mortgage Company, which was one of the early purveyors of abusive subprime mortgage loans. I later was in the national leadership in cases brought by state attorneys general against subprime lenders Household, Inc. and Ameriquest Mortgage Company. In addition to subprime mortgage lending matters, I have investigated and litigated numerous public enforcement actions for violations of deceptive trade practice laws against credit card issuers, debt collectors, telemarketers, foreclosure rescue scam companies, auto finance sellers and other entities engaged in consumer finance.

I also have participated in the drafting of legislation and rules governing consumer finance products. In 2007, I worked with Minnesota legislators who passed the

toughest anti-predatory lending in the nation. Among other state legislation on consumer finance matters, in 2004 I assisted the Minnesota Legislature in enacting a law to regulate foreclosure rescue scams. That regulatory scheme has become a national model enacted in 18 other states.

I have worked closely with dedicated staff in several divisions of the Federal Trade Commission (“FTC”). Several of the cases that I brought for consumer fraud or violations of credit reporting or mortgage lending laws were done in cooperation or consultation with the FTC. Conversely, I occasionally assisted the FTC in cases brought under its authority. In *State of Minnesota v. Fleet Mortgage Corporation*, I was the lead attorney in a case brought by the Minnesota Attorney General under the federal Telemarketing Sales Rule (“TSR”) against a telemarketer and its partner national bank subsidiary alleging deceptive sales of membership clubs to homeowners. Thanks in part to an amicus brief filed by the FTC, we prevailed in the case and obtained a ruling of first impression on the authority of the FTC over non-bank operating subsidiaries of national banks.¹ After pursuing the *Fleet* case and similar matters, I worked with talented FTC staff in the promulgation of the “preacquired account telemarketing” rules adopted as amendments to the TSR.

The proposed CFPA is a unique opportunity for dramatically improving the lives of American families. I will focus my testimony on matters most relevant to my experience working on consumer protection in the sale of finance products. First, the open public enforcement model preserving FTC enforcement powers and extending enforcement powers to state attorneys general will improve the long-term effectiveness of the CFPA in protecting consumers, but these new statutory powers should be sharpened. Second, the investigative powers of the CFPA during the rule-making process should be strengthened. Third, CFPA should not be required to make determinations on state law preemption and the restrictions on the use of preemption by federal bank regulators to prevent state level consumer protection legislation and enforcement should be clarified.

¹ *State of Minnesota v. Fleet Mortgage Corp.*, 158 F.Supp.2d 962 and 181 F.Supp.2d 995 (D. Minn. 2001). This case included allegations that Fleet’s internal surveys of its customer service representatives found repeated statements that Fleet’s charges to its mortgage customers were “unethical,” “a scam,” “a fraud,” that Fleet customers were “being slammed” and the like. Nonetheless, the Office of the Comptroller of the Currency took no known action against Fleet, and instead filed an amicus brief in the case in support of Fleet’s motion to dismiss the Minnesota Attorney General’s case.

I. The Open Public Enforcement Model In The Act Will Be Effective, But State Enforcement Powers Should Be Clarified.

Enforcement of consumer protection laws and rule-making for consumer protection are different activities that require different models to be effective. Unified rule-making authority in an agency dedicated to consumer protection goals presents an extraordinary opportunity to reform the consumer finance system to ensure products and sales practices that meet minimum standards of fairness for consumers. Public enforcement, on the other hand, is best accomplished in an open model; a system that allows multiple public entities the opportunity to gauge compliance.

A. The Act Properly Creates An Open Enforcement System.

The Act opens enforcement both within the federal system and between federal and state public agencies. The Act preserves the authority of the FTC and other federal regulators to bring enforcement actions against marketplace actors within the jurisdiction of these agencies. The FTC retains its authority to pursue violations of existing federal consumer credit laws, such as the Electronic Funds Transfer Act (section 1078), the Equal Credit Opportunity Act (section 1079), the Fair Credit Reporting Act (section 1082), the Fair Debt Collection Practices Act (section 1083) and the Truth in Lending Act (see section 1092). This enforcement authority is subject to a referral requirement and wait period in section 1022(e). The FTC also is required to “consult and coordinate” with the CFPB when the FTC brings UDAP actions involving consumer financial products or services. These referral and consultation requirements, and the joint enforcement authority of the FTC and other federal agencies, are discussed in subsection B below.

The Act also makes two important changes to the federal and state balance in enforcing consumer credit protection laws. Section 1042 of the Act provides authority to state attorneys general to enforce federal consumer credit laws. Sections 1044 and 1047 are a welcome reversal of overreaching regulations and interpretations by federal banking regulators that attempted to stop state attorneys

general from enforcing non-preempted state laws against federally chartered financial institutions. These provisions are discussed in subsection C below.²

The open public enforcement system adopted in the Act has multiple advantages. Open public enforcement is a form of a regulatory marketplace that creates competition for more consumer protection rather than a race to the bottom. Regulators faced with competing enforcement agencies would have a much greater incentive to pay attention to consumer complaints of unfair or misleading conduct, as they know that a different public entity might bring an action against the same seller or financial institution. This is particularly true because public entities with enforcement authority often go through cycles of different levels of commitment and different philosophic approaches to the missions of the agency.

Awareness of competing regulators will help avoid the problem of agency capture that clearly plagued the financial regulatory system over the last decade or more. Federal banking regulators too often used their claimed exclusive authority to protect the interests of their regulated entities rather than the interests of the consumer. Their enforcement record on these issues was abysmal.³ More subtly, financial regulators came to see the world through the lens of the seller rather than through the experience of American families using consumer finance products. The Federal Reserve Board was the single agency with the authority to set standards protecting homeowners in origination of mortgages, but it became hard to distinguish during the last decade between the rhetoric of the lenders and the published analyses of the Federal Reserve Board and its Governors in its use (or nonuse) of this authority.

Open public enforcement also allows the resources and the focus of different public enforcement agencies to be matched with the type of enforcement problem.

² Sections 1041, 1043, 1045-1046 and 1048 attempt to return a proper balance to the preemption of substantive state consumer protection laws. These provisions are discussed in section III of this testimony.

³ See, e.g., Amanda Quester and Kathleen Keest, *Looking Ahead After Watters v. Wachovia Bank: Challenges for the Lower Courts, Congress and the Comptroller of the Currency*, 27 *Review of Banking and Financial Law* 187, 199 (2008).

A state attorney general may have an incentive to attack violations of laws that occur only in its locality, while the CFPB likely would not have the resources to focus on problems that are not national in scope. A federal regulator may be able to remedy violations that are discovered when investigating problems unrelated to compliance with CFPB regulations. Allowing multiple regulators with varying foci to enforce violations can be more efficient.

Banks and other regulated entities will no doubt object to having the possibility of multiple public agencies enforce consumer protection laws. One can anticipate dire predictions about the excessive quantity of enforcement action and inconsistent enforcement standards. These concerns are not valid based on past or anticipated conduct of public enforcement agencies. The resources available to public entities have never been sufficient to ensure compliance by all actors with all such laws. Every public enforcement agency has to discard valid possible enforcement actions to focus on the highest priority cases. It would be instructive to compare the total public dollars spent on enforcing consumer protection laws in the sale of consumer finance products with the dollars spent by the financial services industry just to lobby federal and state legislative and administrative bodies to shape the laws that will be enforced.

The threat of inconsistent enforcement agendas of public entities is meritless for two reasons. First, the Act gives the ultimate authority to interpret consumer credit laws and regulations, and decide on how those rules are enforced, to the CFPB. The CFPB can and presumably will create uniformity in enforcement. Second, it is a positive development rather than an onerous burden if there are some discrepancies in enforcement priorities or interpretation not immediately rectified by the CFPB, for the reasons stated above. Enforcement is an area in which regulatory competition creates benefits. Indeed, the recent experience of the meltdown in nonprime mortgage lending is attributable in part to insufficient public enforcement efforts undermined substantially by regulators claiming monopolistic enforcement authority.

As with the grant of rule-making authority, the Act gets the essential concepts right in the area of public enforcement. The following two subsections offer suggestions for improving the details of the enforcement system proposed in the Act.

B. The Intra-Federal System Of Referrals for Enforcement Should Be Streamlined And The Scope Of This Parallel Enforcement Broadened, But The Consultation Requirement For the FTC Is Proper.

The statutory authority for enforcement by multiple federal agencies under existing consumer credit law are preserved in subtitle H of the Act but made subject to section 1022 of the Act. Section 1022(e) provides that the CFPA has primary enforcement authority over these laws, but that federal agencies now authorized to enforce these laws can make a written referral to the CFPA of a possible enforcement matter. These federal agencies have “backstop enforcement authority” to bring the enforcement action if the CFPA “does not, before the end of the 120-day period beginning on the date on which the Agency receives a recommendation..., initiate an enforcement proceeding.”

This enforcement authority should be streamlined. First, the Act should be clarified to state that the 120 day period is a maximum time and the CFPA can authorize an enforcement action by another federal agency at anytime during that period. Second, the referral period could be shortened, perhaps to 30 days, with authority for the CFPA to stretch out the review to 120 days if it determines it needs more time. Many of the cases brought by other federal agencies will include claims for violation of federal consumer credit laws that are ancillary to other violations. The FTC often files actions alleging section 5 UDAP violations that will include alleged violations of federal consumer credit laws. A required 120 day period could result in disincentives for the FTC or other federal agencies to include such alleged violations.

The scope of the enforcement authority for the FTC and other federal agencies to initiate “backstop” enforcement actions also should be broadened. The same rationale that applies to preserving the authority of these entities to bring claims under existing federal consumer credit laws applies to enforcement of new rules promulgated by the CFPA. The FTC could efficiently bring such claims in cases with UDAP or other alleged violations rather than splitting this type of matter into two cases, or having the CFPA enforcement action foregone because of the costs of bringing a separate matter. The CFPA rules likely will become more important than existing consumer credit rules over time, so this additional authority is worth

serious consideration. As with the existing federal consumer credit laws, the CFPA would have the authority to take control of the proposed action if it determined that was appropriate in the circumstances.

The FTC also faces a proposed new requirement in section 1101 in Title XI that it “consult and coordinate” with the CFPA when the FTC brings an UDAP action related to consumer financial products. Whether mandated by statute or not, this type of consultation makes sense not just for its seemingly intended purpose (to allow the CFPA to create uniformity in the regulation of consumer finance projects), but also because it may help inform the actions of the CFPA. A critical lesson to be learned from the debacle in mortgage lending is the early warning function of UDAP enforcement. The only public agencies that consistently brought enforcement actions and raised the alarm about abuses in nonprime lending were a small group of state attorneys general and state financial regulators who approached the problem from the perspective of UDAP enforcement. This group of state entities brought cases against First Alliance Mortgage Company, Household, Inc., and Ameriquest Mortgage-- each of which was the largest and/or arguably most egregious subprime mortgage lender in succession from 1998 through 2005. The allegations in these cases track almost precisely the history of practices that should have been better regulated during the last ten years.

Public enforcers of UDAP laws often ask different types of questions than rule-making regulators, who typically see enforcement primarily as a matter of rule compliance. Effective UDAP enforcement requires attention to the stories of individuals in distress, and to constructing of patterns from volumes of consumer complaints and the reflected experience of consumers by those who work closely with individual users of consumer products. UDAP enforcement also is accompanied by a bias in favor of believing consumers whose experience is not necessarily consistent with the written documents that memorialize the transaction. While UDAP problems are not a sufficient basis alone for constructing regulatory policy, UDAP enforcement offers critical insight into emerging problems in any industry, including consumer finance. The FTC should forcefully bring this experience and perspective to the construction of regulations by the CFPA.

C. State Enforcement Powers Are An Important Part Of An Open Enforcement Scheme, But State Enforcement Rights Should Be Clarified.

The Act commendably opens the enforcement of CFPA regulations to the large number of state attorneys general who will be capable of bringing enforcement actions. State entities were the most active in bringing cases to remedy the abuses of subprime mortgage lending, and this additional authority will help the attorneys general achieve their consumer protection objective while also improving compliance with CFPA regulations. The Act also takes the long overdue step of reigning in the absurdly broad assertion of “visitorial” powers by federal banking regulators as a means of protecting their regulated entities from active state consumer protection enforcers.

1. State Power to Enforce Federal Consumer Finance Laws

Section 1042(a)(2) further develops an open public enforcement system by preserving the right of state attorneys general to bring actions where currently allowed under federal consumer credit laws. Section 1402(a)(1) extends these enforcement rights of state attorneys general to new CFPA regulations. The Act contains a well-considered and balanced consultation requirement in section 1042(b) prior to a state attorney general exercising this authority.

As noted above, consumer law public enforcement actions often arise in contexts that make it practical for certain types of public entities to bring enforcement actions where other public entities could not do so. State attorneys general will be able to enforce CFPA regulations in local matters where the limited size and scope of the violations would make the action less viable for the CFPA. State attorneys general, similar to the FTC, may find it practical to enforce CFPA regulations ancillary to UDAP actions. As with the FTC, these cases would be less likely to be initiated by the CFPA.

Conversely, state attorney general actions would benefit the CFPA by identifying enforcement problems and areas for possible new regulation. State attorneys general generally are much nimbler, and much smaller, than their federal counterparts. State attorneys general often are able to sort through consumer complaints, or consult with loan counselors and nonprofit agencies that reflect

consumer experiences, much more quickly than larger federal agencies with multiple decision-making layers.

A change to the Act would help clarify these parallel state enforcement powers. Section 1042(a)(1) of the Act provides that state attorneys general can obtain “monetary or equitable relief for violation of any provisions of this title or regulations adopted thereunder.” This provision does not specify the available remedies; in contrast, section 1055(a) sets forth eight specific remedies available in CFPA enforcement actions, and also details the limits and considerations in assessing civil penalties. Section 1042(a) could be read as incorporating these specific remedies, but the Act should be clarified to make clear that intent.

2. Clarification of Federal Banking Regulator Visitorial Power

The Act also addresses the problem of bank regulators overreaching in their interpretation of “visitorial” powers in order to restrict state actions. Visitorial powers of a bank supervisor generally include the right to examine the operations of a supervised financial institution. The Office of Comptroller of the Currency (“OCC”) promulgated regulations under its visitorial powers that purported to deny the authority of the state attorneys general to investigate and enforce even non-preempted state laws against national banks. The United States Supreme Court recently overturned the OCC rule prohibiting a state from enforcing its own applicable laws in court, calling the OCC’s position a “bizarre” interpretation of its authority.⁴ The Court deferred to the OCC and left in place the OCC rule prohibiting a state from using its pre-suit investigative powers as to a national bank.

Sections 1044 and 1047 restore the power of states to investigate and enforce violations of law by federally chartered financial institutions. The Act requires that state attorneys general consult with banking regulators prior to sending pre-suit investigative demands to a federally chartered financial institution and prior to filing an action to enforce state law. Such consultation makes some sense when the state attorney general is sending a pre-suit investigative demand because this action is related to the traditional domain of banking regulators. Forcing the state

⁴ Cuomo v. Clearing House Assn. L.L.C., et. al., No. 08-453 (U.S.S.Ct. June 29, 2009) at 7.

attorneys general to consult prior to filing an enforcement action, however, limits their authority in light of the recent Supreme Court ruling. Federal banking regulators have shown consistent hostility to state attorney general enforcement of state UDAP and other consumer protection laws. There is no reason to force a new requirement of mandatory consultation by a state attorney general in this circumstance.

II. The CFPA Must Have Strong Investigative Powers For Effective Rule-Making.

The Act's proposed division of authority between the CFPA and the existing regulatory agencies makes sense. The standards for issuing consumer finance products should not depend on the charter or licensing status of the seller. And the regulatory requirements for the sale of core consumer finance products should be the function of a single regulator with authority to harmonize the requirements of different federal statutes and rules as they relate to a single product. The incoherent set of forms issued by multiple agencies with authority over residential mortgage origination confuses homeowners and imposes unnecessary costs on lenders. It even provides room for mischief by sellers of credit that use the confusing regulatory requirements to mislead homeowners. Centralization of rule-making authority for federal consumer finance laws in the CFPA, combined with the new rule-making powers of the CFPA and a focus on the needs of consumers in the promulgation of those rules, is the right approach.

The FTC retains its core function as the primary federal enforcement agency against unfair and deceptive practices ("UDAP"). Some areas related to consumer financial services are more closely tied to UDAP enforcement, and, appropriately, the Act preserves FTC jurisdiction in these areas. The authority related to foreclosure rescue scams and debt settlement rule-making, for instance, should and do remain with the FTC.

The subject and particulars of rule-making will be informed by the experience and interests of other regulators, industry and advocates. One of the problems with the current regulatory structure is that functional regulators had a clear focus on the needs of the industry they regulated rather than the more diffused but critical needs of the public that used consumer financial products. When consumers complained in droves about the abusive terms and sales practices with consumer finance products, federal regulators simply were not listening. It is encouraging that the

structure of the CFPA emphasizes the actual use of financial products by consumers as the touchstone for regulation, as exemplified by the responsibilities assigned to the research, community and consumer complaint units envisioned in section 1014(c).

But it is critical that the CFPA also have access to a wide range of data from the issuers of products to understand the characteristics of consumer finance products that are actually sold. If the CFPA does not have access to data held by account issuers, only the industry will have detailed information to dispense in influencing the shape of debate.

For example, consider the problem of regulating overdraft or over-limit charges on asset and credit accounts. The CFPA may want to consider this problem across various forms of consumer financial products. It may want to consider limits on the use of overdraft fees and apply those limits to some or all of the financial products it regulates. The design of this regulation will require the CFPA to inquire into a series of questions about these charges, such as the following: What are the features and amounts of overdraft charges on different products? What are the actual costs to the account issuers for overdrafts? How and why have account issuers varied these charges over time? What are the policies and actual practices of account issuers in applying these charges? Do consumers with certain types of accounts or certain characteristics pay a disproportionate amount for these charges? There is no substitute for an agency having access to the actual data of the account issuers on these and a host of related question to obtain a nuanced understanding of how overdraft charges really work in practice. And there is no better time to obtain this understanding than before the CFPA promulgates a rule on the matter.

It is even more important for the CFPA to have this type of investigative authority during rule-making because it does not have the benefit of regularly obtaining such data through examinations it controls. Federal banking authorities conduct regular exams and have wide-ranging visitorial powers that the CFPA would not possess.⁵

Sections 1022 through 1024 of the Consumer Financial Protection Agency Act of 2009 (“the Act”) contain general references to examination and information

⁵ Section 1022(c) of the Act authorizes the CFPA to obtain examination reports conducted by the banking regulators and other federal agencies. But the CFPA cannot control the content of those exams.

gathering powers of the CFPA. By contrast, the CFPA’s pre-complaint investigative authority in section 1052(b) is rich in specificity but applies only to information relevant to a violation of the laws enforced by the CFPA.

Section 1022(c) refers to examination authority mostly in the context of “compliance.” Section 1022(c)(2)(B), however, provides that the CFPA may require reports on “matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.” It is unclear if this authority was intended to extend to the type of comprehensive data collection that would inform the CFPA prior to or during the rule-making process. Section 1023(a)(1) authorizes the CFPA to “gather and compile information,” but it is not clear if this authorizes the CFPA to issue mandatory commands for data, and if so from whom and under what conditions. Section 1023(a)(2) clearly authorizes the CFPA to require the filing by “persons” of “annual or special reports, or answers in writing to specific questions,” although the exact scope of this power is not specified. Section 1024 provides more robust investigate authority for the CFPA, but this power is limited to the Agency’s duty to “monitor for risks to consumers in the provision of consumer financial products or service, including developments in markets for such products or services.” Section 1024(a)(3) and (a)(4) suggest this authority is primarily for report generating functions.⁶

Taken as a whole, this authority will allow the CFPA to obtain useful information to consider in making rules that shape consumer financial products. The current language in the legislation, however, does not provide the CFPA with unambiguous authority to obtain detailed data about the products it will regulate prior to writing the rules for those products. The current legislation likely does not put the CFPA on a level field of knowledge with the industry it will be created to supervise.

⁶ Section 1039 also prohibits a covered person from refusing to provide information to the Agency, “as required by this title.”

The Act should provide the CFPA with the type of specific investigative authority that it is provided in section 1052(b) when bringing enforcement actions. At minimum, the CFPA should have the right to obtain the type of data in the computer systems of sellers and account issuers that would be readily available and easy to screen for the exclusion of private financial information.

III. The Act’s Provisions Related to Preemption of State Law Should Be Amended.

The Act appears to remedy the misuse of federal preemption that has occurred in the last decade. States play an important role in highlighting consumer problems unaddressed by federal regulation and testing solutions to these problems. On the other hand, there are benefits to consumers and sellers when there is some degree of uniformity in product choices. The Act takes the best approach to this problem to benefit consumers—a uniform federal regulatory floor that allows greater state consumer protections.

Nonetheless, the devilish details in the Act’s preemption language hide some avoidable implementation problems. First, the general preemption standard for CFPA actions will require rather than simply permit the new agency to make state preemption determinations. Second, the language overturning the misuse of preemption by federal bank regulators needs clarification.

A. The CFPA Should Not Be Burdened With Mandatory Preemption Exemption Determinations.

The Act preserves from preemption state laws that are not inconsistent with the CFPA rules, authority and actions. The Act expressly provides that states laws are not inconsistent and thus not preempted if they provide greater consumer protection than the CFPA regulatory scheme. This formulation is familiar from existing federal consumer protection laws, such as in the Electronic Funds Transfer Act, 15 U.S.C. § 1693q.

The Act provides that a state law is not preempted “if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title, as determined by the Agency.” The final clause of this phrase adds a requirement that is unlike current federal consumer protection law

preemption standards, which generally allow the primary regulator to make determinations permissively. This language suggests that a state law is preempted until the Agency makes a ruling, which would cause two inter-related problems.

First, consumers would not be afforded the intended benefit of the state law until the CFPA is able to make a preemption determination. This will be the case even if the superiority of the state law protection for the consumer is obvious. Thus, if the state law limits prepayment penalties to 1% of the outstanding balance on a certain credit product while the CFPA does not limit such charges, the state law clearly provides greater protection for the consumer. The current language in the Act might deprive consumers in that state of the benefit of the greater protection until the CFPA makes such a determination.

The second problem should now be obvious—if consumers must wait until the CFPA makes a determination to be afforded the possible greater protection under state law, the CFPA could be flooded with preemption requests as to every action it takes. The new agency’s resources might be better directed to other endeavors, especially given the expertise of courts in making decisions on such matters. To the extent the CFPA is concerned with the uniformity of such interpretations, the Act should be amended to allow the CFPA to make such determinations on its own initiative or when it deems appropriate in response to requests from interested parties.

B. The Restriction on National Bank Preemption Authority Should Be Clarified.

The Act takes the long overdue step of beginning to reign in the misuse of preemption by federal banking regulators. Preemption of state consumer protection laws by federal banking laws is a complex subject. The Act takes on several parts, but not all, of this problem. I will very briefly highlight one important concern with the specific language used to define the scope of state laws that would be implicated in the Act’s attempt to restore the proper federal and state balance to consumer protection.

Sections 1043 amends the National Bank Act so that, with exception, “State consumer laws of general application, including any law relating to unfair or

deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection law, shall apply to any national bank.”⁷ This language creates ambiguity because “laws of general application” is not a well-defined term that imparts clear meaning to the courts. Specifically, it is not certain whether this definition will mean that state laws related to consumer finance products, such as the many state anti-predatory lending laws, will apply to national banks. If a state imposes a duty on every residential mortgage lender to act in the best interests of the borrower when originating a mortgage loan, will this standard be applied to loans made by national banks and their operating subsidiaries? Under current law, the OCC has forcefully protected its regulated entities from having to comply with such requirements applicable to state-licensed lenders. The Act should be clarified to definitely answer this question in favor of a level playing field that requires national banks to meet the same standards as state lenders within a given state.

CONCLUSION

The needs of the average American have been ignored for too many years when federal regulators and large financial institutions shaped the types of consumer finance products that would be sold, often aggressively sold, to homeowners and other consumers. Throughout the ongoing foreclosure and financial crisis, struggling homeowners have taken a back seat to the needs of the lenders who created and profited from the consumer finance products that caused the problems. The proposed CFPA is the first attempt in decades to make meaningful changes in our regulatory system to help the majority of people who use consumer finance products. I trust that you will enact legislation to create a strong and effective new agency with a singular focus on consumer protection. I hope that you will consider the clarifications to the Act offered in this testimony.

⁷ Section 1048 makes identical changes applicable to federal savings associations.