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3 HEARING ON ``THE PROPOSED CONSUMER FINANCIAL PROTECTION

4 AGENCY: IMPLICATIONS FOR CONSUMERS AND THE FTC''

5 WEDNESDAY, JULY 8, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:10 a.m.,  
11 in Room 2123 of the Rayburn House Office Building, Hon. Bobby  
12 L. Rush [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Rush, Schakowsky,  
14 Sarbanes, Sutton, Green, Gonzalez, Butterfield, Barrow,  
15 Matsui, Castor, Space, DeGette, Dingell, Waxman (ex officio),  
16 Radanovich, Stearns, Whitfield, Pitts, Terry, Gingrey,  
17 Scalise and Barton (ex officio).

18 Staff present: Anna Laitin, Professional Staff; Will  
19 Casey, Special Assistant; Michelle Ash, Chief Counsel;

20 Timothy Robinson, Counsel; Marc Groman, Counsel; Stephanie  
21 Bazell, Intern; Caren Auchman, Communications Associate;  
22 Bruce Wolp, Senior Adviser; Phil Barnett, Staff Director;  
23 Jeff Wease, Deputy Information Officer; Earley Green, Chief  
24 Clerk; Brian McCullough, Senior Professional Staff; Shannon  
25 Weinberg, Counsel; Will Carty, Professional Staff; and Sam  
26 Costello, Legislative Assistant.

|  
27           Mr. {Rush.} The Subcommittee on Commerce, Trade and  
28 Consumer Protection will now come to order.

29           The purpose of today's hearing is to hear witnesses on  
30 the subject of the proposed Consumer Financial Protection  
31 Agency, implications for consumers and the FTC. I certainly  
32 want to welcome all the witnesses, Mr. Barr and Chairman  
33 Leibowitz. The Chair recognizes himself for 5 minutes for  
34 the purposes of an opening statement.

35           I would like to thank all my colleagues and all the  
36 witnesses who diligently worked to prepare testimony over the  
37 Fourth of July holiday so that today's hearing would be as  
38 meaningful as possible as we commence our examination of the  
39 Administration's proposal to create a new Consumer Financial  
40 Protection Agency. My view on the matter is fairly  
41 straightforward. I believe that the FTC should remain intact  
42 as it is currently constituted and that this committee and  
43 subcommittee should continue to oversee and authorize the  
44 FTC.

45           The Commission, which was established in 1914 during our  
46 Nation's Progressive Era, was designed to be a regulatory  
47 agency with disinterested expertise to ensure compensation  
48 and to promote free enterprise. That mission and those  
49 prescient concerns are as vital today as they were almost a

50 century ago. The Commission operates best as a lone eagle.  
51 From high above, the agency can survey the marketplace and  
52 swoop down on predators that deceive unsuspecting and  
53 misinformed consumers. The higher and farther away that the  
54 FTC is from other agencies and the entities that it  
55 regulates, the better it is at spotting unfair commercial and  
56 trading practices and at isolating those practices that cast  
57 the longest shadows. Similarly, by staying at a distance,  
58 the agency can keep would-be credit captors at bay while  
59 staying on course to achieve its critical mission of  
60 protecting consumers.

61 Looking at all reliable indicators, the commission has  
62 performed commendably for a small and scrappy staff and  
63 abridged powers, working alone with a five-person bipartisan  
64 commission, possibly 1,100 dedicated employees spread out  
65 across three bureaus: Bureau of Competition, Consumer  
66 Protection and Economics. Although its expertise is deep and  
67 broad, the FTC's statutory tools under the FTC Act consist of  
68 an antiquated and cumbersome of rulemaking under the  
69 Magnuson-Moss Act paired with anemic litigation authority.  
70 These two may be successful at landing glancing blows but  
71 they fail to pack a full punch of detergents that businesses  
72 will respect and consumers deserve. Currently at the FTC's  
73 disposal are its expertise and its agency crafted instruments

74 of research, policy and study development, consumer compliant  
75 and education, competition, legal analysis and economics.  
76 While the FTC does well, it has done without power relative  
77 to its sister agencies, and what it hasn't done particularly  
78 well is in the process of being fixed.

79         Just a few weeks ago, our subcommittee worked intently  
80 to mark up H.R. 2309, the Credit and Debt Protection Act,  
81 which directs the FTC to adopt rules using APA rulemaking  
82 authority that would address rampant unfair and deceptive  
83 practices in the area of payday lending, automobile  
84 financing, mortgage and foreclosure rescue and debt  
85 settlement. Our subcommittee's objective in passing H.R.  
86 2309 was to confer more authority upon the FTC and to equip  
87 it with sufficient resources so that it could adopt rules  
88 faster in the areas of credit and debt through APA rulemaking  
89 procedures and bring enforcement action through the threat of  
90 civil penalties. Our committee had worked devotedly in the  
91 past more than a few times with members from the Financial  
92 Service Committee to bolster the FTC's shortcomings, hold out  
93 the FTC's best practices for banking agencies to emulate and  
94 protecting consumers and to improve the ability of bank  
95 regulatory agencies to protect consumers by ensuring unfair  
96 and deceptive rules under the FTC Act. I have witnessed the  
97 respective chairs of the Committees on Energy and Commerce

98 and Financial Services jointly introduce H.R. 3525 to tackle  
99 some of these challenges.

100 Further, I offered a further amendment to H.R. 3526,  
101 which was introduced by the chair of the Financial Services  
102 Committee in the 110th Congress to require that a GAO report  
103 investigating federal banking and credit union regulations  
104 and the perpetuation of unfair and deceptive acts and  
105 practices by depository institutions. Importantly, this push  
106 and pull between our respective committees has pressured  
107 providers of financial services and products including banks  
108 and depository institutions to balance the allure of profits  
109 and determination of safety and soundness against the needs  
110 of consumers. This collaborative working relationship  
111 between committees has produced good and sustainable consumer  
112 protection bills to safeguard consumers of financial services  
113 and of consumer credit products and is a vital example of the  
114 independent agencies that would be affected by the  
115 Administration's proposal as it will allow each of them to  
116 maintain their independence and respective biases and  
117 expertise when addressing serious problems that cut across  
118 sectors and affect market supplies and consumers.

119 I want to thank the witnesses for being here today, for  
120 taking the time out from their busy schedules to participate  
121 in this hearing. With that, I yield back the balance of my

122 time.

123 [The prepared statement of Mr. Rush follows:]

124 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
125           Mr. {Rush.} The Chair now recognizes the gentleman from  
126 California, the ranking member, Mr. Radanovich for 5 minutes  
127 for the purposes of an opening statement.

128           Mr. {Radanovich.} Thank you, Mr. Chairman, good  
129 morning. I appreciate your calling today's hearing on this  
130 important topic.

131           Whenever something goes wrong in this country,  
132 Washington proposes a solution regardless of whether the  
133 situation calls for one. However well-intentioned our  
134 actions, they rarely work out because they are often  
135 undertaken as a knee-jerk response. We have seen many  
136 unintended consequence of rush to legislation in recent  
137 history, for example, the Sarbanes-Oxley Act. At best, we  
138 have seen marginal improvements in the markets diverting  
139 billions of dollars toward new compliance costs to the  
140 detriment of many small- and medium-sized businesses. In  
141 another example, last Congress we enacted a law in response  
142 to lead paint on toys. The paint violated an existing  
143 standard but what was a compliance problem rather than a  
144 deficient standard problem led to numerous costly new  
145 mandates that put many small- and medium-sized businesses out  
146 of business because the cost was too high without any  
147 corresponding increase in safety.

148           This is not to say that weaknesses in our financial  
149 system don't exist; they obviously and clearly do. The  
150 failure of so many financial institutions and the ongoing  
151 problem of foreclosures on mortgages some borrowers never  
152 should have taken out are evidence of that, and if the  
153 bailout of banks and financial firms really were necessary to  
154 save the financial system, something clearly needs to be done  
155 to address the systematic risk.

156           Additionally, fraud and deception by both lenders and  
157 borrowers in the mortgage market ran rampant. The FBI  
158 reported an increase in fraud by more than 400 percent since  
159 2005. Few people question anything was wrong in the market  
160 until home prices started plummeting and borrowers began  
161 defaulting. If uniformity in the enforcement of existing  
162 laws can address these problems, I would support that. Apart  
163 from the lack of systemic risk regulation to prevent future  
164 financial collapses required in the taxpayer bailout, I am  
165 still trying to understand what holes exist in the FTC's  
166 consumer protection authority and to what extent the  
167 government contributed to the crisis with its intervention in  
168 housing policy. I am far from convinced that the market  
169 problems require the creation of a new federal regular as  
170 contemplated by the Administration's proposal.

171           Fannie Mae and Freddie Mac are under government control

172 in part because they did exactly what Congress and the  
173 government wanted: extend home ownership to as many people  
174 as possible under the watch of the federal regulators.  
175 Fannie and Freddie along with the federal housing agencies  
176 and programs were encouraged to extend credit, and when they  
177 did, their shareholders played the price for failing. To  
178 accomplish the policy goal of extending home ownership to as  
179 many people as possible, changes in lending standards had to  
180 occur. The lowering of lending standards meant more  
181 borrowers qualified for loans they couldn't afford. My point  
182 is that laws on the books didn't stop people from taking out  
183 risky mortgages, either in spite of or because of rapidly  
184 increasing home prices, nor has it stopped regulators and law  
185 enforcement from prosecuting those who we now know committed  
186 fraud and broke the law.

187       While many experts believe that the banking regulators  
188 performed their duties inadequately, I will leave that to the  
189 Financial Services Committee to decide. But with regard to  
190 the FTC, it seems to me that we are throwing out the baby  
191 with the bathwater by stripping the authority over consumer  
192 protection for financial products and services from the one  
193 agency that has performed well. If we agree we need  
194 legislation, we should take the approach of legislating with  
195 a scalpel rather than with a bulldozer.

196           With that said, I have two primary concerns with this  
197 proposal. First, it creates a new federal entity with an  
198 enormous scope of authority. The proposal grants sweeping  
199 authority to a new agency over financial products that would  
200 cover every sector of the economy. As I understand it, the  
201 draft legislation would touch everyone from a certified  
202 public accountant to a realtor and subject them to a new tax  
203 to fund the agency.

204           Second, I am concerned about transferring functions from  
205 the FTC to a new agency without any evidence that it is  
206 necessary or that it will be as effective as a regulator as  
207 the FTC is. By removing the FTC's authority, we could lose  
208 the FTC's unique expertise in balancing consumer protection  
209 and competition.

210           Finally, the legislation contains several new broad  
211 authorities for the FTC regarding rulemaking authority and  
212 civil penalty authority. I have previously disagreed with  
213 these and do not need to repeat them at this time. However,  
214 I do have some questions of the witnesses regarding these  
215 provisions and I will ask them when they are appropriate.

216           I want to welcome the members to the panel as well and  
217 yield back, Mr. Chairman.

218           [The prepared statement of Mr. Radanovich follows:]

219 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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220           Mr. {Rush.} The Chair thanks the gentleman. The  
221 chairman of the full committee is recognized for purposes of  
222 opening statement for 5 minutes.

223           The {Chairman.} Thank you very much. I want to thank  
224 you, Mr. Chairman, for holding this important hearing.

225           Last year, as chairman of the House Oversight Committee,  
226 I held several hearings examining the causes of the financial  
227 crisis. Those hearings revealed a government regulatory  
228 structure that was unwilling and unable to meet the  
229 complexities of the modern economy. We found regulatory  
230 agencies that had fully abdicated their authority over banks  
231 and had done little or nothing to curb abusive practices like  
232 predatory lending. The prevailing attitude was that the  
233 market always knew best. Federal regulators became enablers  
234 rather than enforcers.

235           The Obama Administration has developed an ambitious plan  
236 to address these failures and to strength accountability and  
237 oversight in the financial sector. Today's hearing will take  
238 a close look at one piece of that plan, the proposal to  
239 create a single agency responsible for protecting consumers  
240 of financial products. A new approach is clearly warranted.  
241 The banking agencies have shown themselves to be unwilling to  
242 put the interests of consumers ahead of the profit interests

243 of the banks they regulate and the structure and division of  
244 responsibilities among these agencies has led to a regulatory  
245 race to the bottom. The Federal Trade Commission has taken  
246 steps to protect consumers but its jurisdiction is limited  
247 and it has been hampered by a slow and burdensome rulemaking  
248 process.

249 I am pleased that this subcommittee is holding today's  
250 hearing and examining the Administration's proposal  
251 carefully. There are two areas of which attention and focus  
252 from this committee are particularly needed. First, the new  
253 agency must be structured to avoid the failures of the past.  
254 It only makes sense to create a new agency if that new agency  
255 will become a strong, authoritative voice for consumers. And  
256 second, we must ensure that the Federal Trade Commission is  
257 strengthened, not weakened, by any changes. Unlike the  
258 banking agencies, FTC has consumer protection as its core  
259 mission.

260 In recent months, FTC has taken great strides to protect  
261 consumers of financial products, bringing enforcement actions  
262 against fraudulent debt settlement companies and writing new  
263 rules governing mortgages. The Administration's proposal  
264 would give most of the FTC's authority over financial  
265 practices and some of FTC's authority over privacy to the new  
266 agency. At the same time, the Administration proposes

267 improving FTC's rulemaking authority and enforcement  
268 capabilities. It is not clear what impact these proposals  
269 would have on FTC or its ability to perform its consumer  
270 protection mission. As we build a new structure for  
271 protecting consumers of financial products, it is our  
272 responsibility to ensure that we do not weaken the agency  
273 currently responsible for consumer protections in this and  
274 many other areas.

275           Once again, I thank Chairman Rush for holding this  
276 hearing. I welcome our witnesses to the committee and look  
277 forward to their testimony.

278           [The prepared statement of Mr. Waxman follows:]

279 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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280           Mr. {Rush.} The Chair thanks the chairman of the full  
281 committee, and now the Chair recognizes the gentleman from  
282 Florida, Mr. Stearns, for 2 minutes for the purposes of  
283 opening statement.

284           Mr. {Stearns.} Good morning, and thank you, Mr.  
285 Chairman.

286           This is a very important hearing. It is important for  
287 us as members of this subcommittee, and Mr. Chairman, in  
288 terms of our jurisdiction and what the implications are for  
289 jurisdiction in the future. The Administration's newly  
290 proposed CFPA, or the Consumer Financial Protection Agency,  
291 is relevant. It is an idea that a lot of us have mixed  
292 reactions. It has implications for our subcommittee.  
293 Although this is only one component of the Administration's  
294 broad-reaching financial regulatory reform proposal, it  
295 certainly is an important part of that overall program and it  
296 needs detailed examination.

297           We must carefully consider the long-term effects that  
298 this will have on the Federal Trade Commission, the consumers  
299 it is charged with protecting and on industry. Currently,  
300 the Federal Trade Commission has broad authority to protect  
301 consumers from unfair and deceptive practices in the credit  
302 and debt areas, and the FTC has notably been an effective and

303 reliable agency in terms of consumer protection. We have  
304 seen it in this subcommittee. However, this new agency, the  
305 CFPA, proposal strips the Federal Trade Commission of  
306 virtually all of its consumer protection authorities  
307 pertaining to financial practices and even some of its  
308 privacy protection authority. So, Mr. Chairman, I think that  
309 has to be a concern.

310         The proposal compensates for this shifting of authority  
311 by granting the Federal Trade Commission streamlined  
312 Administrative Procedures Act, APA, rulemaking authority and  
313 the ability to seek civil penalties against unfair and  
314 deceptive practices. But this is a term of which there is no  
315 clear definition as well as making it unlawful to ``aid and  
316 abet'' in deceptive acts. So due to the shifting of power  
317 and the potential economic consequences of businesses, we  
318 must ensure that effective stakeholders have a voice at the  
319 table but ultimately we need to be sure that the CFPA, the  
320 new agency, will be an agency designed to do what is in the  
321 best interests of the consumers and not what is in the best  
322 interest of the bureaucrats who run it.

323         One other concern I would have, Mr. Chairman, with the  
324 APA is it has 180 days for consideration. Is this sufficient  
325 time under the Magnuson-Moss Act rulemaking requirements  
326 included a public hearing and so, Mr. Chairman, perhaps as

327 this bill moves along we might want to include some kind of  
328 public hearing as well as this 180 days of consideration.

329 With that, I yield back the balance of my time.

330 [The prepared statement of Mr. Stearns follows:]

331 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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332           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
333 now recognizes the gentleman from Michigan, the chairman  
334 emeritus of the full committee, my friend, Mr. John Dingell,  
335 for 5 minutes for opening statement.

336           Mr. {Dingell.} Mr. Chairman, I thank you, and I commend  
337 you for this hearing. It is a very important one. It  
338 follows on a series of events which began with a raid on this  
339 committee by other committees and by the banking industry and  
340 by repeal of Glass-Steagall, which removed all the penalties  
341 and prohibitions against many of the illegal activities which  
342 brought us to the current lowest state in which we find  
343 ourselves financially and economically. At the Treasury  
344 Department, there was an office still in being called the  
345 Controller of the Currency, who pushed to totally deregulate  
346 banks and to unlearn the lessons which we learned during the  
347 Depression and to permit the abuses which the Pecora  
348 Commission found to be a problem, things which brought about  
349 the 1929 crash, and lo and behold, the failure to learn those  
350 lessons or to preserve the protections which the Congress and  
351 the President in the 1930s put into place led to the economic  
352 collapse which occurred in the United States in the last  
353 calendar year and this calendar year.

354           So the questions that we will be concerned with are

355 going to be, are consumers protected, is the Federal Trade  
356 Commission able to continue doing the work that it does to  
357 protect consumers, and this committee is going to concern  
358 ourselves this morning with these issues and means by which  
359 to ensure improved consumer protections continue to exist  
360 with regard to financial products and services and to see to  
361 it that the Federal Trade Commission is able to carry out the  
362 responsibilities which in a rather contemptible fashion were  
363 disregarded by the SEC and also by the Controller of the  
364 Currency.

365         Now, we need to know if our concerns here and the pause  
366 which it gives us occurs in part because of a transfer of  
367 existing authority from the Federal Trade Commission to a  
368 newly minted Consumer Financial Protection Agency, an agency  
369 whose behavior we don't know but an agency which is going to  
370 probably be composed of many of the goodhearted people who  
371 have brought us to this curious and unfortunate state of  
372 events. I will be truthful: I have significant concerns  
373 about these plans and I will be intending to engage today's  
374 witnesses in a frankly discussion about their merits. The  
375 Administration, which has no fault in the events of the  
376 deregulation and the collapse of the American economy last  
377 year, envisions consolidating all consumer protection  
378 functions related to financial products including rulemaking,

379 supervision, examination and enforcement under the aegis of  
380 the new CFPA, which would receive sole rulemaking enforcement  
381 authority over consumer financial protection statutes such as  
382 the Truth in Lending Act. At first glance, this strikes me  
383 as a de jure and possible unwarranted reassignment of FTC's  
384 consumer protection authorities in the financial services  
385 area. I will be looking to see whether this is so and  
386 whether in fact is a good thing or can be justified by the  
387 Administration.

388 While a comparatively small agency, it is to be observed  
389 that FTC has some superb work in protecting consumers, and in  
390 this the country would benefit not from a diminished mandate  
391 to that agency but rather to additional statutory authority,  
392 personnel and funding. Consequently, I have more than a  
393 modest degree of skepticism regarding the Administration's  
394 proposal. In brief, I wish for our witnesses to elucidate  
395 upon several matters associated with the CFPA proposal.

396 First, if CFPA were mandated under law, what authorities  
397 would be left to FTC and why would that occur. Second, what  
398 latitude would FTC have in enforcing consumer protection  
399 statutes as they relate to financial services, and what  
400 consumer protection statutes would be denigrated or  
401 dissipated under this proposal. Third, how would one  
402 characterize the level of interagency cooperation in the

403 drafting of the Administration's proposal. Financially, if  
404 CFPA receives its proposed mandate, what will become of this  
405 committee's jurisdiction over consumer protection as  
406 designated under rule 10 of the House of Representatives? I  
407 will welcome the witnesses' responses to these and other  
408 questions in order to properly establish an adequate record  
409 for additional action by the Congress if such is deemed  
410 necessary.

411 I would ask at this time that I have unanimous consent  
412 to keep the record open to submit a list of questions to the  
413 witnesses today and to have those responses and the questions  
414 inserted into the record.

415 I want to commend you, Mr. Chairman, for your courtesy  
416 and foresight in this hearing. I would conclude by a  
417 personal note in welcoming Dr. Stephen Calkins, associate  
418 vice president for academic personnel and professor of law at  
419 Wayne State University in my home State of Michigan. His  
420 testimony has been invaluable to my understanding of this  
421 matter and I look forward to his participation in the  
422 continuing debate on consumer financial protection, and I  
423 note, Mr. Chairman, that my wife is a member of the Board of  
424 Governors of that great institution, which gives me a  
425 particularly warm feeling about it, and again, Mr. Chairman,  
426 I urge you and my colleagues to be most diligent, most

427 cautious, most careful and most dutifully suspicious of the  
428 events that we inquire into today. Thank you.

429 [The prepared statement of Mr. Dingell follows:]

430 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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431           Mr. {Rush.} The Chair thanks the chairman emeritus.  
432 The Chair wants to put before the committee the UC request,  
433 and hearing no objection, so ordered, the UC request by the  
434 chairman emeritus. And the Chair also wants to take a moment  
435 of personal privilege to celebrate the chairman emeritus's  
436 birthday and to wish him a happy birthday, so we want you to  
437 know that we all wish you a very happy birthday and many,  
438 many more.

439           Mr. {Dingell.} Mr. Chairman, I thank you for your kind  
440 observations. At 83, a fellow is a little more careful about  
441 celebrating his birthdays. The good news is, I am  
442 celebrating my 83rd birthday. The bad news is that I am 83.  
443 I thank you, Mr. Chairman, for your courtesy and I thank my  
444 friends for their kindness and their courtesy.

445           Mr. {Rush.} Thank you. The Chair now recognizes the  
446 gentleman from Kentucky, Mr. Whitfield, for 2 minutes for  
447 opening statement. Excuse me. I didn't see Mr. Barton  
448 there. He just walked in? Okay. Mr. Barton is recognized.

449           Mr. {Barton.} Well, you can go to Mr. Whitfield. He  
450 was here before me. I am fine with going to Ed and then come  
451 back to me after the next--

452           Mr. {Rush.} You all worked that out then. Okay. Mr.  
453 Whitfield.

454 Mr. {Whitfield.} We are all very polite today so thank  
455 you very much.

456 Mr. Chairman, I want to thank you also for holding yet  
457 another important hearing examining the ongoing financial  
458 crisis and ways we can help our constituents get through  
459 these difficult times and mitigate future problems.  
460 Secretary Geithner said that this new Consumer Financial  
461 Protection Agency would have only one mission, and that is,  
462 to protect consumers. It is also my understanding that this  
463 proposal would eliminate the consumers protections at the  
464 FDIC, the Federal Reserve Board, the Controller of the  
465 Currency, and the impact on the FTC, perhaps we should  
466 explore expanding the authority of the FTC.

467 Another problem that concerns me about the proposed  
468 legislation is that there is no federal preemption of any  
469 State law that is more stringent than the federal law, and  
470 anyone that has gone through a mortgage process and when they  
471 hand you the 45 pages of documents, you are going to find  
472 yourself getting more documents if you have these conflicting  
473 State laws on these consumer issues, and I think that is a  
474 real concern as well.

475 But the problem that I have most of it, how much will  
476 this cost? Every day we pick up another article in a  
477 newspaper, growing national debt may be next economic crisis.

478 Unless we demonstrate a strong commitment to fiscal  
479 sustainability in the longer term, we will have neither  
480 financial stability nor healthy economic growth. Interest  
481 payments on the debt alone last year were \$452 billion. This  
482 year it is expected to be \$470 billion, the largest federal  
483 spending category after Medicare, Medicaid, Social Security  
484 and defense. Another article today, economist declares train  
485 wreck because out-of-control federal budget deficits. The  
486 economist talks about the real question is, how much damage  
487 will greater indebtedness do to economic growth and  
488 government's credit worthiness. Those things may transcend  
489 what limited additional protection consumers get from this  
490 legislation. So I think we need to move cautiously, find out  
491 how much costs are we talking about here and what will the  
492 benefits be. Thank you, Mr. Chairman.

493 [The prepared statement of Mr. Whitfield follows:]

494 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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495           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
496 now recognizes the vice chair of the subcommittee, my friend  
497 from Illinois, Congresswoman Schakowsky, for 2 minutes.

498           Ms. {Schakowsky.} Thank you very much, Mr. Chairman.

499           I just came from a roundtable on women's financial  
500 literacy, clearly an important issue, but what we have found  
501 is how daunting the environment has been for anyone who even  
502 is pretty literate in financial issues. We have seen the  
503 systematic production and marketing and sales of countless  
504 financial products including mortgages that were extremely  
505 risky, even downright dangerous for borrowers, and often it  
506 was pretty hard to figure out what was what. For years bank  
507 and non-bank lenders operated with too little oversight by  
508 government regulators, and when regulation was taking place  
509 there was little focus on whether the financial products and  
510 services sold were safe for consumers.

511           The Federal Trade Commission, and I am so glad its  
512 chairman it is here today, is essentially the only agency  
513 with a mandate to prioritize consumer safer and protect  
514 Americans from unfair or deceptive practices, and I commend  
515 Chairman Leibowitz for his renewed commitment to consumers'  
516 rights in the areas of credit and debt. However, as has been  
517 mentioned, the FTC's jurisdiction is limited to non-bank

518 activities. The agency has been hampered for decades by  
519 cumbersome rulemaking authority and in recent years its  
520 actions were limited by the previous Administration's general  
521 contempt for oversight of the private sector.

522 Overall, current regulations aren't sufficient and they  
523 aren't working. We can't maintain a system which neglects  
524 consumer protection for the bulk of the financial service  
525 industry. Americans deserve access to honest information  
526 that will help them make educated decisions on mortgages,  
527 credit cards and bank accounts. Dangerous financial products  
528 should be kept off the markets and advertisers must be held  
529 accountable for their claims. We have to move forward with  
530 these goals, and I look forward to hearing today's testimony  
531 on how a consumer financial protection agency might achieve  
532 them.

533 Thank you, and I yield back.

534 [The prepared statement of Ms. Schakowsky follows:]

535 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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536           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
537 now recognizes the ranking member for the full committee, the  
538 humble and honorable Mr. Barton from Texas, for 5 minutes.

539           Mr. {Barton.} Well, thank you, Mr. Chairman. Before I  
540 give my opening statement, let me amplify what you said about  
541 the chairman emeritus, Mr. Dingell. Some people get 1 year  
542 of experience and that is it. In his case, you could say  
543 that would be 1 year 83 times. But in Mr. Dingell's case,  
544 each year he adds it to the base where it compounds and  
545 amplifies by orders of magnitude. I think you can honestly  
546 say that our friend and chairman emeritus is the most  
547 influential Member of Congress in our lifetime and it is such  
548 a privilege to have him on our committee and it is really fun  
549 when he is on my side. It is not so much when he is not on  
550 my side, but even then I learn from him. So the heartiest  
551 congratulations from the minority to a true gentleman of the  
552 House, the conveyor and the protector of institutional  
553 viability for this body. We wish you many, many more.

554           With regards to this hearing, Mr. Chairman, I would  
555 bring the members' attention to today's Wall Street editorial  
556 op-ed piece about the particular agency. It is entitled,  
557 ``Let us treat borrowers like adults.'' It calls into  
558 question whether there needs to be a super consumer financial

559 products protection agency which the legislation we are  
560 looking at today would empower. We accept the intention as  
561 being honorable but people like myself have extremely strong  
562 reservations about the implementation of such an agency.  
563 What would the legislation actually accomplish that some  
564 federal agency isn't already attempting to do? We would like  
565 to know what is gone so wrong with our existing protection  
566 agencies that we deem it necessary to create another brand-  
567 new agency.

568 I am a bit taken back by the breadth of the proposed  
569 coverage. This legislation, of course, relates a great deal  
570 to banking and other financial institutions over which this  
571 committee unfortunately has no jurisdiction, at least not  
572 now. One never knows about the future. But it reaches  
573 beyond that. It could reach accountants, auditors, gift  
574 cards, all other types of institutions and entrepreneurial  
575 activities. It doesn't fall strictly within our jurisdiction  
576 because it applies to banks but it is still of concern.  
577 There seems to me to be an exception that swallows the  
578 preemption rule. According to the proposal, if I understand  
579 it correctly, State consumer laws of general application and  
580 those State laws enacted pursuant to federal law intended to,  
581 and I quote, ``exceed or supplement federal law'' will now  
582 apply to any national bank. The Harvard professor who is

583 credited with inspiring this all-inclusive consumer financial  
584 protection agency described the need for it in her article,  
585 ``Unsafe at any Rate.'' Professor Warren wrote that we need  
586 this agency in order to reverse industry practices that make  
587 it difficult for consumers to understand what they are  
588 getting in a financial product world, for example, 30 pages  
589 of contract terms for a simple credit card or 50 lines of  
590 convoluted and excessive text to explain all required  
591 disclosures. I understand that. I just cosigned for my  
592 stepdaughter's new condo in Austin, Texas, and it took an  
593 hour of signing various documents, some of which were  
594 documents I signed certifying that I just signed the previous  
595 document. So I understand the need for simplicity and the  
596 need for perhaps a review of some of the existing documents  
597 that we are asked to sign but I am not sure that this agency  
598 gets there.

599       This bill would assume that businesses and their  
600 customers are eager to pay more for such protection, maybe  
601 even a lot more, because there are no limits on the burdens  
602 to either. There are all kinds of reports this new agency  
603 could mandate, regular and special requests, but there are no  
604 limits to how often the agency could require those reports,  
605 and there is no mandate to consider the burden placed on the  
606 businesses to product these reports. The preemption

607 provisions really convey no preemption at all. In one  
608 paragraph, the proposal mandates all State laws are preempted  
609 but only to the extent that they conflict. In the next, the  
610 legislation permits a State law to supersede federal law if  
611 the new agency determines the State law is more protective.  
612 That seems to be almost in direct opposition to the prior  
613 paragraph. What if a company is compliant with the federal  
614 law, but while the agency hasn't yet determined whether a  
615 state law is more protective, the attorney general believes  
616 it is and brings action against the business for a violation,  
617 is that company liable for its violations of State law  
618 without any notice? This would seem to exacerbate the  
619 decisions but rather by making certain that the products  
620 themselves don't become the source of the trouble.

621 I see my time is about to expire, Mr. Chairman. I have  
622 another page and a half of written commentary. Simply put me  
623 down as extremely doubtful about the positive impact of this  
624 legislation. I think we would be better served on this  
625 committee and your subcommittee to go in and reform existing  
626 authority, clarify the differences between existing  
627 regulatory agencies, and if there is something that has  
628 really fallen through the cracks, try to figure out one of  
629 the existing agencies like the FTC and see if we couldn't  
630 give them explicit authority in that area that needs

631 reinforcing.

632 With that, Mr. Chairman, I yield back.

633 [The prepared statement of Mr. Barton follows:]

634 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
635           Mr. {Rush.} The gentleman from Texas, Mr. Green, for 2  
636 minutes for opening statement.

637           Mr. {Green.} Mr. Chairman, thank you for holding this  
638 timely hearing to examine the Administration proposal to  
639 create a new agency that would consolidate and be responsible  
640 for consumer protection with regard to financial products and  
641 services. After the events of last year, there should be no  
642 doubt that Congress needs to act to further protect consumers  
643 with regard to financial regulation.

644           This subcommittee has already taken steps to address  
645 this by moving forward legislation, H.R. 2309, the Consumer  
646 Credit and Debt Protection Act, to give the Federal Trade  
647 Commission additional powers to better address consumer  
648 credit and debt issues. It was widely agreed in the hearings  
649 that the legislation with the added authority H.R. 2309 would  
650 provide the FTC, it should take a broader and more effective  
651 role in consumer financial protection.

652           With regard to the new tools this proposal would give  
653 the FTC, the Administration has addressed many of the  
654 problems that have hamstrung the Commission from taking steps  
655 to implement additional financial consumer protections  
656 equally with regard to the FTC rulemaking process. Magnuson-  
657 Moss procedures are lengthy and cumbersome and can prevent

658 the FTC from taking action on widespread problems in a timely  
659 and efficient manner, so I strongly support the provision in  
660 the Administration proposal to grant the Commission authority  
661 to conduct rulemaking under the Administrative Procedures  
662 Act. The proposal also follows 2309 granting the FTC  
663 authority to seek civil penalties for any violations of  
664 section 5 of the FTC Act which would provide a great  
665 deterrent to would-be actors.

666 The portions of the proposal I am less certain about,  
667 however, would move nearly all the FTC's consumer protection  
668 authority for financial practices to the newly created  
669 Consumer Financial Protection Agency. I do not disagree that  
670 additional law enforcement is a good thing for the consumers.  
671 My main concern is, we are adding a new enforcement regime  
672 that is siphoning off authority from our Nation's primary  
673 consumer protection agency when that agency is more than  
674 capable of doing the job given the necessary tools and  
675 funding. Many of the consumer protection functions the new  
676 agency would be responsible for would be moved from other  
677 agencies and departments that do not have consumer protection  
678 as their primary function. However, this is not the case  
679 with the FTC.

680 I look forward to hearing from our witnesses on why the  
681 Administration believes the FTC should not continue these

682 roles, and again, Mr. Chairman, I thank you for the  
683 timeliness of the hearing. I look forward to exploring with  
684 regard to this bill and look forward to the best paths to  
685 protect consumers.

686 [The prepared statement of Mr. Green follows:]

687 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
688           Mr. {Rush.} The Chair thanks the gentleman. Mr. Pitts  
689 is recognized for 2 minutes for the purposes of opening  
690 statement.

691           Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for  
692 holding this important hearing on the Administration's  
693 proposal to create a new agency responsible for consumer  
694 protection.

695           I think we all agree that we need strong consumer  
696 protection measures. The recent housing and credit crisis  
697 our country has faced makes this abundantly clear. We must  
698 do this prudently, though, avoiding the mistakes of the past.  
699 It seems, however, the proposal we have before us creates yet  
700 another divided system of regulation, making room for gaps in  
701 oversight. We saw the effects of divided regulation at  
702 Fannie Mae and Freddie Mac where two regulators meant less  
703 regulation, not more.

704           The proposed new agency would also have the authority to  
705 set prices rather than allowing costs to be determined by  
706 consumers in the marketplace. Everything from ATM fees,  
707 check overdraft fees and late payment fees for credit cards  
708 would fall under the purview of this new agency. Instead of  
709 adding layers of bureaucracy to financial regulation and  
710 intervening in the marketplace, things we have tried in the

711 past, we should work to bring transparency and consumer  
712 choice to our markets.

713         Consumer financial protection is a worthy goal.  
714 Unfortunately, increasing the layers of bureaucracy in the  
715 financial industry has not protected consumers in the past  
716 and I see no reason why it will this time around. Again, we  
717 all desire effective and efficient enforcement of consumer  
718 protection laws. It is my hope that this committee moves  
719 forward in a wise and careful manner with increased  
720 transparency and consumer choice as their primary goals.

721         I look forward to hearing from our distinguished  
722 witnesses. Thank you, and I yield back.

723         [The prepared statement of Mr. Pitts follows:]

724 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
725           Mr. {Rush.} The Chair now recognizes the gentleman from  
726 Texas, Mr. Gonzalez, for 2 minutes for the purposes of  
727 opening statement.

728           Mr. {Gonzalez.} I will waive opening.

729           [The prepared statement of Mr. Gonzalez follows:]

730 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
731           Mr. {Rush.} The Chair now recognizes the gentlelady  
732 from California, Ms. Matsui, for 2 minutes.

733           Mrs. {Matsui.} Thank you, Mr. Chairman, and thank you  
734 for calling today's hearing. I applaud your leadership in  
735 addressing this important issue. I would also like to thank  
736 the witnesses for joining us today.

737           In today's economic recession, many families in home  
738 district of Sacramento are struggling to make ends meet. I  
739 have heard countless stories of people struggling to keep  
740 their homes, their jobs and their way of life. California  
741 and in particular my constituents in Sacramento have been  
742 greatly impacted by the economic crisis. Many of my  
743 constituents were and continue to be victims of predatory  
744 home loan lending, unfair credit card practices, payday loans  
745 and other forms of unscrupulous business practices.

746           Just recently, the President signed into law credit card  
747 reform legislation to regulate unfair credit card practices.  
748 The ink is hardly dry. The companies are already trying to  
749 find ways to arbitrarily raise credit card interest rates and  
750 fees on consumers. Struggling homeowners are also seeking  
751 assistance to keep their homes but continue to be tricked  
752 into contacting scam artists who just so happen to be the  
753 same crowd that initially steered homeowners into subprime

754 loans. This is also occurring as job losses mount,  
755 foreclosures continue to rise and Americans are increasingly  
756 turning to other forms of credit to make ends meet. It is  
757 clear that consumers are not being properly protected from  
758 unfair and deceptive financial practices. When is enough  
759 enough?

760 The President's proposal to create a new financial  
761 consumer protection agency could be the answer that American  
762 consumers are seeking but it must be done in a thoughtful way  
763 to ensure consumers are protected from fraudulent activity.  
764 We must make sure any new agency has real authority and just  
765 as much bite as it has bark. Consumers need to feel  
766 protected and have confidence in our financial system. Right  
767 now it is clear that they do not.

768 I thank you, Mr. Chairman, for holding this important  
769 hearing today and I look forward to working with you and the  
770 committee on this issue moving forward. I yield back the  
771 balance of my time.

772 [The prepared statement of Mrs. Matsui follows:]

773 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
774           Mr. {Rush.} The Chair thanks the gentlelady. The Chair  
775 now recognizes the gentleman from Nebraska, Mr. Terry, for 2  
776 minutes.

777           Mr. {Terry.} Thank you, Mr. Chairman. I will try to be  
778 quick.

779           I think the fundamental premise of this bill is that the  
780 FTC, the entity in charge of protecting consumers, has  
781 evidently been an abysmal failure. I don't agree with that  
782 premise. I think the issue should be, how do we make sure  
783 that the FTC is properly empowered to protect consumers and  
784 that should be what we are working for as opposed to  
785 stripping away whatever jurisdiction they have over  
786 protecting consumers and creating some monolithic new  
787 government agency in replace of what already exists.

788           So I am very skeptical of this process or this bill and  
789 I look forward to hearing from our witnesses so we can  
790 determine if FTC is capable of doing what they have been  
791 doing and whether or not this bill is even necessary. So I  
792 yield back.

793           [The prepared statement of Mr. Terry follows:]

794 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
795           Mr. {Rush.} The Chair recognizes the gentlelady from  
796 Ohio, Ms. Sutton, for 2 minutes.

797           Ms. {Sutton.} Thank you, Chairman Rush, and thank you  
798 for holding today's very important hearing on the newly  
799 proposed Consumer Financial Protection Agency.

800           As Elizabeth Warren aptly stated in describing the need  
801 for an agency like this, ``It is impossible to buy a toaster  
802 that has a one in five chance of bursting into flames and  
803 burning down your house but it is possible to refinance an  
804 existing home with a mortgage that has the same one in five  
805 chance of putting the family out on the street, and the  
806 mortgage won't even carry a disclosure of that fact to the  
807 homeowner.'' Unfortunately, many people in my district who  
808 were preyed upon by so many unscrupulous companies, people  
809 know this all too well.

810           The well-known and tragic case of one of my  
811 constituents, Addie Polk, is a shocking example of a  
812 financial product that not only caused someone to almost be  
813 homeless but caused someone to attempt to take their own  
814 life. At the age of 86, Ms. Polk was given a new 30-year  
815 mortgage on a house she already owned and for an amount  
816 greater than the value of her house. Let me say that again.  
817 At the age of 86, Ms. Polk was given a new 30-year mortgage

818 on a house she already owned and for an amount greater than  
819 the value of her house. Less than 4 years later, Ms. Polk,  
820 probably of no surprise to the person who sold the mortgage  
821 to her, began to have trouble making her payments and her  
822 house fell into foreclosure. Feeling trapped and without  
823 options, Ms. Polk shot herself rather than lose the house she  
824 lived in for 40 years. No one ever should be in Ms. Polk's  
825 position. Now is our chance in honor of Ms. Polk and  
826 countless other Americans who have found themselves the  
827 unfortunate owners of financial products with indecipherable  
828 terms, smoke-and-mirror-like provisions and gotcha fees to  
829 truly support strong consumer protection.

830 I look forward to hearing from the panel about how we  
831 make sure we provide the needed protection, and I yield back.

832 [The prepared statement of Ms. Sutton follows:]

833 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
834           Mr. {Rush.} The Chair thanks the gentlelady. The Chair  
835 now recognizes the gentleman from Georgia, Dr. Gingrey, for 2  
836 minutes.

837           Mr. {Gingrey.} Mr. Chairman, I thank you, and I thank  
838 you for calling the hearing and welcome back Jon Leibowitz  
839 and Honorable Barr, the assistant secretary of financial  
840 institutions.

841           I associate my remarks really with what the gentleman  
842 from Nebraska on our side just said, Mr. Terry. Here we are  
843 creating a whole new federal government bureaucracy when we  
844 have one already that is doing a heck of a job as it  
845 certainly seems to me and I think most members on this panel.  
846 So the question becomes, you know, why, to use a medical  
847 expression, throw the baby out with the bathwater if the FTC  
848 is doing the right and proper job and the right and proper  
849 oversight and all of a sudden we come in and spend more  
850 federal dollars, as the gentleman from Kentucky was talking  
851 about earlier, by creating a whole new federal bureaucracy.  
852 So again, I am happy to hear from the witnesses and maybe  
853 they can explain that. Hopefully they will explain that.

854           But I think this is something that we need to look at  
855 very, very carefully as we just continue to create one more  
856 or consider creating one more government bureaucracy at a

857 time when we are running billions of dollars of deficit year  
858 after year after year. And with that, Mr. Chairman, I will  
859 yield back.

860 [The prepared statement of Mr. Gingrey follows:]

861 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
862 Mr. {Rush.} The Chair recognizes the gentlelady from  
863 Florida, Ms. Castor, for 2 minutes.

864 Ms. {Castor.} Thank you, Chairman Rush, for calling  
865 this critically important hearing on the Obama  
866 Administration's proposal for a Consumer Financial Protection  
867 Agency.

868 Last Congress, in the wake of widespread concerns about  
869 toxic lead in paint on children's toys and other toxic  
870 consumer products, this subcommittee originated legislation  
871 to reorganize and strength the Consumer Product Safety  
872 Commission, and last year as the economy plunged, there were  
873 some analogous terms being used to describe some of the  
874 mortgage and investment products. We heard about toxic  
875 assets, poisoning banks balance sheets and toxic mortgage  
876 products, leaving millions of our neighbors facing  
877 foreclosure.

878 Predatory lenders wreaked havoc on my community and the  
879 subsequent significant decline in property values has  
880 affected millions of folks in my home State, and  
881 unfortunately consumers could not count on State oversight of  
882 these mortgage brokers. In my home State, they just turned a  
883 blind eye and I recommend the Miami Herald exposé that  
884 documented how many convicted felons entered into the

885 subprime mortgage loan marketing business.

886           So this financial crisis has taught us that in order to  
887 maintain a healthy economy, effective regulation must focus  
888 on protecting consumers from abusive, deceptive and unfair  
889 lending practices. The FTC has the enforcement authority to  
890 go after only non-depository lending institutions that deal  
891 unfairly with their borrowers but the abuses that led to the  
892 financial crisis spread deep into the banking system. So in  
893 light of the need for more-effective regulation of all  
894 lending institutions, depository and non-depository, the  
895 Obama Administration has rightly proposed a reorganization,  
896 and I think all of us can agree that regulation of financial  
897 institutions must be improved to better protect consumers.  
898 However, we must be aware not only of the impact of granting  
899 authority to a new Consumer Financial Protection Agency but  
900 also the consequences to consumers of the changes that have  
901 been proposed to the FTC. The Administration's proposal  
902 would reshape the FTC by shifting authority over consumer  
903 credit but also by streamlining its rulemaking process and  
904 allowing it to assess civil penalties on bad actors.

905           So I look forward to your testimony on what this new FTC  
906 might look like and how its ability to achieve its mandate of  
907 consumer protection will be affected. I yield back.

908           [The prepared statement of Ms. Castor follows:]

909 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
910           Mr. {Rush.} The Chair now recognizes the gentleman from  
911 Louisiana, Mr. Scalise, for 2 minutes.

912           Mr. {Scalise.} Thank you, Mr. Chairman. I want to  
913 thank you and the ranking member for having this hearing.

914           The Administration is proposing yet another new federal  
915 agency with vague, sweeping authority. We all know there  
916 have been bad actors in our financial system that took  
917 advantage of consumers and contributed to the current  
918 economic crisis. Unfortunately, many of the problems that  
919 brought on today's financial crisis are not even being  
920 addressed in this bill. The proposed legislation does not  
921 address the real bad actors in our financial systems, Fannie  
922 Mae and Freddie Mac and other institutions that engaged in  
923 subprime lending and relaxing their standards to encourage  
924 more people to take out loans they could not afford. Those  
925 warning signs were brought before Congress for years and yet  
926 many of the same people in this Administration and in the  
927 leadership in this Congress are the same people who opposed  
928 the very reforms that would have prevented this financial  
929 crisis from happening in the first place.

930           This proposed new agency represents yet another step in  
931 the federal government trying to run all aspects of our  
932 lives. The government is running banks and car companies

933 with disastrous results. The so-called stimulus bill, which  
934 spent \$787 billion of money we don't have, is now being  
935 recognized even by this Administration as a failure that  
936 didn't create any jobs that were promised. There are even  
937 some in this Administration floating the reckless idea of yet  
938 another massive spending bill since the last one didn't work.  
939 Scores of experts predict that this Administration's cap-and-  
940 trade energy tax will cost us millions of jobs while  
941 increasing electricity rates on all American families. We  
942 are debating a bill that proposes a government takeover of  
943 health care, which has been tried and failed in other  
944 countries to the point that sick people with the means in  
945 those countries come here to get their health care because  
946 government-run health care leads to rationing everywhere it  
947 has been tried. Now we have this bill to create a consumer  
948 czar. Enough is enough. Let us fix the problems that exist  
949 and make reforms to federal agencies that are causing these  
950 problems rather than adding yet another layer of government  
951 bureaucracy that simply covers up the root causes of the  
952 problem while punishing those who play by the rules.

953 I look forward to hearing the comments from today's  
954 panel and would like to hear how the Administration's plan  
955 impacts the FTC. In his testimony, Chairman Leibowitz speaks  
956 to the successes the FTC has had in protecting consumers in

957 financial matters, which begs the question why we need a new  
958 agency with all these sweeping new powers and spends more  
959 money that we don't have. I yield back.

960 [The prepared statement of Mr. Scalise follows:]

961 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
962           Mr. {Rush.}   The Chair now recognizes the gentlelady  
963 from Colorado, Ms. DeGette.

964           Ms. {DeGette.}   I will waive opening.

965           [The prepared statement of Ms. DeGette follows:]

966   \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
967           Mr. {Rush.} The Chair thanks the gentlelady. The Chair  
968 recognizes the gentleman from Ohio, Mr. Space, for 2 minutes.

969           Mr. {Space.} I will waive.

970           [The prepared statement of Mr. Space follows:]

971           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
972           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
973 recognizes now the gentleman from North Carolina, Mr.  
974 Butterfield, for 2 minutes.

975           Mr. {Butterfield.} Thank you, Chairman Rush, for  
976 holding this very important hearing and I especially want to  
977 thank the witnesses for their testimony today.

978           Mr. Chairman, I hope this hearing will provide an  
979 opportunity for the subcommittee to address some concerns  
980 that we have about the proposed agency, particularly the loss  
981 of jurisdiction on the part of the Federal Trade Commission.  
982 Now, my colleagues are right, Mr. Chairman, there are many  
983 actors to blame for the current state of our economy.  
984 Unscrupulous subprime mortgage lenders and speculators and  
985 the like have all contributed to the financial meltdown. Of  
986 deep concern and rightfully so is the regulatory patchwork of  
987 federal agencies charged with regulating all aspects of  
988 financial institutions. For example, depository institutions  
989 such as banks and credit unions are overseen by many  
990 different agencies. Conversely, all non-depository  
991 institutions are overseen by one agency, and that is the FTC.  
992 The FTC has done a good job, and I think we can agree all on  
993 that, at regulating these players and I am concerned that  
994 reducing FTC oversight as part of the creation of the

995 Consumer Financial Protection Agency may do more harm than  
996 good. While I am pleased that the Administration's proposal  
997 seeks to strengthen the FTC's rulemaking and enforcement  
998 abilities in areas unrelated to financial products, I believe  
999 that it is extremely important that the FTC maintain strong  
1000 non-depository institution oversight.

1001 The Administration's proposed agency would seek to  
1002 achieve four important objectives aimed at bolstering  
1003 consumer confidence in financial institutions and  
1004 transactions, and these objectives include ensuring consumer  
1005 education and understanding of these financial products,  
1006 better protecting consumers from unfair and deceptive  
1007 practices and discrimination, ensuring consumer financial  
1008 services operate fairly, making certain that underserved  
1009 communities like my district have increased access to  
1010 financial services. These are excellent objectives and I  
1011 strongly support the goals of the proposed agencies but I  
1012 want to be certain that the creation of a new regulatory  
1013 agency will not place undue and unnecessary strains and  
1014 burdens on existing federal regulatory framework that may  
1015 still be capable of meeting those same goals and objectives.

1016 And so, Mr. Chairman, this hearing today is vitally  
1017 important. I look forward to hearing the testimony of the  
1018 witnesses and I thank you for the time.

1019 [The prepared statement of Mr. Butterfield follows:]

1020 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
1021           Mr. {Rush.} The Chair thanks the gentleman. The Chair  
1022 sees no other members who have opening statements.

1023           Now it is my pleasure to introduce panel one. This is a  
1024 two-panel hearing, and panel one consists of the Hon. Michael  
1025 Barr, who is the assistant secretary for financial  
1026 institutions at the Department of Treasury. We want to  
1027 welcome Mr. Barr back to this committee once again. And also  
1028 joining him at the witness table is one who is very familiar  
1029 to this subcommittee, the Hon. Jon Leibowitz, who is the  
1030 chairman of the Federal Trade Commission, and Chairman  
1031 Leibowitz, we certainly welcome you back again to this  
1032 subcommittee. It is the practice of this subcommittee to  
1033 swear in the witnesses, so I would like each of you to stand  
1034 and raise your right hand.

1035           [Witnesses sworn.]

1036           Mr. {Rush.} Let the record reflect that the witnesses  
1037 have answered in the affirmative. Now we want to recognize  
1038 beginning with Mr. Barr the witnesses for an opening  
1039 statement. You have 5 minutes or thereabouts for your  
1040 opening statement.

|  
1041 ^TESTIMONY OF HON. MICHAEL BARR, ASSISTANT SECRETARY FOR  
1042 FINANCIAL INSTITUTIONS, DEPARTMENT OF THE TREASURY; AND HON.  
1043 JON LEIBOWITZ, CHAIRMAN, FEDERAL TRADE COMMISSION

|  
1044 ^TESTIMONY OF MICHAEL BARR

1045 } Mr. {Barr.} Thank you, Mr. Chairman, and thank you,  
1046 Ranking Member Radanovich for providing me with this  
1047 opportunity to testify about President Obama's proposal to  
1048 establish a new strong financial regulatory agency charged  
1049 with just one job: looking out for consumers across the  
1050 financial services landscape.

1051 As Secretary Geithner has said, protecting consumers is  
1052 important in its own right, and also central to safeguarding  
1053 our financial system as a whole. We must restore honesty and  
1054 integrity to our financial system. That is why President  
1055 Obama personally feels so strongly about creating this new  
1056 Consumer Financial Protection Agency.

1057 I understand the committee's concerns that have been  
1058 expressed today with respect to boundary issues,  
1059 jurisdictional issues and the role of the FTC. I think as we  
1060 work together on those issues, it is important to keep in  
1061 mind the central goal we all share: having one agency for

1062 one marketplace with one mission, protecting consumers. The  
1063 new agency will have the authority and the resources it needs  
1064 to set consistently high standards for banks and non-bank  
1065 financial providers alike, to put an end to regulatory  
1066 arbitrage, to put an end to unregulated corners of our  
1067 financial system that inevitably weaken standards across the  
1068 board. This agency will be accountable for its mission yet  
1069 independent. It will have a wide range of tools to promote  
1070 transparency, simplicity and fairness. It will act in a  
1071 balanced manner, considering costs as well as benefits, in a  
1072 way that protects consumers from abuse while ensuring their  
1073 access to innovative, responsible financial services. It  
1074 will be able to reduce regulatory burden while helping  
1075 consumers, for example, by creating one simple mortgage  
1076 disclosure form for all consumers to use. It will not set  
1077 prices for any service.

1078         The federal government has failed to date in its most  
1079 basic regulatory responsibility, utterly failed to protect  
1080 consumers. The deep financial crisis that we are still in,  
1081 let me emphasize, that we are still in today, revealed the  
1082 alarming failure of our existing regime to protect  
1083 responsible consumers and to keep the playing field level for  
1084 responsible providers. Instead of leadership and  
1085 accountability, we have had a fragmented system of regulation

1086 designed for failure. Bank and non-bank financial service  
1087 providers compete vigorously in the same consumer markets but  
1088 are subject to two different and uncoordinated federal  
1089 regimes, one based on examination and supervision, the other  
1090 on after-the-fact investigation and enforcement.

1091       Less-responsible actors are willing to gamble that the  
1092 FTC and the States lack the resources to detect and  
1093 investigate them. This puts enormous pressure too on banks,  
1094 thrifts and credit unions to lower their standards to compete  
1095 and on their regulators to let them, and no financial  
1096 provider should be forced to choose between keeping market  
1097 share and treating consumers fairly. This is precisely what  
1098 happened in the mortgage market. Independent mortgage  
1099 companies peddled risky mortgages in misleading ways to  
1100 borrowers who could not handle them. To compete, banks and  
1101 thrifts and their affiliates relaxed their standards on  
1102 underwriting and sales and their regulators were slow to act.  
1103 The consequences for homeowners were devastating and our  
1104 economy is still paying the price.

1105       Fragmented regulation facilitated abusive credit cards.  
1106 Tricks and traps enabled banks to advertise selectively low  
1107 annual percentage rates to grab market share and boost  
1108 income. Other banks could not compete if they offered fair  
1109 credit cards through transparent pricing and consumers ended

1110 up with retroactive rate hikes and unfair terms. The list  
1111 goes on and on. Credit unions and community banks with  
1112 straightforward credit products struggled to compete with  
1113 less-scrupulous providers who appeared to offer a good deal  
1114 and then pulled a switch on the consumer.

1115 Our federal agencies do not currently have the mission,  
1116 structures and authority suited to effective consumer  
1117 protection in consumer financial markets. The FTC has no  
1118 jurisdiction over banks and it does not have supervisory and  
1119 examination authority to detect and prevent problems before  
1120 they spread throughout the market.

1121 Mr. Chairman, I see that I will be significantly over my  
1122 time. Could I take several additional minutes?

1123 Mr. {Rush.} Yes, you are so approved.

1124 Mr. {Barr.} Thank you.

1125 Mr. {Rush.} You are on the ``thereabouts'' part of your  
1126 testimony.

1127 Mr. {Barr.} Thank you.

1128 Bank regulators have supervisory powers over banks but  
1129 their primary mission is to ensure that banks are safe and  
1130 sound and not to protect consumer. Consumer protection  
1131 supervision is never going to share the front seat with  
1132 safety and soundness. Tinkering with the consumer protection  
1133 mandates or authorities of our existing agencies cannot solve

1134 these structural problems. We need a structural solution.  
1135 We need one agency for one marketplace with one mission: to  
1136 protect consumers of financial products and services and the  
1137 authority to achieve that mission. That is the agency we are  
1138 proposing to create.

1139         The CFPA will have the sole mission of protecting  
1140 consumers. It will write rules, supervise institutions,  
1141 examine them and lead enforcement efforts for the whole  
1142 marketplace. The implications for our proposal for consumer  
1143 protection and competition are enormous. The proposal will  
1144 bring higher and more consistent standards, stronger, faster  
1145 responses to problems, the end of regulatory arbitrage, a  
1146 level playing field for all providers, and more-efficient  
1147 regulation. Our proposal gives the agency the power to  
1148 strengthen mortgage regulation across all lenders and  
1149 brokers. It can strengthen disclosure, make it easier for  
1150 consumers to choose simple products, prevent lenders from  
1151 paying yield spread premiums that pay brokers more if they  
1152 deliver loans with higher rates than consumers qualify for.  
1153 The agency would implement credit card protections and update  
1154 these protections as markets change, and it would set high  
1155 national standards for licensing, bonding, monitoring of all  
1156 non-bank financial service providers.

1157         Let me say the FTC is a good agency. The chairman and I

1158 are good friends. Our legislation does not affect the  
1159 jurisdiction of the FTC over the vast array of non-financial  
1160 markets and actually strengthens its ability to police those  
1161 markets. To increase the FTC's ability to protect consumers,  
1162 we propose that the FTC be able to adopt rules to prohibit  
1163 unfair or deceptive acts or practices with standard notice  
1164 and common rulemaking, to obtain civil penalties when  
1165 companies act in an unfair or deceptive way and to pursue  
1166 those who substantially aid and abet providers that commit  
1167 unfair or deceptive practices.

1168         The Administration also supports increased resources for  
1169 the FTC so that consumers can be better protected across all  
1170 markets. As for financial markets, the FTC would continue to  
1171 have authority under the FTC Act to pursue financial fraud  
1172 without delay including on foreclosure rescue and loan  
1173 modification scams. The FTC will retain authority for  
1174 writing rules under the Telemarketing Sales Act and  
1175 concurrent responsibility for enforcing them over financial  
1176 products and services, and the FTC would retain primary  
1177 authority in the area of data security for non-bank entities.  
1178 In addition, the FTC would have backstop authority to enforce  
1179 the same consumer credit statutes that it can enforce today.  
1180 Under that authority, the FTC, or frankly, a bank regulator,  
1181 could if it becomes aware of a possible law violation refer

1182 to the new agency, and if the new agency doesn't act, take  
1183 action itself. That same referral requirement will apply to  
1184 the bank regulators, and it is designed to ensure a  
1185 consistent federal approach to interpreting and enforcing our  
1186 consumer protection statutes.

1187 Finally, let me just say this. It is time to put  
1188 consumer protection responsibility in an agency with a  
1189 focused mission and comprehensive jurisdiction over all  
1190 financial services providers, banks and non-banks alike. It  
1191 is time for a level playing field for all financial services  
1192 providers. It is time for an agency that consumers and their  
1193 elected representatives can hold fully accountable and  
1194 responsible for consumer protection in all financial sectors,  
1195 and it is also long past time for a stronger FTC. The  
1196 President's legislation fulfills these needs.

1197 Thank you for this opportunity to discuss the proposal,  
1198 the additional time you have graciously given me, and I will  
1199 be happy to answer any questions at the conclusion of our  
1200 opening statements.

1201 [The prepared statement of Mr. Barr follows:]

1202 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
1203           Mr. {Terry.} Mr. Chairman, I would like to make a  
1204 unanimous consent request that the gentleman from the FTC  
1205 have 9 minutes.

1206           Mr. {Rush.} The chairman of the FTC will take whatever  
1207 time he may consume.

|  
1208 ^TESTIMONY OF JON LEIBOWITZ

1209 } Mr. {Leibowitz.} Thank you so much, Mr. Chairman.

1210 Chairman Rush, Ranking Member Radanovich, Vice Chair

1211 Schakowsky, members of the subcommittee, I appreciate the

1212 opportunity to be here to discuss consumer protection

1213 regulatory reform including President Obama's far-reaching

1214 proposal to enhance consumer protection through the creation

1215 of a new Consumer Financial Protection Agency, the CFPA.

1216 As all of us in this room know and as many of you on the

1217 panel articulated and as Mr. Barr also effectively

1218 articulated, the need for reform has become as painfully

1219 clear as the distress the consumers are now experiencing in

1220 these difficult economic times from a failure of regulation.

1221 All of us on the Commission support the President's goal of

1222 elevating consumer protection, although some of us have

1223 different views as to the best means to that end.

1224 For my part, this initiative, which enhances the

1225 resources and authority for the FTC and which creates the

1226 CFPA, is clearly preferable to the status quo. In any case,

1227 the Commission will continue to vigorously protect consumers

1228 of financial services while this proposal is under discussion

1229 and while the CFPA if it is enacted is ramping up. Beyond

1230 that, we look forward to working collaboratively with the new  
1231 agency.

1232         In the last 5 years, we have brought more than 100  
1233 financial consumer protection cases and have recovered nearly  
1234 half a billion dollars in the last decade for consumers.  
1235 Since I last testified before this subcommittee in late  
1236 March, we have continued aggressively pursuing financial  
1237 predators, bringing 14 new cases in this area. In fact,  
1238 today we are announcing distribution of an additional \$8  
1239 million in consumer redress checks to Americans who were  
1240 deceived by deceptive mortgage origination fees, and on June  
1241 1st, using the new APA rulemaking authority that you gave us  
1242 in the omnibus appropriations bill, we began a rulemaking  
1243 addressing mortgage modification and foreclosure rescue scams  
1244 which have become, as all of you know, all too common  
1245 recently, and also addressing the entire mortgage lifecycle,  
1246 advertising, origination, appraisals and servicing. Simply  
1247 put, this work will help ensure that consumers aren't ripped  
1248 off by bogus mortgages or false advertising.

1249         Mr. Chairman, President Obama emphasized the importance  
1250 of giving the FTC tools and increased resources, the ones  
1251 that we need to stop practices that harm consumers and  
1252 violate the law. First, the proposal grows our agency,  
1253 giving us the staff that we need to do the job that you all

1254 want us to do. Currently we have just over 1,100 FTEs. That  
1255 is down from about the 1,800 FTEs we had in the late 1970s  
1256 and early 1980s, despite a considerable growth in the U.S.  
1257 population, and in our own responsibilities including  
1258 enforcing canned spam, Do Not Call, COPPA, the Children's  
1259 Online Privacy Protection Act, Gramm-Leach-Bliley and other  
1260 statutes. Second, the proposal provides the FTC with APA  
1261 notice and comment rulemaking which is used by virtually  
1262 every other agency in the federal government. It would  
1263 strengthen the Commission's ability to address widespread  
1264 problems more quickly. Third, the proposal authorizes the  
1265 FTC to obtain civil penalties for violations of section 5 of  
1266 the FTC Act. This new power we believe would help deter  
1267 would-be violations and help protect consumers more  
1268 effectively. I think something like 47 State attorneys  
1269 general have fining authority. And by the way, fining  
1270 authority was originally proposed by Casper Weinberger when  
1271 he was chairman of the Federal Trade Commission under  
1272 President Nixon in the early 1970s. Finally, the proposal  
1273 authorizes the FTC to go after those who aid and abet others  
1274 who violate the law.

1275         We would also urge Congress as you consider this  
1276 legislation to give both the FTC and the CFPB the ability to  
1277 bring civil penalty actions on our own, which would put both

1278 of us on equal footing with other consumer protection  
1279 agencies like the SEC and the CFTC and not make us as we do  
1280 currently have to wait for the Justice Department to clear  
1281 our going forward.

1282 Now, we expect that as with any bold and complex new  
1283 initiative clarifications will be worked out as the  
1284 legislative process moves forward, but from my perspective,  
1285 the President's goal of streamlining the overall system for  
1286 protecting consumers from financial abuse is more than  
1287 commendable, and eliminating the balkanization of consumer  
1288 protection oversight over non-banks and banks, as Mr. Barr  
1289 has alluded to, is laudable and very, very critical.

1290 We do have some concerns, however, about the draft  
1291 legislation or the legislation as it was initially drafted,  
1292 although I am optimistic that we can work these out as the  
1293 legislative process moves forward. So for example, the  
1294 proposal states that the FTC would have backstop authority  
1295 but the draft legislation imposes a review period that could  
1296 require us to wait 120 days before filing certain cases. We  
1297 also believe it would be helpful to make definitions of the  
1298 proposal's terms such as credit and financial activity  
1299 clearer, and let me tell you why with an example. So suppose  
1300 the FTC finds a telemarketer making illegal robo calls to  
1301 millions of consumers on the Do Not Call Registry urging them

1302 to purchase something like advanced fee credit cards which  
1303 are, I wouldn't say per se illegal but almost always, let us  
1304 say often illegal, and suppose that a payment processor  
1305 participated in the fraud. It is critical that we be able to  
1306 bring action against all of the malefactors expeditiously but  
1307 it is unclear under this draft whether we would have the  
1308 jurisdiction over the telemarketer offering the financial  
1309 products or the payment processor, and if so, whether the  
1310 120-day waiting period would come into play. Now, we have  
1311 made much progress with Treasury on several of these boundary  
1312 issues and we are continuing to make progress but getting  
1313 this right and allowing us to put an immediate halt to  
1314 harmful practices is crucially important.

1315       Having said that, with this committee involving in  
1316 writing any legislation, I am confident that this very, very  
1317 important initiative will be considered, discussed, clarified  
1318 and refined with all open issues resolved in favor of  
1319 American consumers. We understand, of course, that under  
1320 this proposal rulemaking authority and primary enforcement  
1321 responsibility for financial products and services would go  
1322 to the new agency but we will continue to aggressively  
1323 enforce these laws as a cop on the beat where necessary as  
1324 well as each and every other consumer protection law within  
1325 our jurisdiction. We look forward to working with the

1326 Administration and Congress to reach a plan that best  
1327 protects American consumers, and I thank you for your time.

1328 [The prepared statement of Mr. Leibowitz follows:]

1329 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
1330           Mr. {Rush.} The Chair thanks the gentleman, the  
1331 chairman of the FTC, and the Chair now recognizes himself for  
1332 5 minutes for the purposes of questioning the witnesses.

1333           With the continuation of the financial crisis, we see  
1334 more and more scam artists preying on desperate consumers  
1335 seeking to reduce their debts and to keep their homes out of  
1336 foreclosure or from selling their homes at a loss, and I am  
1337 concerned about this proposal in that this new agency would  
1338 not do enough in the short term because we all know that it  
1339 takes some time for a new agency to rev up, to get going and  
1340 get running. Another option that the Administration might  
1341 have considered is proposing that the FTC take on this  
1342 essential role. By increasing its staff and authority, it is  
1343 conceivable that FTC could be taking on these issues within  
1344 weeks or months rather than years. Mr. Barr, did the  
1345 Administration consider other options other than creating a  
1346 new agency?

1347           Mr. {Barr.} Yes, Mr. Rush. Let me just say, Mr.  
1348 Chairman, that with respect to the transition issues, our  
1349 view is that the FTC should act aggressively as it is doing  
1350 now under the chairman's leadership to continue to enforce  
1351 the law, be a cop on the beat, be quite aggressive in this  
1352 area, and we are at the same time that we are pushing to

1353 create the new agency pushing on all the existing agencies  
1354 working closely with them to do everything we can under  
1355 existing authority. So I don't think there is any sense that  
1356 anybody thinks we should slow down, rather, quite the  
1357 opposite.

1358         With respect to other options, the Administration  
1359 considered a wide range of options with respect to consumer  
1360 protection, and our basic view was that the existing system  
1361 was fundamentally broken and we needed a quite large,  
1362 significant change to create one agency whose sole job was  
1363 protecting consumers across the financial services  
1364 marketplace. I think that the chairman is deeply aware of  
1365 the ways in which consumers have been abused and neglected  
1366 for quite a long time and the existing structure is just  
1367 inadequate to meet the needs. So our strong view, the  
1368 President's personally strong view was that we needed a new  
1369 financial agency with that core mission that was strong and  
1370 could achieve the goals that I think the chairman articulated  
1371 so eloquently in the opening remarks.

1372         Mr. {Rush.} Chairman Leibowitz, during this interregnum  
1373 between this bill becoming law and this new creation actually  
1374 taking place, that is going to put a lot more pressure on the  
1375 FTC. Do you have the requisite resources and personnel? How  
1376 will the FTC function during this interregnum?

1377           Mr. {Leibowitz.} I would say that during the sort of  
1378 interregnum period if the legislation is enacted, we are  
1379 going to work very closely with the new agency. I think the  
1380 period for transfer is somewhere between 6 and 24 months,  
1381 depending on how quickly they are ready to ramp up. We are  
1382 going to continue to bring cases, and I think that was always  
1383 the notion. I do think that going forward, you know, we  
1384 could use more resources, and we talked about this before in  
1385 hearings, and I do think that even after the agency is  
1386 created, assuming it is, that it would be useful for us to  
1387 have concurrent enforcement authority so that if we are going  
1388 after--you know, the bad guys don't always act in silos, as  
1389 Mr. Barr knows, as all of you know. You know, sometimes they  
1390 are violating the Do Not Call rule and they are violating reg  
1391 Z or reg E which would go over to the new agency, and so I  
1392 think it is important going forward that when there is  
1393 ongoing consumer harm that we are able to sort of jump over  
1394 the kind of legislative, the new legislative fence to help  
1395 consumers and not have to wait potentially 120 days. I think  
1396 we are working through a lot of these issues, making a lot of  
1397 progress between our staffs and ourselves.

1398           Mr. {Rush.} The Chair sees that his time is up. The  
1399 Chair now recognizes the ranking member for 5 minutes.

1400           Mr. {Radanovich.} Thanks, Mr. Chairman, and welcome,

1401 gentlemen, to the panel. I am pleased to see you here today.

1402           Mr. Leibowitz, welcome back to the committee. I know  
1403 you have been here a number of times already and probably  
1404 will be more in the future. I have to think you are doing a  
1405 bit of a dance because you stand to lose some jurisdiction in  
1406 the FTC, and it seems to me that you are getting, at least  
1407 under the proposal, getting more money and authority to do  
1408 less, and I want to know what your reaction to that statement  
1409 is, given the fact that the FTC has dual jurisdiction, and  
1410 that is, two missions to ensure competition but also consumer  
1411 protection.

1412           Mr. {Leibowitz.} Well, Mr. Radanovich, let me just  
1413 start by saying I hope that familiarity is not breeding  
1414 contempt here.

1415           Mr. {Radanovich.} Not at all.

1416           Mr. {Leibowitz.} Look, you know, if you read through  
1417 our written testimony, you can sort of see it is a complex  
1418 matrix within the Commission about what we support and what  
1419 we don't. I do think from our perspective if you create  
1420 this--from my perspective, if you create this new agency and  
1421 you also give us more resources and authority, from the  
1422 perspective of consumers they will be getting a better deal  
1423 because we will be able--we will continue to have a backstop  
1424 authority with respect to financial matters and we are going

1425 to be able to concentrate and just do more for consumers. As  
1426 you know, because we have talked about this, we spent a lot  
1427 of time leveraging--

1428 Mr. {Radanovich.} But if I may, you are losing  
1429 jurisdiction.

1430 Mr. {Leibowitz.} We would be losing jurisdiction and--

1431 Mr. {Radanovich.} How does that loss of jurisdiction  
1432 deal with your two missions of ensuring competition and  
1433 providing consumer protection?

1434 Mr. {Leibowitz.} Well, I would say on the competition  
1435 side, we wouldn't be losing jurisdiction. We would still  
1436 retain that jurisdiction. On the consumer protection side,  
1437 we would losing jurisdiction to this new agency but this new  
1438 agency would be another cop on the beat protecting consumers,  
1439 and then--and we would also be losing personnel, and we have  
1440 already lost a few personnel, I would say, to the new  
1441 agency...

1442 Mr. {Radanovich.} But it does seem to me like you are  
1443 getting more money and authority to do less.

1444 Mr. {Leibowitz.} Well, we will do more. I mean, we  
1445 really will. It is not a question from our perspective of  
1446 moving to a government--I mean, our guys work extremely hard.  
1447 They have been commended by OPM for always scoring high on  
1448 sort of effectiveness and quality of work, and we will just

1449 do more in the areas where we have--while retaining backup  
1450 authority, if the proposal goes through, we will do more in  
1451 the other areas of consumer protection and there is plenty to  
1452 do.

1453 Mr. {Radanovich.} Thank you.

1454 Mr. Barr, welcome to the subcommittee. You know, in  
1455 Russia during the height of communism, it was often talked  
1456 about the fact that there was not a lot of food on the  
1457 shelves, and when you go into stores you might be able to get  
1458 a loaf of bread, but if you wanted sourdough, you probably  
1459 had to have the standard loaf, if you wanted rolls, you got  
1460 a loaf of bread, if you wanted something else, you got a loaf  
1461 of bread. Tell me how--explain to me how you are not doing  
1462 the same thing in the credit markets in the name of consumer  
1463 protection.

1464 Mr. {Barr.} Thank you very much for that terrific  
1465 question. I was smiling as you were describing the example  
1466 because I spent some time in Poland had the same experience  
1467 where you go to the store and there is nothing there and you  
1468 can actually literally go hungry. This agency has nothing to  
1469 do with that, literally nothing to do with that. The new  
1470 agency--

1471 Mr. {Radanovich.} Tell me how you are not doing that  
1472 though in the credit markets, because that is a question I

1473 would like answered.

1474           Mr. {Barr.} The new agency is in no way pursuing that  
1475 kind of command and control model. It is in no way pursuing  
1476 price setting. It is in no way saying you can't offer  
1477 certain kinds of products. The new agency under the  
1478 legislation--

1479           Mr. {Radanovich.} And I understand the reason for  
1480 looking at this because we have all experienced this  
1481 financial crisis but doesn't this end up providing consumers  
1482 with less choice and driving up the cost of credit for  
1483 consumers?

1484           Mr. {Barr.} With respect, sir, our strong view is that  
1485 it does not. It continues to provide for financial  
1486 innovation. Consumers can get access to whatever products  
1487 and services providers want to offer. Our basic approach is  
1488 to improve disclosure, reduce regulatory burden, for example,  
1489 by merging authorities so you can have one simple mortgage  
1490 form at the time of disclosure, improve--

1491           Mr. {Radanovich.} But weren't there existing  
1492 authorities that have and could and should deal with the  
1493 current crisis that we are in? Doesn't the added  
1494 restrictions and regulations that you are going to be putting  
1495 on the credit industry will drive up the cost of credit to  
1496 consumers?

1497 Mr. {Barr.} I think that the better judgment, sir,  
1498 again, with respect, is that the current system we have had,  
1499 the status quo on consumer protection was a dismal failure  
1500 and I think we have evidence all around us of that, and our  
1501 view was, both for banks and for non-banks, for consumers and  
1502 for households, the system failed. If you talk to, and I am  
1503 sure you do, the community bankers in your community who had  
1504 to compete against unregulated providers who were sucked into  
1505 offering products--

1506 Mr. {Radanovich.} Actually competing against large  
1507 banks for TARP money, but--thank you very much, Mr. Chairman.  
1508 I yield back.

1509 Mr. {Rush.} The Chair now recognizes the gentlelady  
1510 from Illinois, the vice chair, Ms. Schakowsky.

1511 Ms. {Schakowsky.} Thank you. Mr. Barr, could you  
1512 describe how we potentially would have been in a different  
1513 situation today had this agency been in existence as the  
1514 current problems started to unroll?

1515 Mr. {Barr.} Yes. I think we would have been in, could  
1516 have been in a fundamentally different situation if we had an  
1517 agency that could set the rules of the road for everybody to  
1518 follow, if we had an agency that could say to mortgage  
1519 brokers, you can't get paid more for offering riskier,  
1520 higher-priced, more confusing products than a basic product,

1521 if we had a rule that said mortgage brokers, you have a duty  
1522 of care, you have to do best execution for a mortgage so you  
1523 can't offer the mortgage that is the best deal for the  
1524 broker, you are supposed to offer a mortgage that is the best  
1525 deal for the consumer, if we had a duty that said mortgage  
1526 brokers have to have some skin in the game, they need to be  
1527 paid over time, securitization trusts have to have skin in  
1528 the same so that you don't have a system where all the bad  
1529 mortgages are made up front and eventually sold to the  
1530 investor at the other end with nobody in the chain having  
1531 responsibility, nobody having any of their own capital at  
1532 risk. So we could have had fundamental change. We could  
1533 have had a fundamentally different situation in which  
1534 consumers were protected at the front end and the financial  
1535 system was protected all the way through.

1536 Ms. {Schakowsky.} And you are saying without any change  
1537 in legislation beyond the creation of this agency, that you  
1538 would have the authorities then under the bill, which I  
1539 haven't read thoroughly yet, you would be able to have done  
1540 all those things?

1541 Mr. {Barr.} Yes. This agency would be granted the  
1542 authority to do all the things that I just described.

1543 Ms. {Schakowsky.} Did you want to comment on that, Mr.  
1544 Leibowitz?

1545           Mr. {Leibowitz.} Well, I would just say that one of the  
1546 things that is critical here is APA rulemaking authority, and  
1547 of course, under the new proposal, they will be able to do it  
1548 for non-bank- as well bank-related financial instruments and  
1549 mortgages. And so in the omnibus you gave us, for which we  
1550 are very grateful, APA rulemaking for non-bank mortgages and  
1551 we are going to look at that and we are going to do, I think,  
1552 a very, very good rule, and Mr. Rush, you have legislation  
1553 that would expand our jurisdiction a little bit more but it  
1554 only goes--it is only within the context of non-bank-issued  
1555 financial instruments. So 20 years ago we did a lot of  
1556 matters relating to credit cards and all the credit cards are  
1557 now, virtually every credit card is now issued by a bank. We  
1558 have no jurisdiction there. So I think that is a critical  
1559 advantage from the consumer's perspective of what this new  
1560 agency might do.

1561           Ms. {Schakowsky.} And let me just say that while I  
1562 absolutely in theory think pulling it all together in one  
1563 place is a good idea, but, you know, we have seen in the  
1564 startup of the Department of Homeland Security lots of  
1565 difficulties in pulling it all together and making it all  
1566 happen. The creation of a director of national intelligence,  
1567 certainly in that case many of us on the Intelligence  
1568 Committee see a large bureaucracy itself developing, and have

1569 some problems with the coordination that was actually  
1570 supposed to happen. How can we be assured that this will  
1571 achieve its goals, achieve it in a timely way and not just be  
1572 another bureaucracy?

1573 Mr. {Barr.} Thank you very much. Again, I think that  
1574 our view is, the agencies that have the authority now should  
1575 aggressively use those authorities. Those authorities are  
1576 inadequate to the task. The basic structure of the system  
1577 was a dismal failure. We need to do this. We need to take  
1578 this action. The legislation has tight timelines for  
1579 transition. Treasury has responsibility to make sure that  
1580 transition happens effectively. You can come see me, you can  
1581 come see Secretary Geithner. We are responsible for making  
1582 sure. You can hold us accountable.

1583 Mr. {Rush.} The Chair recognizes Mr. Stearns from  
1584 Florida.

1585 Mr. {Stearns.} Thank you, Mr. Chairman. Mr. Chairman,  
1586 we have had a lot of hearings on privacy here in this  
1587 committee, and when I was chairman of the committee we had  
1588 many hearings on privacy, and I think my concern is that if  
1589 we transfer some of the Federal Trade Commission's privacy  
1590 work to this new CFPA, particularly in light of all the  
1591 expertise that you have, and you have been the leading  
1592 federal agency in the area of consumer privacy for all these

1593 years, and including financial privacy as well as identity  
1594 theft, information security. So with that in mind, what do  
1595 you feel about this transfer?

1596 Mr. {Leibowitz.} Well, I guess I would make a couple  
1597 points, and this committee and you have been leaders in  
1598 privacy-related issues. You know, we will be transferring  
1599 over a lot of laws. We hope to keep sort of a backstop  
1600 authority that is concurrent, and of course, this is the  
1601 beginning of the legislative process. It is not the end and,  
1602 you know, I see a lot of agreement on many things within this  
1603 committee on ways to go forward. The way we read the  
1604 legislation, it was unclear whether issues like data  
1605 security, privacy would stay with us. I think Mr. Barr has  
1606 represented today, the better reading of the proposed statute  
1607 or the reading of the way the proposed statute will move  
1608 forward is that we will keep issues like that, and I think  
1609 that is very, very important.

1610 Mr. {Stearns.} So identity theft, you would still keep?

1611 Mr. {Leibowitz.} I think we would keep identity theft.

1612 Mr. {Stearns.} And financial privacy?

1613 Mr. {Leibowitz.} Financial privacy, I think mostly  
1614 moves over to the new agency. I mean, again, I think that is  
1615 to some extent up to you. I think we would keep the  
1616 safeguards rule under Gramm-Leach-Bliley but a lot of this

1617 has to be worked through of course during the transition  
1618 period. We will keep on doing this and again we will have  
1619 backstop authority. And I should probably turn this over to  
1620 Mr. Barr, who is one of the true architects of the plan.

1621 Mr. {Stearns.} But what you are saying today is that  
1622 some of this is still up for negotiation?

1623 Mr. {Leibowitz.} Yes. These boundary issues, that you  
1624 have raised the same concerns that we saw when we got the  
1625 legislation at the end of last week but it seems that it is  
1626 being resolved on many of these boundary issues in favor of  
1627 retaining jurisdiction by the existing Commission, and I  
1628 assume that, you know, as this legislation moves forward,  
1629 that is what this committee would be most interested in, but  
1630 let me turn it over to Mr. Barr.

1631 Mr. {Barr.} Just to add to that, the chairman is  
1632 correct that with respect to data security issues, identity  
1633 issues, safeguard red flags, all that would stay at the FTC  
1634 and the parallel authority for that at the bank agencies but  
1635 the front-end privacy notices that have to do with disclosure  
1636 would fit in the new disclosure regime of the new Consumer  
1637 Financial Protection Agency.

1638 Mr. {Stearns.} So let us say Internet privacy, consumer  
1639 privacy, would that remain with Federal Trade Commission?

1640 Mr. {Barr.} Again, with respect to the disclosure

1641 aspect on the financial side, the disclosure would be unified  
1642 with the disclosure regime at the new financial agency. All  
1643 the data security, identity theft and related issues would  
1644 remain at the FTC and the parallel authorities with respect  
1645 to banks.

1646 Mr. {Leibowitz.} But if you are thinking about core  
1647 issues like spam, spyware, behavioral marketing, we keep all  
1648 of those. You know, there might be some issues about whether  
1649 we are going after a malefactor or a group of malefactors and  
1650 one of them is on the other side of the core new agency's  
1651 fence, you know, right now there's 120-day waiting period,  
1652 which we are a little concerned about from the perspective of  
1653 consumers, but going back to your original point, a variety  
1654 of issues including sort of the core privacy issues we do we  
1655 will be keeping and retaining jurisdiction.

1656 Mr. {Stearns.} Well, I think, Mr. Barr, what you should  
1657 realize with all that expertise in the Federal Trade  
1658 Commission we are starting a new federal agency here. You  
1659 know, I would think that as many have pointed out on this  
1660 side, we are worried about a new federal agency, particularly  
1661 when you have an agency that already has the expertise. I  
1662 think the bill says that the cost of development of this new  
1663 agency is such sums as are necessary. Is there any more  
1664 definitized information you can give on what the cost would

1665 be for this new federal agency?

1666 Mr. {Barr.} I don't at this time have an overall cost  
1667 estimate for the agency or size estimate for the agency. It  
1668 is something we are working on. We will work with the  
1669 appropriate committees on it and with OMB and CBO. We  
1670 anticipate that the agency will be pulling in staff and  
1671 resources from the existing agencies and additionally having  
1672 new resources required. I would be happy to continue to work  
1673 with you on that question.

1674 Mr. {Stearns.} Can you talk about the resources the  
1675 agencies will need besides--I mean, have you identified any  
1676 of the resources?

1677 Mr. {Barr.} We have begun the process of identifying  
1678 the number of individuals and the other resources the agency  
1679 would need but we are not at a place now where I could give  
1680 you even a reasonable estimate of what additional measures  
1681 beyond the transfer authorities would be required. It is  
1682 something we are working quite hard on.

1683 Mr. {Stearns.} I will just close. Mr. Chairman, you  
1684 might think as a subcommittee chair since a lot of the  
1685 expertise for this is already in the Federal Trade Commission  
1686 and this is a new agency, you might--and particularly in your  
1687 jurisdiction here, I think we have to move carefully as Mr.  
1688 Dingell out, developing a brand-new agency. They don't know

1689 how much they are going to spend, they don't know what  
1690 resources they are going to need, and also they are going to  
1691 be taking on expertise for areas they know nothing about that  
1692 the Federal Trade Commission has years on, so I just wonder,  
1693 you as the chairman, you might want to be very careful and  
1694 cautious about endorsing this new agency without, you know,  
1695 some more hearings on it and try to get more of the  
1696 stakeholders here, perhaps more than we have on the witness  
1697 list here, to try and get into the discussion here. So I  
1698 thank you, Mr. Chairman.

1699 Mr. {Rush.} The Chair thanks the gentleman. The Chair  
1700 observes that there is a vote going on on the Floor. There  
1701 are three votes. It is the desire of the chairman that we  
1702 should delay the committee hearing until after the votes are  
1703 concluded and then return. I am not sure what the witnesses'  
1704 time commitments are but it would be very important if you  
1705 return I would say within 15 minutes after the last vote.  
1706 Then the subcommittee will reconvene.

1707 [Recess.]

1708 Mr. {Rush.} The subcommittee will reconvene. The Chair  
1709 recognizes the fact that there might be members of the  
1710 subcommittee who did not have an opportunity to ask questions  
1711 of our witnesses before we recessed. However, I am very  
1712 cognizant of the witnesses' time and will take this time to

1713 go into a second round of questions, and if there are members  
1714 who come in who have not asked questions in the first round,  
1715 then the chair will prolong their questioning to 7 minutes.

1716         So with that, the Chair recognizes himself for 2 minutes  
1717 of additional questions.

1718         In its White Paper describing the proposed regulatory  
1719 reforms, the Department of Treasury stated clearly that, and  
1720 I quote, ``The FTC shall retain authority for dealing with  
1721 fraud in the financial marketplace.'' Despite this  
1722 assurance, the proposed language appears to weaken FTC's  
1723 authority in this area. FTC will retain the authority to  
1724 enforce against unfair and deceptive acts and practices using  
1725 the FTC Act. However, the FCC could not add any statutory  
1726 claims such as the Truth in Lending Act or the Equal Credit  
1727 Opportunity Act to a complaint without first referring the  
1728 case to the new agency and waiting 120 days for that agency  
1729 to decide if it wants to take the case. Chairman Leibowitz,  
1730 let me ask you, how will this change impact the FTC's ability  
1731 to consume financial problems? Could the FTC consume one  
1732 part of a case while the other is under consideration or  
1733 would you expect that it would simply not bother with  
1734 additional claims? Will the FTC's cases be weakened if they  
1735 only rely on FTC Act claims?

1736         Mr. {Leibowitz.} Well, I think, Mr. Chairman, that is

1737 an great question, and keeping in mind that we are at the  
1738 beginning of the legislative process, not near the end of the  
1739 legislative process, those are questions that this committee  
1740 will want to think through as the legislation proceeds  
1741 forward. Last week we brought a bunch of cases which we  
1742 called Operation Short Change, and it was about scams that  
1743 were hitting people in economic distress, and a lot of those  
1744 were basically fraud claims under the FTC Act, but one of  
1745 them involved the Electronic Funds Transfer Act, I think it  
1746 is reg E. Now, reg E would go to the new agency, and so this  
1747 would sort of invoke two parts of your question or two  
1748 components of your question, one of which is, would we have  
1749 to wait 120 days to bring this case while there is ongoing  
1750 harm, and then the second issue is really, what is the nature  
1751 of our backup authority, and I want to say, Mr. Barr and I  
1752 have been working through this with our staffs and very, very  
1753 productively. You know, I worked on the Hill for 13 years  
1754 and I never wrote a piece for legislation for my bosses then  
1755 that didn't change as it went forward. And so but I think  
1756 these are precisely the questions that we worry about at the  
1757 FTC. We want to make sure, and I know Mr. Barr does too,  
1758 that this legislation is as effective as it can be for the  
1759 consumers that all of us represent, and so I think it is  
1760 important that you--

1761 Mr. {Rush.} Well, it seems that the consumers would  
1762 benefit more if the FTC didn't have to solely rely on the so-  
1763 called backdrop authority. Do you agree with that?

1764 Mr. {Leibowitz.} Well, again, I mean, from my  
1765 perspective, and I will turn the mic over to Mr. Barr in a  
1766 second but from our perspective, if the backup authority is  
1767 weak, and, you know, we have backup authority involving the  
1768 SEC and the CFTC which we use very rarely, only when we need  
1769 it. But here, a couple of points. One is, as the transition  
1770 is happening, if this legislation is created, you and  
1771 certainly even after very good lawyers are transferred and  
1772 attorneys and jurisdiction, you know, it is going to take a  
1773 while for this agency, and Mr. Barr knows better than anyone,  
1774 to ramp up, and I like--I believe that they are going to want  
1775 us involved using our backup authority, probably more earlier  
1776 than later. Now, we understand that they will have primary  
1777 jurisdiction but I think it is very important that the backup  
1778 authority be robust so that we can sort of help out and also  
1779 so that when we have these cases that involve malefactors  
1780 that don't fit into the old or new silos that we can  
1781 effectively go forward and stop ongoing harm involving  
1782 consumers.

1783 Mr. {Rush.} I have just one question. Earlier you  
1784 stated that you had lost some personnel. Were the

1785 individuals transferred to Treasury?

1786 Mr. {Leibowitz.} We have one or two people who have  
1787 gone over.

1788 Mr. {Rush.} And what is the purpose of them going over  
1789 to Treasury? Are they on loan to Treasury or are they  
1790 reassigned to Treasury?

1791 Mr. {Leibowitz.} Oh, I think they are on detail.

1792 Mr. {Rush.} What is the purpose of them being on detail  
1793 to Treasury? What are they doing over there?

1794 Mr. {Leibowitz.} I think they are--well, I will turn  
1795 that over to Mr. Barr. But I do know that the one person I  
1796 know who is on detail to Treasury is a fabulous attorney and  
1797 really cares about consumer protection.

1798 Mr. {Rush.} All right. Well, why don't you turn it  
1799 over to Mr. Barr and let him answer the question. Thank you.  
1800 Mr. Barr, would you begin your answer with that last question  
1801 and then you can respond to the other question.

1802 Mr. {Barr.} Sure, and then I would be happy to address  
1803 the broader points. We have on our staff a terrific attorney  
1804 from the FTC who has come over on detail and is going to be a  
1805 permanent employee of the Treasury Department working on  
1806 consumer issues. With respect to the broader sets of  
1807 questions, I would just say first and foremost the chairman  
1808 and I have been working closely together and are committed to

1809 working closely together on these sets of issues. On  
1810 financial fraud, it is clear from the President's proposal  
1811 that it would not in any way diminish the FTC's ability to  
1812 take on financial fraud cases as it is stated in the white  
1813 paper and in the legislation. The FTC would retain its  
1814 authority and its duty to bring financial fraud causes  
1815 without delay.

1816         With respect to coordination, there are many issues that  
1817 the agencies will want to coordinate on. The 120-day measure  
1818 is not like the existing authorities that the FTC uses where  
1819 it is the primary entity doing enforcement. This is a  
1820 proposal that kicks in if the FTC is doing its work and finds  
1821 a problem, it can let the new agency know, the consumer  
1822 agency know about it. It doesn't have to wait as the FTC  
1823 does today, it doesn't wait until it has gone through its  
1824 investigation, gone through the whole charging process and  
1825 gotten it all ready and then refer it to the Justice  
1826 Department. It is totally unlike that. This a chance for  
1827 the FTC to let the new agency know about a problem that it  
1828 sees that has come to its attention. So it is a  
1829 fundamentally different mechanism. We are committed to being  
1830 sure that that in no way delays any financial fraud cases.

1831         And with respect to the transition issues again, the FTC  
1832 and the bank agencies will have large transition issues. We

1833 are committed to working those through and, as I mentioned to  
1834 Representative Schakowsky, Treasury is responsible for  
1835 ensuring that transition happens smoothly and you can hold us  
1836 accountable for that.

1837 Mr. {Rush.} With that, my time is concluded. Now Mr.  
1838 Radanovich is recognized.

1839 Mr. {Radanovich.} Thanks, Mr. Chairman, and welcome  
1840 back.

1841 Mr. Leibowitz, uncertainty is one of the key factors  
1842 behind the perpetuation of our current economic crisis, and  
1843 granting a new and unknown regulatory agency with this broad  
1844 scope of power places a dangerous--could place a dangerous  
1845 level of uncertainty into the financial markets. Do you  
1846 think that it might be better to have an experienced regular  
1847 such as the FTC with a long and trusted history of working  
1848 with business at the helm with these new powers?

1849 Mr. {Leibowitz.} Well, as you know, I am very fond of  
1850 the Federal Trade Commission as you are. I would say this.  
1851 You know, as you know, I testified here a few months ago that  
1852 we thought we could do the consumer protection mission  
1853 involving predatory financial instruments. The proposal that  
1854 has been developed, though, is one that is broader than that.  
1855 It has bank examiner components. It has compliance  
1856 components. So those are not things in our core competency.

1857 You know, again, we are a creature of Congress. We are an  
1858 independent agency, and so we will do whatever you tell us we  
1859 are going to do, and then beyond that, I just want to come  
1860 back to my initial point, which is, based on what we have  
1861 seen in this marketplace and the restrictions that we have  
1862 operated under, I do think that if these issues are worked  
1863 through, and I believe they will be, I do think that having  
1864 this new agency and the FTC both going after unfairness,  
1865 deception, fraud is considerably preferable to the status  
1866 automobile accident.

1867         Mr. {Radanovich.} We agree on that. I think the issue  
1868 is, how you go about it. I will say, though, that meeting  
1869 with the bankers in my district back home, they are afraid of  
1870 this, and I think the uncertainty question is a legitimate  
1871 question, and if it does bring the specter of increased  
1872 regulatory management over the industry, not that something  
1873 has to be done in order to correct the mistakes of the last  
1874 year, but, you know, what is it going to do to the industry's  
1875 willingness to get out there and unfreeze liquidity like we  
1876 are all wanting?

1877         Mr. {Barr.} If I could just add to Chairman Leibowitz's  
1878 comment on that, I think that a key new factor is, this  
1879 agency would have all the supervisory and examination  
1880 authority it needs, not just with respect to banks but also

1881 with respect to non-bank competitors of those banks, so I  
1882 understand that many banks are worried about the scope of the  
1883 new Consumer Financial Protection Agency. I appreciate those  
1884 concerns. I think the additional upside for them is that the  
1885 non-bank competitors will have the same high standard that  
1886 they need to meet, the same level playing field, the same  
1887 consistent rules. So they don't have to worry. A community  
1888 bank and a credit union doesn't have to--

1889 Mr. {Radanovich.} Something tells me that you are just  
1890 broadening the uncertainty to include the entire financial  
1891 markets, you are not--

1892 Mr. {Barr.} No, I think what we are able to do, sir,  
1893 with respect--

1894 Mr. {Radanovich.} It seems to me the uncertainty is  
1895 being broadened, not--that doesn't answer the question about  
1896 uncertainty and the banks are afraid of this kind of  
1897 legislation.

1898 Mr. {Barr.} I think what we are able to do is create a  
1899 high, consistent, clear standard. We are able to reduce  
1900 regulatory burden in many cases, for example, combining the  
1901 TEAL and RESPA forms that drive everybody crazy and don't  
1902 help consumers. We need a single, uniform, simple standard  
1903 for disclosure that applies--

1904 Mr. {Radanovich.} I suggest that you need to convince

1905 the banks because they are the ones that are expressing the  
1906 real concern. If I may, though, Mr. Barr, I do have a second  
1907 question, and that is that President Obama has stated that a  
1908 streamlined system will provide better oversight and will be  
1909 less costly for regulated institutions but the preemption  
1910 statutes in the bill create a floor rather than a ceiling for  
1911 State regulation. Doesn't that mean we are looking at 51  
1912 different versions of this thing by giving the preemption  
1913 statutes to the States and does that not conflict with  
1914 President Obama's statement that we are looking at a  
1915 streamlined system?

1916 Mr. {Barr.} Well, as you know, the States have long  
1917 played an important role in consumer protection. I think one  
1918 of the upsides of living in our country is that we have  
1919 independent States that--

1920 Mr. {Radanovich.} But they have not had preemptive  
1921 status in this situation before.

1922 Mr. {Barr.} They have not been able to apply State laws  
1923 in some context to national banks, but they certainly have  
1924 been very active in the consumer area across lots of  
1925 different products and services in the past.

1926 Mr. {Radanovich.} Do you think that could lead to 51  
1927 different versions of this--

1928 Mr. {Barr.} I think we are much more likely to see a

1929 high standard at the national level. I think it is very rare  
1930 if you set a good, high standard at the national level you  
1931 are going to find it very rare for States to go off in their  
1932 own way, but sometimes States are right. Sometimes States  
1933 protect consumers in innovative ways, and our view is, we  
1934 shouldn't block the States' ability to do what the States  
1935 think in their judgment is right.

1936 Mr. {Radanovich.} All right. Thank you, Mr. Chairman.

1937 Mr. {Rush.} The Chair recognizes Dr. Gingrey for 7  
1938 minutes for the purposes of questions.

1939 Mr. {Gingrey.} Mr. Chairman, thank you for your  
1940 generosity of time. I am sorry I missed the first round, and  
1941 I appreciate you letting me ask some questions. And I did  
1942 want to ask Secretary Barr, in your testimony you indicated  
1943 that we need only one agency charged with protecting  
1944 consumers for financial products and services. As one of the  
1945 principal architects of the Administration's plan and the  
1946 proposed Consumer Financial Protection Agency, you lay out  
1947 very broad and sweeping changes that will fundamentally  
1948 change a number of government agencies of course including  
1949 the FTC. However, while this is still in the early stages,  
1950 there are some concerns held by members including me that an  
1951 overly broad new regulatory agency will have the same effect  
1952 of hitting a nail with a sledgehammer, and these efforts

1953 under the guise of uniformity I feel that there may be some  
1954 different standards set for industries within this proposed  
1955 agency. For example, I have heard some suggestion that small  
1956 banks should be exempt from some or all of the rules written  
1957 by the proposed agency and the drafted legislation contains  
1958 exempted authority based on asset size. Is it the  
1959 Administration's play to apply different consumer protections  
1960 depending on whether a customer transacts with a small or a  
1961 large bank, and furthermore, if you intend to carve out  
1962 smaller institutions, what are the types of rules they would  
1963 be exempted from and what is the policy reason for carving  
1964 out these institutions?

1965           Mr. {Barr.} Thank you very much for that set of  
1966 questions. I do think that our proposal does involve  
1967 sweeping change, a sweeping change that in our judgment is  
1968 essential to protect consumers. Our old system was  
1969 fundamentally broken and we do need fundamental reform.

1970           With respect to smaller institutions, we don't expect to  
1971 see, would not expect that small banks and big banks would  
1972 have different rules of disclosure, but you may see  
1973 differences in, say, how much examination or supervision  
1974 there would be. In the bigger institutions as we do today on  
1975 site there are examiners on site year round. You wouldn't  
1976 want that for a small bank. So you may see differences like

1977 that but not differences in the basic standards affecting  
1978 consumers. Those would be uniform across the board. So if  
1979 you walk into a bank or you walk into a credit union, you  
1980 walk into a big bank or you go to your independent mortgage  
1981 broker or you go to an independent mortgage company, you get  
1982 the same simple mortgage disclosure so consumers can  
1983 understand what they are getting.

1984 Mr. {Gingrey.} Chairman Leibowitz, as you outlined in  
1985 your testimony, there will be a number of changes to the FTC  
1986 as a result of the Consumer Financial Protection Agency it  
1987 that becomes law. Many responsibilities will be pulled from  
1988 the current jurisdiction of the FTC and to be given to this  
1989 new agency. With all of these proposed changes, what then  
1990 will be the role of the FTC in this new landscape and how  
1991 much of that new role will be duplicative of this proposed  
1992 agency? You guys have been doing a good job, you know, we  
1993 are appreciative of that.

1994 Mr. {Leibowitz.} And we appreciate, you know, and are  
1995 heartened by what you said about our agency. I do think we  
1996 do a good job and we have terrific attorneys who really care  
1997 about enforcing the mission of the agency and good  
1998 commissioners who are also committed. You know, we will  
1999 still have all of our competition, right, our antitrust  
2000 authority. We will continue to do all the other things we

2001 do, whether it is fraud or privacy outside of the financial  
2002 context or, you know, advertising and marketing practices,  
2003 and then we will continue to stay involved here, I think  
2004 especially during the transition period and hopefully beyond  
2005 with concurrent jurisdiction. You know, look, there are, as  
2006 we know in this room, as you guys know better than anybody  
2007 else, there are a lot of bad actors out there who are, you  
2008 know, trying to rip off American consumers and so, you know,  
2009 by growing the federal ability to go after these malefactors,  
2010 you know, that can only help even the playing field. What we  
2011 do at the FTC and I think we do it really well but it's a  
2012 sort of triage, right? You know, we look at different cases,  
2013 potential cases as we are going through an investigation and  
2014 we say which one can we best leverage, which are the ones  
2015 that, you know, are the greatest harm to the greatest number  
2016 of people, which are the ones that might make better, change  
2017 bad case law, for example, and we are always making decisions  
2018 based on sort of the lack of resources that we have. We just  
2019 try to do the best job we can.

2020 Mr. {Gingrey.} Well, let me reclaim my time just for a  
2021 second. I did want to ask you one other question. We don't  
2022 disagree with the need for oversight, but it seems to me that  
2023 in this current financial crisis that we are in and all of  
2024 these bad loans and toxic assets and all of that, that the

2025 oversight got really heavy after the horse had already left  
2026 the born and so that is kind of a concern, and there is  
2027 always the concern that the oversight becomes too much, so  
2028 restrictive after the fact that these institutions,  
2029 particularly your small banks and lending institutions, can't  
2030 function, and I certainly see this across my district in  
2031 privately held banks, smaller banks that the oversight should  
2032 have been steady and consistent and it always should be but  
2033 yet, you know, when some catastrophe occurs because somebody  
2034 was not minding the store, then all of a sudden the oversight  
2035 comes down on these institutions to the point that all of a  
2036 sudden they go out of business, it hurts the local community.  
2037 But let me just ask you in the little bit of time I have got  
2038 left, you mentioned to us what the FTC would be able to  
2039 continue to do. What percentage of what you currently do is  
2040 that? Does that represent 50 percent of your current  
2041 responsibilities, 25 percent? Are you losing more than 50  
2042 percent of what you currently are charged to--

2043       Mr. {Leibowitz.} No, no, no. You know, I think it  
2044 would be more like in terms of--if I think it through in  
2045 terms of resources, I will get back to you with a response  
2046 but I would say it is more like 5 to 10 percent of what we  
2047 do, and of course, it has been an area, as you know, that we  
2048 have been concentrating on more and more because it is very

2049 important to American consumers, many of whom are suffering  
2050 from--almost of whom are suffering from some--

2051 Mr. {Gingrey.} Well, I would appreciate it if you would  
2052 get back to me.

2053 Mr. Chairman, thank you for your patience and  
2054 generosity, and thank the witnesses.

2055 Mr. {Rush.} Again, the Chair thanks the witnesses for  
2056 the use of their time. You were very generous to us with  
2057 your time and we want you to know that you have really  
2058 contributed significantly to this process and we are better  
2059 off because you testified today and helped us move along on  
2060 this new proposal. So we will be in touch with you in the  
2061 future, and the Chair wants you to know that we will give  
2062 members 72 hours to ask questions in writing, and if you will  
2063 respond to them in a reasonable amount of time, the Chair  
2064 will really appreciate it, so thank you so very much.

2065 The Chair now calls the second panel. The Chair  
2066 welcomes the second panel to this hearing. The Chair  
2067 apologizes for the inconveniences that you might have had to  
2068 endure while we were on the Floor voting, and the Chair is  
2069 very respectful and appreciative of the fact that you have  
2070 come from far and wide to be here to testify.

2071 I want to introduce our witnesses, and I will begin my  
2072 left. Ms. Gail Hillebrand is the senior attorney and manager

2073 for the Financial Services Campaign for the Consumers Union.  
2074 Sitting next to her is Mr. Stephen Calkins, Esquire. He is  
2075 associate vice president for academic personnel and a  
2076 professor of law at Wayne State University. Next to him is  
2077 Mr. Prentiss Cox, who is an associate clinical professor of  
2078 law at the University of Minnesota, and sitting to Mr. Cox is  
2079 Ms. Rachel E. Barkow, and Ms. Barkow is a professor of law at  
2080 New York University School of Law. And last but not least,  
2081 the gentleman with the smile next to her is Mr. Chris  
2082 Stinebert. Mr. Stinebert is the president and CEO of  
2083 American Financial Services Association. Again, we want to  
2084 thank you and welcome you to this committee hearing.

2085       It is the practice of this committee that we swear in  
2086 the witnesses, so would you please rise and raise your right  
2087 hand?

2088       [Witnesses sworn.]

2089       Mr. {Rush.} Let the record reflect that all the  
2090 witnesses responded in the affirmative.

2091       Now it is my privilege to recognize you for 5 minutes  
2092 for an opening statement, so Ms. Hillebrand, we will start  
2093 with you.

|  
2094 ^TESTIMONY OF GAIL HILLEBRAND, SENIOR ATTORNEY AND MANAGER,  
2095 FINANCIAL SERVICES CAMPAIGN, CONSUMERS UNION; STEPHEN  
2096 CALKINS, ESQ., ASSOCIATE VICE PRESIDENT FOR ACADEMIC  
2097 PERSONNEL AND PROFESSOR OF LAW, WAYNE STATE UNIVERSITY;  
2098 PRENTISS COX, ASSOCIATE CLINICAL PROFESSOR OF LAW, UNIVERSITY  
2099 OF MINNESOTA; RACHEL E. BARKOW, PROFESSOR OF LAW, NEW YORK  
2100 UNIVERSITY SCHOOL OF LAW; AND CHRIS STINEBERT, PRESIDENT AND  
2101 CEO, AMERICAN FINANCIAL SERVICES ASSOCIATION

|  
2102 ^TESTIMONY OF GAIL HILLEBRAND

2103 } Ms. {Hillebrand.} Thank you, Chairman Rush, Ranking  
2104 Member Radanovich and members of the committee, you know  
2105 Consumers Union as the nonprofit publisher of Consumer  
2106 Reports but our mission is to inform, protect and empower  
2107 consumers, and that is the role in which I appear before you  
2108 today. My written testimony was joined by six national  
2109 consumer organizations.

2110 Consumer groups want and consumers in the United States  
2111 need a strong consumer financial protection agency, a robust  
2112 Federal Trade Commission and a strong role for States in  
2113 consumer protection in financial services. We believe that  
2114 those goals are entirely consistent with one another. The

2115 goal is a better financial services marketplace and better  
2116 government in financial services oversight. We have to face  
2117 it, the current system doesn't work. It is not delivering  
2118 products or encouraging products that are understandable to  
2119 consumers who use them or that meet the reasonable  
2120 expectations created in the sales process. Instead we have  
2121 gotcha banking. We have multiple regulators by type of  
2122 providers, even when those providers are competing directly  
2123 for the very same consumer. We have long delays for  
2124 regulatory action and we don't have much of open public  
2125 enforcement except by the FTC. And finally, we have abusive  
2126 features in products that are squeezing their way through the  
2127 holes in the existing law and the existing regulatory scheme.

2128 I believe the job of government is to serve the people.  
2129 We are not here to talk about more government, we are here to  
2130 talk about better government in financial services oversight.  
2131 Today our system isn't designed to do the job. It is spread  
2132 out over six or more agencies with a hodgepodge of rules and  
2133 statutes, and how much enforcement a provider receives  
2134 depends in part on who its regulator is. That is just not a  
2135 system designed to match the realities of today's market. We  
2136 want to give the federal government a different and new job  
2137 in the financial services marketplace, and that is to promote  
2138 a fair as well as an efficient financial services market to

2139 watch for the market to prevent harms as they start to  
2140 develop.

2141 I come from the great State of California, where the  
2142 option ARM and some of the other products that have gone so  
2143 terribly sideways were pioneered, and you can only wonder if  
2144 someone had been watching those markets more closely whether  
2145 that would have spread around the country.

2146 The mandate of the CFPA is the right mandate. It is to  
2147 promote transparency, simplicity, fairness with  
2148 accountability and access, and note I say ``promote.'' It is  
2149 a different job from what the federal government has had  
2150 before, and with the CFPA we have the opportunity for an  
2151 agency who has an obligation to get information, to learn  
2152 about the market, to watch that market and then to make a  
2153 conscious decision about what needs to be regulated and what  
2154 doesn't and which regulatory tools to use and then to apply  
2155 those tools evenly no matter who is providing the product.  
2156 With the CFPA, we could get one agency to watch over the  
2157 market, faster-acting responses, one agency that is  
2158 responsible to you and to me when things gone wrong, and one  
2159 place for your constituents to go instead of the alphabet  
2160 soup they have now of trying to figure out who to complain to  
2161 and who to get relief from.

2162 The CFPA model is one federal rulemaker but multiple

2163 enforcers, and that brings me to the incredibly important  
2164 continuing role of the FTC. I would like to disclose, Mr.  
2165 Chairman, I was once a summer law intern at the Bureau of  
2166 Competition at the FTC, longer ago than could possibly be  
2167 relevant for today, but I want to disclose that. The FTC  
2168 keeps its enforcement authority. It keeps its section 5  
2169 authority with a simple, regardless of the topic, financial  
2170 services or not, with a simple consultation that can be at  
2171 the staff-to-staff level. It keeps its authority with  
2172 respect to all the statutes it now has with that referral  
2173 process, and I think it is very important to note that is a  
2174 refer and wait process but they are not waiting for a yes or  
2175 no. If the CFPA does not take on a case the FTC thinks needs  
2176 to be brought, it can still bring that case. The CFPA cannot  
2177 say no. We have made a recommendation to you in the written  
2178 testimony that the statute should allow the CFPA to waive  
2179 that notice or to shorten it by individual case by type or  
2180 category of case and by agency so that they can work these  
2181 things out where there is commonly, for example, the  
2182 telemarketer case with the EFTA claim. And we also are  
2183 recommending to you that the FTC be given the authority to be  
2184 a secondary regulator with respect to enforcing the CFPA  
2185 rules, not writing them but enforcing them.

2186         The FTC does lose jurisdiction to write unfair and

2187 deceptive acts and practices rules in financial services but  
2188 that has not been a role they have been able to use widely in  
2189 the last couple decades since the credit practice rule which  
2190 went into effect in the 1980s. They keep all of their  
2191 enforcement, and of course, it will be made stronger with the  
2192 aiding and abetting enforcement. We believe this is the only  
2193 way to put all the competing products under the same set of  
2194 rules. I have some examples but I will hold them for the Q&A  
2195 because I am conscious of your time, and I do want to say  
2196 that I think it is very important what the FTC does right now  
2197 in the recession. It is very important what the FTC will  
2198 continue to do after the transfer of authority in those cases  
2199 where there is overlapping enforcement and it will be  
2200 extremely important what the FTC does with its additional  
2201 authority.

2202       There are a lot of things the FTC can do right now to  
2203 help consumers who are suffering from the recession including  
2204 cleaning up the problem with credit-reporting errors, the  
2205 work it is now beginning to do under the new authority you  
2206 gave it in mortgage modification and foreclosure, debt  
2207 collection and debt settlement. All those things will remain  
2208 extremely important. I would be happy to take questions.  
2209 Thank you.

2210       [The prepared statement of Ms. Hillenbrand follows:]

2211 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|

2212 Mr. {Rush.} Thank you very much.

2213 Mr. Calkins, you are recognized for 5 minutes.

|  
2214 ^TESTIMONY OF STEPHEN CALKINS

2215 } Mr. {Calkins.} Thank you. Chairman Rush, Ranking  
2216 Member Radanovich, members of the subcommittee, thank you for  
2217 inviting me here to testify about this important matter.

2218 The proposed legislation would effect sweeping changes  
2219 in the Federal Trade Commission. The key to the bill is in  
2220 the definitions and they are written extremely broadly.  
2221 Applying those definitions and working your way through the  
2222 bill, you find that the bill would transfer out of the  
2223 Federal Trade Commission much of the work that the Federal  
2224 Trade Commission now does, giving those responsibilities to  
2225 the new agency and giving it the exclusive authority to  
2226 prescribe role and issue guidance with respect to much of  
2227 what the Bureau of Consumer Protection does.

2228 If you take the FTC's most recent annual report for 2009  
2229 and turn to consumer protection and start reading what they  
2230 have been done, subprime credit, mortgage servicing,  
2231 foreclosure rescue, fair lending, mortgage advertising, debt  
2232 collection, payday lending, Operation Clean Sweep, Operation  
2233 Telephony, the Sumtasia marketing case, payment systems, the  
2234 Naovi case, Nationwide Connections case, global marketing  
2235 case and so on and so forth, prepaid phone calls, on matter

2236 after matter after matter of what they have been doing, I  
2237 read the bill as saying that all of that would be transferred  
2238 to the new agency. In short, we would have major change.  
2239 Indeed, if you read the bill carefully you would find that  
2240 even some of the antitrust responsibility of the Commission  
2241 would be transferred. I assume that is a mistake but that is  
2242 how it is currently written.

2243         Now, why have this sweeping change in what the Federal  
2244 Trade Commission does? It might make sense if the Federal  
2245 Trade Commission was a bad agency that was doing bad work,  
2246 but as you all have spoken so eloquently this morning, the  
2247 Federal Trade Commission is a good agency that has been doing  
2248 good work. It has a unique bipartisan structure. It  
2249 combines consumer protection and competition to bring the  
2250 best from both perspectives to bear on problems and it has  
2251 been doing important work for consumers including in the  
2252 world of credit for a very, very long time. Transferring  
2253 responsibility from the Federal Trade Commission to another  
2254 agency obviously creates some pretty significant risks, and  
2255 my recommendation to you is to proceed with great caution, to  
2256 weigh those risks to decide whether they are really worth  
2257 running and certainly if they are to work very hard to try to  
2258 minimize those risks because the bill as written would make

2259 major changes and you need to be very careful to make sure  
2260 that all of this makes sense.

2261           Thanks very much, and I am happy to answer questions  
2262 when the time comes.

2263           [The prepared statement of Mr. Calkins follows:]

2264 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

2265 Mr. {Rush.} Thank you.

2266 Mr. Cox, you are recognized for 5 minutes.

|  
2267 ^TESTIMONY OF PRENTISS COX

2268 } Mr. {Cox.} Thank you, Mr. Chairman and Ranking Member  
2269 Radanovich.

2270 Abuses of consumer finance products were a disaster for  
2271 millions of consumers before anyone recognized them because  
2272 we had a financial crisis, a disaster. We heard previous  
2273 testimony about someone committing suicide. I have sat with  
2274 people whose families committed suicide after I worked with  
2275 them who had heart attacks from the stress. Millions of  
2276 people experienced this.

2277 Our federal regulatory system did not respond to this.  
2278 It was dominated completely by the thinking and needs of the  
2279 lenders and sellers and not by what was happening on the  
2280 ground. It is often said that no one could have seen this.  
2281 The people who were working with the victims of subprime  
2282 lending and were talking to people who reflected the  
2283 experience of those people as well as the others who were  
2284 subject to the abuses of consumer finance products absolutely  
2285 knew what was going on and were screaming at the top of our  
2286 lungs. No one was listening. It was predictable and it was  
2287 preventable.

2288 The Consumer Financial Protection Agency as proposed

2289 offers the first hope in generations, certainly in my adult  
2290 lifetime working on these issues, for an agency with  
2291 sufficient power and focus on consume protection issues to  
2292 seriously address these problems. It gets it right in terms  
2293 of its model. It sets up a unified rulemaking process. It  
2294 is not about whether the FTC was good or bad. It is about  
2295 the fragmentation of authority and the lack of perspective  
2296 and a unified rulemaker. It gets it right and setting the  
2297 floor and allowing innovation where innovation should occur,  
2298 which is in the state regulatory system, and it couples that  
2299 with an open enforcement system. It allows the enforcement  
2300 of those clear, unified rules to occur in multiple places,  
2301 and there are two reasons you want that. The first is that  
2302 you compare the proper enforcement agency with the problem at  
2303 hand. If you have got a problem that just occurs in Indiana,  
2304 the Indiana attorney general is the right place to do it. It  
2305 simply won't get taken care of if you allow a federal agency.  
2306 Conversely, if the Indiana attorney general turns up a  
2307 problem that appears to be nationwide, that can highlight the  
2308 need for the agency. Secondly, agencies like the FTC and  
2309 state attorneys general often will bring violations of rules  
2310 ancillary, which is what Chairman Leibowitz was saying,  
2311 ancillary to other investigations because these things don't  
2312 come up in little neat silos. So an open public enforcement

2313 model, which is what this bill has, by allowing the Federal  
2314 Trade Commission and other federal agencies to enforce the  
2315 rules and state attorneys general to enforce the rules  
2316 enhances enforcement.

2317 I will make two quick comments, one about the details of  
2318 the enforcement mechanisms and the other about the rulemaking  
2319 investigative authority. The open enforcement mechanisms in  
2320 the bill are excellent, however, I agree completely with  
2321 Chairman Leibowitz that the 120 days' restriction on the FTC  
2322 is way too cumbersome. It needs to be streamlined and made  
2323 more efficient. Secondly, and this is, I think, a very  
2324 important point, in the bill as currently constructed the FTC  
2325 is given the authority to enforce extant federal consumer  
2326 credit laws but not the regulations passed by the CFPA. The  
2327 CFPA regulations over time will become much more important  
2328 than the extant consumer credit regulations. It is really  
2329 critical that the FTC get the authority to enforce the  
2330 regulations that are passed by the CFPA.

2331 There is also a consulting power in there, a  
2332 requirement, and that is correct and I hope that on an  
2333 informal basis the agency takes account of the fact that the  
2334 FTC, which enforces UDAP, unfair and deceptive acts and  
2335 practices laws, gains a particular type of experience and  
2336 understanding that is vital to setting those rules.

2337           Secondly, state AGs have authority but mechanisms for  
2338 remedies need to be clarified because right now the section  
2339 1055 powers it is unclear whether those are bootstrapped into  
2340 the AG enforcement.

2341           Finally, in its rulemaking authority, the new CFPA  
2342 desperately needs detailed and express and clear  
2343 investigatory powers. Otherwise the data that is brought to  
2344 bear in what the rules are will be data held by the industry  
2345 that the CFPA simply doesn't have access to, so it is  
2346 critical that the CFPA have that investigative power so that  
2347 they can get the rules right the first time.

2348           I really appreciate the opportunity to be at this  
2349 historic hearing and wish the Congress great luck in making  
2350 this project work.

2351           [The prepared statement of Mr. Cox follows:]

2352           \*\*\*\*\* INSERT 5 \*\*\*\*\*

|

2353           Mr. {Rush.}   Thank you very much.

2354           Ms. Barkow.

|  
2355 ^TESTIMONY OF RACHEL E. BARKOW

2356 } Ms. {Barkow.} Thank you, Mr. Chairman, Ranking Member  
2357 Radanovich and members of the subcommittee. Thank you for  
2358 inviting me to testify before you today. I am honored to  
2359 have the opportunity to discuss this piece of legislation.

2360 The linchpin of the Consumer Financial Protection Agency  
2361 Act is of course the agency it creates, so whether this Act  
2362 will succeed or fail in its mission to protect consumers will  
2363 depend entirely on whether the agency it creates will succeed  
2364 or fail. I therefore analyzed the structure and powers of  
2365 the proposed CFPA to determine if it has been designed in the  
2366 most effective way to achieve its stated statutory mission.  
2367 I take no position on the merits of that mission or whether  
2368 there is a need for a new agency to regulate this field.  
2369 Rather, my focus is on whether the CFPA has been designed as  
2370 effectively as it can be to achieve that mission. In that  
2371 regard, I would like to make six brief suggestions and  
2372 observations about the design of the CFPA and this  
2373 legislation.

2374 My first recommendation and the most important is to add  
2375 a provision to this Act that would limit the CFPA board's  
2376 membership to no more than three members of the same

2377 political party. Unlike virtually all other legislation that  
2378 governs multi-member independent regulatory agencies  
2379 including the FTC, the SEC and the Consumer Products Safety  
2380 Commission, the CFPA Act as it is currently written does not  
2381 require political balance among the agency's membership.  
2382 There is a wealth of empirical studies that are demonstrating  
2383 that a group comprised solely of ideologically like-minded  
2384 people tends towards extremely decision making. Without a  
2385 provision in the CFPA Act requiring partisan balance, the  
2386 CFPA is likely to change positions from one extreme to  
2387 another with each new presidential administration. This is  
2388 unhealthy for the regulation of any market and certainly the  
2389 consumer financial products market. A political balance  
2390 requirement can serve as a stabilizing force. In addition, a  
2391 political balance requirement can lead to dissenting opinions  
2392 which is valuable for alerting Congress and the public if the  
2393 agency goes in an extreme direction one way or the other.

2394         Second, I suggest amending the Act's requirement that  
2395 the CFPA consult with all federal banking agencies and any  
2396 other relevant agency before passing rules to make sure those  
2397 rules will be consistent with the prudential market or  
2398 systemic objectives of the agencies being consulted. Because  
2399 this consultation requirement sweeps so broadly covering  
2400 every conceivable agency regulating-related field and

2401 anything of any importance to those agencies, this process is  
2402 likely to dramatically delay the promulgation of CFPA rules.  
2403 This is precisely the kind of requirement that aids industry  
2404 participants in tying of agency rules for years. So unless  
2405 Congress is of the view that the delay in legal uncertainty  
2406 is outweighed by the benefits of this provision, I suggest  
2407 making clear that consultation is at the discretion of the  
2408 CFPA and not subject to judicial review.

2409         Third, I advise modifying the statute of limitations  
2410 provision in the Act to begin running from the time the CFPA  
2411 discovers a violation, not from the time a violation has  
2412 occurred. Because violations by sophisticated business  
2413 interests are not discovered for years in many cases, this  
2414 provision is as it is currently written might hamper the CFPA  
2415 in its enforcement efforts.

2416         Fourth, I recommend including a limitation on the  
2417 ability of CFPA board members to practice before the CFPA for  
2418 a period of time after their service on the board is expired.  
2419 This kind of restriction would limit the negative effects  
2420 that are often caused by having a revolving door between  
2421 agencies and the industries that they regulate.

2422         Fifth, I just would like to highlight a protection in  
2423 the Act that I think is going to be critical to achieving the  
2424 Act's law enforcement objectives, and that is section 1042 of

2425 the Act which allows the state attorneys general to enforce  
2426 provisions. The state AGs have demonstrate in many areas  
2427 that they can be effective law enforcement partners, and I  
2428 think this is particularly true in the area of consumer  
2429 protection where agency capture is a significant risk.

2430 Finally, I would like to alert the subcommittee's  
2431 attention to the fact that it is unclear from this Act as it  
2432 is currently written whether the CFPA will be subject to  
2433 Presidential directives and oversight including review by the  
2434 Office of Information and Regulatory Affairs, known as OIRA.  
2435 There is language in the Act that suggests this is actually  
2436 going to be an executive agency and will be subject to this  
2437 kind of oversight. Congress may intend for the CFPA to be  
2438 part of the President's oversight process but if not, the Act  
2439 would need to be rewritten to make clear that the CFPA is an  
2440 independent regulatory agency for purposes of OIRA review. I  
2441 take no position on whether or not the agency should be  
2442 subject to this type of review but because it is a  
2443 fundamental question, I note for you that it is currently  
2444 unclear in the legislation.

2445 Thank you again for allowing me to testify and share my  
2446 thoughts on this proposed legislation, and I would be happy  
2447 to answer questions when we are all done speaking.

2448 [The prepared statement of Ms. Barkow follows:]

2449 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
2450           Mr. {Rush.} Mr. Stinebert.

|  
2451 ^TESTIMONY OF CHRIS STINEBERT

2452 } Mr. {Stinebert.} Thank you, Mr. Chairman, and thank you  
2453 for this opportunity to speak with you today. I am very glad  
2454 to hear that this is kind of a first step and hopefully which  
2455 will be a long process because as many have expressed here  
2456 today, there are certainly some concerns about this issue and  
2457 we hope that there will be continue to be somewhat of a  
2458 cautious approach as we go forward.

2459 The American Financial Services Association has been  
2460 around for almost 100 years and we represent about 30 percent  
2461 of all consumer credit in the United States with members in  
2462 the mortgage, credit card, auto and personal installment  
2463 loans. First and foremost, AFSA supports strong financial  
2464 consumer protection regulation. Just because we have  
2465 concerns going forward about the current agency does not mean  
2466 that the industry and that the association is not committed  
2467 to strong consumer protection regulation regarding financial  
2468 services. We believe that consistent enforcement of existing  
2469 consumer protections laws by government regulators would have  
2470 greatly lessened the harmful impact that the current crisis  
2471 has on consumers and certainly our economy. Many AFSA  
2472 members are regulated primarily at the State level and

2473 subject to a patchwork of requirements. We firmly believe  
2474 that consumer protection should be uniform in every State.  
2475 Therefore, AFSA supports strong national consumer protection  
2476 standards that allow the member to meet their consumer  
2477 protection obligation in an efficiently and cost-effective  
2478 manner.

2479         In addition, strong national consumer protection  
2480 standards will provide a benefit to consumers only to the  
2481 extent that they are consistent with sound potential  
2482 regulation. Consumer protections that threaten the safety  
2483 and soundness of financial service providers offer really no  
2484 protection at all. We believe consumers will be better  
2485 served by a regulatory structure where prudential and  
2486 consumer protection regulations are housed within a single  
2487 regulator. Congress tried to separate these two intertwining  
2488 functions with the GSEs. When it became apparent that this  
2489 situation was unavoidable, Congress brought the two  
2490 regulatory functions back under a single regulator and for  
2491 good reason. We urge Congress to support regulatory  
2492 structure that does not separate safety and soundness from  
2493 consumer protection.

2494         The authority proposed to be vested in the new agency is  
2495 breathtaking in both its scope and its effect. It would  
2496 cover many entities and persons who have little or no

2497 involvement in the activities leading to the current economic  
2498 crisis. Without any demonstrated need, many unsuspecting  
2499 persons will be swept into a web of scrutiny and reporting  
2500 requirements that yield little in the way of consumer  
2501 protection but much in the way of increased cost for  
2502 consumers. Attorneys, accountants, consumer reporting  
2503 agencies, auto dealers, title companies among others will  
2504 find themselves subject to review with no evidence that they  
2505 behaved unfairly. Financial service providers will find it  
2506 increasingly difficult to plan for risk as virtually any  
2507 practice or product other than prescribed standard plain  
2508 vanilla products could be labeled as unfair or abusive.  
2509 Innovation will be discouraged.

2510         Given the vast scope of the proposed agency's authority,  
2511 its funding needs are also staggering. The proposal seeks to  
2512 fund the CFPA by assessing fees on persons and entities it  
2513 regulates while including many, that would not expect to be  
2514 covered currently. There is no doubt that any assessment on  
2515 financial service products will be passed on eventually to  
2516 consumers. That direct unavoidable result will be an  
2517 increase in the cost and availability of credit.

2518         Most AFSA members are regulated by the FTC, which has a  
2519 proven record of enhancing consumer protection. It has  
2520 addressed the economic crisis in two ways, first by using the

2521 enforcement authority to pursue bad actors in the financial  
2522 services industry, and second, by setting federal policy  
2523 through guidance and public comment. Numerous examples are  
2524 listed in our written testimony.

2525         But in conclusion, AFSA believes that the FTC has done  
2526 an excellent job in enforcing consumer protection law and is  
2527 best suited to continue that role going forward. We believe  
2528 the Administration's goal can be achieved with adjustments to  
2529 the current regulatory structure and the result will be more  
2530 efficient, less costly and certainly more effective. To that  
2531 end, we have two specific suggestions. One, make current and  
2532 future consumer protection rules apply to all financial  
2533 services providers. Congress should ensure that all federal  
2534 consumer protection laws and regulations apply with equal  
2535 force to all providers of financial services with respect to  
2536 similar cases of products and services. These laws should  
2537 include strong national standards that preempt State laws and  
2538 permit all Americans to enjoy consistent level of service and  
2539 access with respect to financial products and services. We  
2540 have heard again and again today as you have 50 different  
2541 States that can meet or exceed the current laws that this is  
2542 not simplification. We are just going to wind up with 51, as  
2543 you stated, Mr. Chairman, different rules that these people  
2544 are going to have to follow.

2545           And number two, pursue a regulatory structure that does  
2546 not separate financial products and services from the  
2547 viability of the companies that offer them. All prudential  
2548 agencies should work together to coordinate consumer  
2549 protection regulation for financial products and services  
2550 with the goal that regulations be preemptive, consistent and  
2551 uniform. If we don't have that, we are not going to make any  
2552 headway. Thank you for your time.

2553           [The prepared statement of Mr. Stinebert follows:]

2554 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
2555 Mr. {Rush.} The Chair thanks the witnesses and the  
2556 Chair now recognizes himself for 5 minutes for questioning.

2557 According to the Administration's proposal, the States  
2558 will be able to enforce the statutes and rules being  
2559 transferred to the new agency right away. In contrast, the  
2560 FTC will be required to provide the CFPA with notice of a  
2561 proposed action and has been stated earlier wait 120 days for  
2562 the CFPA to determine if it would take the case before it  
2563 takes any action. This applies to the very rules and laws  
2564 currently enforced by the FTC.

2565 Mr. Calkins, in your testimony you suggest that this 4-  
2566 month delay will prevent the FTC from ever investigating or  
2567 taking action in these areas. Can you explain and expound  
2568 upon that, please?

2569 Mr. {Calkins.} When I read the bill, I sat and tried to  
2570 think about what life would be like under the new legislation  
2571 and the 120-day rule, what would the FTC do, and as I thought  
2572 about it and I read the bill, I read where the bill says  
2573 ``all consumer financial protection functions of the Federal  
2574 Trade Commission are transferred to the other agency.'' So  
2575 who at the FTC is going to be doing the work to find that  
2576 there is a violation that they wish to use the 120-day rule  
2577 to develop. Maybe the FTC will go out and develop new

2578 resources to do this. Does that make sense? And I don't  
2579 think that makes sense because the whole point of the bill,  
2580 it appears, is to transfer a large part of what the FTC does  
2581 to this new agency. Let us talk about the 120-day rules.  
2582 Well, we have experience with the FTC and the Department of  
2583 Justice where the FTC can ask the Justice Department to bring  
2584 a civil penalty action for it, 45 days there. The reality is  
2585 that the FTC, although I am not sure they would admit it,  
2586 goes out of its way to avoid using that authority. It is a  
2587 lot more effective and efficient for the Commission to go  
2588 directly to court, bring an action, take action against a  
2589 wrongdoer, stop a fraud, stop some harm, get relief and so  
2590 they use the authority they can use by themselves, and time  
2591 and again they don't go to the Department of Justice. I  
2592 think that 120-day authority will be very rarely used in the  
2593 new world. It is really there in case we have a new agency  
2594 that is so opposed to enforcing these rules than an FTC might  
2595 come along and try to develop some sort of alternative world  
2596 as a backstop, but I think that the world that I see would  
2597 have the FTC using this authority very, very rarely and I  
2598 just do not think that is the vision contemplated by the bill  
2599 as written.

2600 Mr. {Rush.} Does any other witness want to chime in  
2601 here? I am hearing skepticism on the part of the other

2602 witnesses. Ms. Barkow, are you skeptical of this backdrop  
2603 rule?

2604 Ms. {Barkow.} It does seem like 120 days would be the  
2605 equivalent of a lifetime in this kind of an industry where  
2606 you are talking about the--

2607 Mr. {Rush.} Well, if it was 60 days, would that make a  
2608 real difference?

2609 Ms. {Barkow.} Well, that I leave to the FTC to decide  
2610 but the fact that they are worried about the 120 days I think  
2611 speaks volumes about the fact that it is probably going to be  
2612 a significant issue.

2613 Mr. {Rush.} Does anyone else want to chime in here on  
2614 this?

2615 Mr. {Stinebert.} Well, I think if you look at some of  
2616 the discussion that occurred earlier and they were talking  
2617 about the number of days, but perhaps more importantly look  
2618 at the actual structure. If they have taken so many of the  
2619 personnel, the team has been taken from the FTC and is now  
2620 part of the new agency and yet they are supposed to maintain  
2621 the backstop or the backup in these areas, but the team is  
2622 gone, and as Mr. Calkins suggested, all they can do is go out  
2623 and rehire new experts that are supposed to be the backup.  
2624 It doesn't sound like a very good system to me.

2625 Mr. {Rush.} Ms. Hillebrand?

2626 Ms. {Hillebrand.} Yes. Thank you, Mr. Chairman. Under  
2627 the one rule writing many enforcers model, we want it to be  
2628 as easy as possible for the FTC to bring the cases in its  
2629 existing jurisdiction as well as to enforce the CFPA rules.  
2630 If the Commission recommends a shorter time period, we would  
2631 want you to look at that very seriously. We think a waiver  
2632 process also could help here. The Commission and the CFPA  
2633 could agree that for this kind of case we don't need to know  
2634 in advance and for these other cases we need a shorter  
2635 period.

2636 Mr. {Rush.} The Chair's time is concluded. The Chair  
2637 recognizes the ranking member, Mr. Radanovich.

2638 Mr. {Radanovich.} Thank you, Mr. Chairman.

2639 Mr. Calkins, the proposed legislation defines a covered  
2640 entity to include those who provide tax planning, financial  
2641 and other related advisory services or provide educational  
2642 courses and instruction materials to consumers. PBS often  
2643 runs such programming on TV for their audiences as do  
2644 financial cable stations and radio stations. Would these  
2645 entities be covered persons under the proposed legislation,  
2646 in your opinion?

2647 Mr. {Calkins.} Certainly there is a risk that they  
2648 would be covered persons. Certainly the Commission would  
2649 have to think about whether it was required to transfer

2650 responsibility for all those and then, very important, even  
2651 if they are not covered entities today, the new agency has  
2652 authority to define for itself additional activities that it  
2653 would have jurisdiction over, and so even if the FTC didn't  
2654 have to transfer authority today, they might have to transfer  
2655 authority a year from now when the definitions got changed.

2656       Mr. {Radanovich.} Thank you, Mr. Calkins. I want you  
2657 to comment on a prior statement about the FTC's  
2658 bipartisanship in the way it conducts its activities and how  
2659 that is good. Can you elaborate on that and how the lack of  
2660 bipartisanship might hinder the CFPA's ability to effectively  
2661 carry out what is now the FTC's mission?

2662       Mr. {Calkins.} Well, the FTC I think has over the years  
2663 developed credibility with Congress, with the States, with  
2664 international observers because it operates in a bipartisan  
2665 way. The commissioners try to work by consensus. They try  
2666 to take the actions that make the most sense. When somebody  
2667 wants to go out on a limb and be really wild and crazy to the  
2668 left or the right, there is someone from the other side to  
2669 pull them back in. As noted before, Ms. Barkow, when you  
2670 have people going too far, dissents can be filed, and it  
2671 succeeds in developing a shared understanding of the sensible  
2672 way to proceed and then as presidents come and go there  
2673 exists some continuity and that continuity I think adds

2674 credibility to the agency's operations and really has made it  
2675 into a more effective agency.

2676 Mr. {Radanovich.} All right. Thank you.

2677 Ms. Barkow, would you care to respond to that question  
2678 as well?

2679 Ms. {Barkow.} I agree completely, and I think that the  
2680 whole idea of an independent regulatory agency which I think  
2681 is part of the goal in this legislation is to have that kind  
2682 of consensus generating form of norms that transcend any  
2683 particular presidential administration so that you don't have  
2684 the instability that comes with every new presidential  
2685 administration means sweeping changes one way or the other.  
2686 You have a stabilizing force in an agency that has membership  
2687 from both parties. I think it has proven to be effective in  
2688 other context and it is hard to understand why you would have  
2689 a multi-member agency here that doesn't have that mix of  
2690 political views on it. I mean, why not just then have a  
2691 single-member board.

2692 Mr. {Radanovich.} Thank you very much.

2693 Mr. Stinebert, I want to ask you about uncertainty in  
2694 the financial markets, this massive shift of responsibility  
2695 and the creation of a new agency on consumer protection, your  
2696 bird's eye view on the industry, how it would react to  
2697 something like this and the level of uncertainty that it

2698 might bring into the markets where uncertainty is--we are  
2699 trying to do everything to avoid uncertainty. Would you  
2700 comment on that, please?

2701 Mr. {Stinebert.} Well, some might argue that this is  
2702 the perfect time to do something like this. I think it is  
2703 absolutely the worst time. We are finally starting to see  
2704 some stability in the financial markets. We are starting to  
2705 see some recovery. We are starting to see investors come  
2706 back into the marketplace, which eventually investors have to  
2707 buy these loans out there. In Europe and the United States,  
2708 we are starting to see movement back in there. This does  
2709 introduce a whole level of uncertainty back into the whole  
2710 arena because people are now going to stand back and wait and  
2711 see what goes on, whether there is additional liability  
2712 requirements and regulations on these entities. So yes, I do  
2713 agree that is going to bring a new level of uncertainty into  
2714 the marketplace at the worst possible time for that.

2715 Mr. {Radanovich.} Can you describe a scenario where the  
2716 duplicative regulatory authorities allowed by this Act's weak  
2717 preemption provision might actually prevent consumers from  
2718 access to valuable financial services? This is the State  
2719 preemption issue where you would have 51 different--

2720 Mr. {Stinebert.} Right now it is set up as basically a  
2721 floor or a standard that States will have the ability to

2722 exceed. Someone will make a judgment whether what the State  
2723 is trying to do is meeting or exceeding. I am assuming that  
2724 would be the new agency. But if a determination is made by  
2725 them that it exceeds it, of course anything that they would  
2726 do to exceed would be permitted. So I think you have seen it  
2727 in many other instances. I will give you the most recent,  
2728 the new SAFE Act. That was the licensing for residential  
2729 mortgage originators. You basically have out there in the  
2730 implementation of that law 50 different standards that  
2731 everyone is trying to meet and each of them, many of them  
2732 exceeding the federal guidelines. So people that are  
2733 regulated at the State level will have to register in  
2734 multiple States as originators are going to have to follow  
2735 very, very many different laws.

2736 Mr. {Radanovich.} Thank you very much. Thank you, Mr.  
2737 Chairman.

2738 Mr. {Rush.} The Chair now recognizes the gentleman from  
2739 Massachusetts, Mr. Sarbanes--Maryland. I am sorry.

2740 Mr. {Sarbanes.} We are trying to get to Massachusetts.  
2741 We have one Republican left. Thank you, Mr. Chairman. I  
2742 appreciate the hearing.

2743 Mr. Stinebert, you said this is absolutely the wrong  
2744 time. What would be a good time?

2745 Mr. {Stinebert.} Well, I think when you go back, and

2746 there is plenty of history to point fingers at what was the  
2747 cause of the subprime mortgage crisis and currently economic  
2748 crisis but I don't think you would get anybody that would  
2749 predict that whatever is done here today or by Congress that  
2750 you can control every bubble that is going to occur in the  
2751 future. Most economists would agree that yes, this bubble is  
2752 a housing bubble, before it was a tech bubble, before that it  
2753 was a savings and loan bubble. You cannot have government  
2754 totally controlling financial markets unless they can totally  
2755 control potential bubbles, unless you totally stymie  
2756 innovation and all you have is a plain vanilla standard  
2757 product out there, and I don't think that is good for the  
2758 very consumers that we are trying to protect here.

2759       Mr. {Sarbanes.} Yes, I agree with that. I mean, I  
2760 don't think you can have government totally controlling every  
2761 single financial dimension in the market. I don't think you  
2762 can do that. I don't think this tries to do that. I think  
2763 what this tries to do is provide some oversight and direction  
2764 and rules of the road so that people stop driving off the  
2765 road, not only because in the view of Alan Greenspan that  
2766 causes the drivers to crash and hurt themselves but because  
2767 they run over hundreds of thousands of innocent bystanders in  
2768 the process.

2769       Let me switch back to a discussion from a few minutes

2770 ago because I think it is very relevant. As attractive as  
2771 the new agency may be to some, and I am partial to it as it  
2772 is being described, we still have to get from here to there,  
2773 and I worry a lot because even if we had in place now the  
2774 regulatory structure that we thought was necessary, it would  
2775 have to be in overdrive, I would argue, to be on the lookout  
2776 against predatory action that is lurking out there. But  
2777 certainly in a transitional phase, predators have a lot of  
2778 opportunities to make mischief, and I think the discussion  
2779 about the 120 days kind of points to some of this anxiety,  
2780 but I would like anyone who would care to, I would like to  
2781 hear you respond to the idea of some kind of a special  
2782 initiative or taskforce or consciousness that during this  
2783 transition we need to be paying attention to, maybe it is a  
2784 limited set of activities or potential mischief but there has  
2785 got to be a special focus on that so that we don't make the  
2786 transition, say now we have got a good regulatory structure  
2787 in place, but in the meantime while that happened, a lot more  
2788 people got hurt, and I say this because there is a lot of  
2789 money that is flowing right now, taxpayer money, into the  
2790 financial infrastructure of the country and many of the same  
2791 players that took advantage of people over the last few years  
2792 are thinking creatively of ways to take advantage of them  
2793 again by accessing some of these dollars. So speak to that

2794 issue of how we can not be caught napping during the  
2795 transition. We can start with you, Ms. Hillebrand.

2796 Ms. {Hillebrand.} Thank you. I believe you are asking  
2797 exactly the right question. There will be a danger period  
2798 during the transition. There are a couple of things, and I  
2799 don't have the whole answer. One is the work that the FTC  
2800 does right now and continues to do up to that date of the  
2801 transfer of rulemaking so it will be incredibly important.  
2802 It could be up to 2 years after enactment. If these two  
2803 titles are enacted together, the FTC will get its rulemaking  
2804 improvements right away and can get some of these rules that  
2805 have been kind of backlogged because of the limitations on  
2806 its power moving into place. That will help certainly to put  
2807 that policing into place. We do need to be paying attention  
2808 to the new problems that will be developing. One that  
2809 worries me in particular is a new form of zombie debt. You  
2810 know, that is a debt where no one has got the paperwork,  
2811 someone just has a list saying you owe this money, that might  
2812 come out of some of these mortgage unsuccessful modifications  
2813 or post kind of mortgage dispositions. So there are new  
2814 issues, a lot of old issues. The more we can get the FTC to  
2815 do now before the transfer, I think the better shape it will  
2816 be in, but we will have to watch for that, yes.

2817 And the other thing is, there is not going to be enough

2818 enforcement resources. Moving people from where they are  
2819 over from all the different agencies is not going to give us  
2820 enough enforcement staff to do the whole job for the country.  
2821 The FTC worked very hard. They said they had 100 cases over  
2822 5 years. If you talk to any State AG in the country, they  
2823 will tell you, 100 cases, we could bring that in my State  
2824 tomorrow. There is more need than the number of people that  
2825 are currently in place to do consumer protection enforcement  
2826 financial services at the federal level.

2827 Mr. {Sarbanes.} Yes, sir.

2828 Mr. {Cox.} I think you need to break your question,  
2829 which is a great question, in two parts. One part is more  
2830 scam-like activities, and I think this Congress effectively  
2831 delegated the FTC, charged to go over foreclosure rescue  
2832 scams where a lot of mortgage brokers were moving in and loan  
2833 modification scams and that kind of thing. That kind of  
2834 activity the existing authority clearly is sufficient to  
2835 regulate and the additional authorities recently give them  
2836 help. You break that from more traditional and large-scale  
2837 sale of products such as mortgages, et cetera, and I think in  
2838 that area the credit markets are so beaten down that I think  
2839 that this agency would be up and running effectively to get  
2840 ahead of the new products that would be--

2841 Mr. {Sarbanes.} Okay. That is helpful. Thank you very

2842 much.

2843           Mr. {Rush.} The Chair will extend to the members  
2844 additional time for one additional question, and the Chair  
2845 would recognize himself for one additional question.

2846           I want to get back to this area of concurrent  
2847 enforcement, and, you know, are there any risks or downsides  
2848 to consumers or industry with this whole idea of concurrent  
2849 enforcement between two agencies? Can you predict or look  
2850 into a crystal ball and tell us what you see in terms of  
2851 downsides or harm to the industry or to consumers regarding  
2852 this whole area of concurrent enforcement? Anybody want to  
2853 jump in? Mr. Stinebert?

2854           Mr. {Stinebert.} Well, I will give it a try and go  
2855 first. One of the whole things that I think the agency being  
2856 proposed is supposed to do is have single-source  
2857 responsibility. Then you take enforcement and you break that  
2858 among current enforcement agencies and then you have a new  
2859 agency that is supposed to share some type of dual  
2860 enforcement. It doesn't sound practical to me. We think  
2861 that enforcement should continue to stay with the existing  
2862 agencies. Now, to your question, Congressman, about the  
2863 timing and you mentioned the speed limit and the people  
2864 watching the people going down the road, I think that--I  
2865 don't think anybody would deny that the regulations or the

2866 speed limits were in place but up until several years ago  
2867 that perhaps the regulations were in place but the  
2868 enforcement and the oversight was not. But I think if you  
2869 look today in all of these agencies whether it be the FTC or  
2870 the other agencies in Washington, I think everybody has their  
2871 radar guns out and are certainly looking at consumer  
2872 protection issues as well as credit and lending issues in  
2873 general. I don't think there has ever been a focus in this  
2874 area like there is today, and so to that respect, I think  
2875 that going back to your question, Mr. Chairman, I think that  
2876 it is very important, I think most important, that there be  
2877 continued responsibility between safety and soundness and the  
2878 viability of those companies and consumer protection, and I  
2879 think it is unwise to separate those two entirely. We have  
2880 gone through a good example with the GSEs of trying to do  
2881 that and finding out why that doesn't work, and it would be  
2882 very simple if that agency that is just concerned about  
2883 consumer protection can make everything so safe that is not  
2884 really good for the companies offering those products or for  
2885 the consumers themselves. There is always going to be risk  
2886 in this industry. That defines what it is. And I don't  
2887 think you can eliminate that entirely.

2888 Mr. {Rush.} Ms. Barkow?

2889 Ms. {Barkow.} I think it is a really good question and

2890 I would say that I think it is not so much of a risk as long  
2891 as the rules of the game as clear, so as long as you have the  
2892 one agency that is setting the rules and what it is that  
2893 companies have to do, the fact that there would be multiple  
2894 enforcers of those rules is less disconcerting because you  
2895 have clear standards and everyone would know what they are  
2896 and you would have essentially this kind of more cops on the  
2897 beat analogy and so that is why you could have state AGs  
2898 helping out, you could have the FTC helping out. You would  
2899 just be getting more manpower. But the rules would be clear.  
2900 So really the success of it would depend upon what kind of  
2901 rules end of being produced from this process, and I guess I  
2902 would just state, that is why it works to have, for example,  
2903 all the States can police Medicare fraud, for example, and it  
2904 is not a risk because everybody knows what they are looking  
2905 for and so it would just be really important for the agency  
2906 that is created to have clear rules, and if they see an  
2907 enforcement action that looks like it is not really in the  
2908 spirit of those rules, the act as it is written, for example,  
2909 if the state AG brings it, the CFPB could intervene and they  
2910 could step into that action and make clear that that is a bad  
2911 interpretation of their rule or it is a bad enforcement  
2912 action. So I think it is okay to have multiple law enforcers  
2913 and in fact probably necessary because there just aren't

2914 enough resources for all the fraud that is out there.

2915 Mr. {Rush.} Ms. Hillebrand?

2916 Ms. {Hillebrand.} Thank you, Mr. Chairman. I had to  
2917 think for a moment about your question to remember that there  
2918 already are six concurrent enforcing authorities. It is just  
2919 that the banking agencies haven't used that open public  
2920 enforcement model to bring cases with the vigor and approach  
2921 that the FTC has used. So we already do have concurrent  
2922 enforcement and the downside has been that many of the  
2923 agencies other than the FTC that have enforcement authorities  
2924 also have other obligations that tie them very close to the  
2925 industry that they regulate. At least with the concurrent  
2926 enforcement authority with the CFPB and the FTC, we won't  
2927 have that problem and I think that is a good step forward.

2928 Mr. {Rush.} Mr. Calkins?

2929 Mr. {Calkins.} Mr. Chairman, I think that concurrent  
2930 enforcement authority could work if done carefully but I  
2931 worry that there is too much attention to the FTC as an  
2932 enforcer. I prepared for this over the weekend when the  
2933 website was down so I was reduced to the documents that I  
2934 happened already to own. I owned a 2004 annual report that  
2935 happened to be in my files. I opened it up to consumer  
2936 protection where the FTC has a good list of the range of  
2937 activities in which the agency engages and that is part of

2938 what makes it a success. Consumer protection policy, one,  
2939 research and reports; two, hearings and workshops; three,  
2940 advocacy; four, amicus briefs; five, consumer and business  
2941 education and outreach. The FTC is not just a cop on the  
2942 beat. It is an agency that has economists, that does  
2943 competition, that does consumer protection and uses a whole  
2944 range of tools to develop expertise, to identify problems and  
2945 to craft solutions, and if a huge part of what the FTC does  
2946 as a matter of subject matter is transferred out and if the  
2947 new agency has the exclusive authority to give guidance in  
2948 this way, then we have lost a very great deal of what the FTC  
2949 does and I think that the consumers would be the worse for  
2950 it.

2951 Mr. {Rush.} Mr. Cox?

2952 Mr. {Cox.} Chairman Rush, I think ultimately the  
2953 industry will make two arguments about the concurrent  
2954 authority and the problems with it. The first is, it is too  
2955 much enforcement, but as Ms. Hillebrand said, and as someone  
2956 who spent years making priority lists, your list is way  
2957 longer than you will ever get to and the problem with this  
2958 bubble bursting was not too much enforcement. The second  
2959 problem which is more subtle or real is an inconsistency in  
2960 enforcement policy, and Ms. Barkow appropriately says that  
2961 this rulemaking authority, if it is clear, if the rules are

2962 clear enough, certainly will solve the problem, and I would  
2963 further say that the CFPB is given the sufficient authority  
2964 to make sure the is happening in a uniform way.

2965 But there is a second response to the inconsistency,  
2966 which is unlike rulemaking where I agree you want a unified  
2967 rulemaker, when it comes to enforcement, this is where  
2968 regulatory competition actually works because you are  
2969 competing to be a better enforcer as opposed to competing for  
2970 a race to the bottom so that people will charter with you,  
2971 which was a serious problem in creating this situation. And  
2972 when you compete to do better, you are aware that if you  
2973 don't do it and somebody else enforces your rule in a  
2974 situation that you might get embarrassed, Madoff, SEC, you  
2975 know, that when you have competitive enforcement you have a  
2976 market that essentially forces public entities to be aware of  
2977 that. That actually works, and when it comes to UDAP  
2978 authority, I just want to say, it is so important. The state  
2979 attorneys general, and I am patting myself on the back here  
2980 because I was part of a small group who did this. We were  
2981 the only ones out there screaming about and bringing these  
2982 cases. The FTC was saying it is great because they were  
2983 going after different actors but did one case where we got  
2984 half a billion dollars back to people with subprime mortgages  
2985 followed by another case where there was \$300 million and I

2986 thought that was too little and I had left by then. I mean,  
2987 this was a problem that if you were on the ground you saw it.  
2988 I mean, it was visceral. These people were utterly out of  
2989 control. The State AGs were able to enforce it because they  
2990 had a different enforcement agenda. They were sitting at a  
2991 different place. Regulatory competition works in terms of an  
2992 open enforcement model.

2993 Mr. {Rush.} The Chair now recognizes Mr. Radanovich for  
2994 one question.

2995 Mr. {Radanovich.} Thanks, Mr. Chairman. I appreciate  
2996 everybody's testimony but Mr. Cox, what I thought I heard was  
2997 that we need multiple agencies having to do the same job to  
2998 make sure that the people are doing their job, and that to me  
2999 a recipe for wasted spending. But I do want to ask you a  
3000 question about, I believe it was Ms. Sutton who was here  
3001 earlier talked about a situation where an 84-year-old woman  
3002 who owned her place free and clear was duped into a 30-year  
3003 mortgage. I would like to know whether or not there was  
3004 family involved putting her up to that and that happened for  
3005 reasons that wouldn't have anything to do this with this  
3006 current financial crisis. I happen to represent Stanislaus  
3007 County in California. It is the epicenter of mortgages, the  
3008 number one county in the Nation where mortgage defaults and  
3009 foreclosures have happened. So I have a great appreciation

3010 for what is happening here. And you would hear tales about,  
3011 one in particular, non-English-speaking people that were  
3012 talked into a home that all they needed to do was come in and  
3013 sign the papers. Once they got there, they were jammed with  
3014 points and fees that they knew absolutely nothing about and  
3015 were put into an uncomfortable situation, signed the mortgage  
3016 papers, later lost the house. So I am curious to know after  
3017 we have spent in reaction to this financial crisis anywhere  
3018 between \$800 billion to \$1.5 trillion dollars to stimulate  
3019 the economy. We get a rise in the unemployment rate that was  
3020 supposed to drop with all that spending. I am a little leery  
3021 of broad, sweeping reactions to the problems that we are in.  
3022 So how does something like--and I would offer that to you,  
3023 Mr. Cox, Mr. Stinebert or anybody else that wants to respond  
3024 to this thing. How would that help the person--I am not sure  
3025 about the Sutton case, and I want to know whether the family  
3026 put her up to that, that poor, unfortunate, elderly person up  
3027 to that situation. But my situation in Modesto, California,  
3028 where the non-English-speaking person was jammed into that  
3029 loan and a shyster put points on there and then they quickly  
3030 sold the mortgage to somebody else and this guy was washing  
3031 his hands and he was out of there. How does this broad,  
3032 sweeping change that you are talking about prevent something  
3033 like that from happening and at what cost any more so than

3034 what is currently on the books to prevent?

3035 Mr. {Cox.} Thank you, Ranking Member Radanovich. I  
3036 will respond to that by also responding to Mr. Stinebert's  
3037 earlier comment, that we all agree that the regulation that  
3038 was there was an enforcement problem. We don't all agree on  
3039 that, and here is--the problem had two parts to it if you  
3040 want to break it into its grossest problem. The first part  
3041 was the type of products that were being sold. They were  
3042 simply way too high risk, way too complex and way too  
3043 aggressively sold for average consumers to work through all  
3044 the problems and understand all the costs and consequences  
3045 and the context of these mortgages. For instance, held up at  
3046 the time as the great financial innovation, the payment  
3047 option ARM, it was sold so aggressively on its benefits but  
3048 its risks were not clear to the average consumer, to my aunt.  
3049 You know, it was the kind of thing I could have sold her on  
3050 if I was an evil person without informing her of the risks.  
3051 So there is a product regulation problem that existed here.  
3052 The Fed, if you read the Fed's papers during this time and  
3053 you put them right next to the industry's papers, you could  
3054 change the titles and you couldn't tell the difference.  
3055 There was one type of thinking. That needs to change.

3056 The second problem was a fraud problem. The fraud  
3057 problem got so far out of control, I have never seen anything

3058 like it. You know, if you were talking to the people and you  
3059 saw this going on, if you talked to the ex-workers in these  
3060 agencies, et cetera, in these companies that were selling  
3061 these things, fraud was so rampant in this industry that, you  
3062 know, that was almost a separate problem from the product  
3063 regulation problem, and so we also had a lack of enforcement,  
3064 particularly at the federal level, you know, on fraud but we  
3065 fundamentally had a product regulation problem. I hope that  
3066 responds.

3067 Mr. {Radanovich.} Mr. Stinebert?

3068 Mr. {Stinebert.} Commenting back to Mr. Cox's earlier  
3069 discussion about whether we should have multiple regulators  
3070 is a good thing, I ask you, if you are a business and you  
3071 have multiple regulators, two and three regulators, is  
3072 competition really good if you are the regulated entity and  
3073 the costs that are involved in that. I mean, so the FTC is  
3074 in your office one week and having your staff gather  
3075 everything else and the next week, you know, another  
3076 regulator is in there. I can see where there might be some  
3077 contention where that is good but you won't have businesses,  
3078 anyone that operates a business, small profit or a large  
3079 business having multiple regulators and enforcers coming into  
3080 your offices is necessarily a good thing because--and all of  
3081 those costs are eventually passed on to consumers. These do

3082 not happen in vacuums. So, yes, there are protections I  
3083 think that need to be in place and you are absolutely right  
3084 about that, but I do think you can overdo a process to. We  
3085 want to have a process that protects consumers but is  
3086 efficient for everyone involved, that it is efficient for the  
3087 safety and soundness and the viability of the companies that  
3088 are being regulated as well as good for the consumers that  
3089 are buying their products, and I think that that is an  
3090 important thing.

3091 Mr. {Radanovich.} Thank you, Mr. Chairman.

3092 Mr. {Rush.} The Chair recognizes the chairman emeritus,  
3093 Mr. Dingell

3094 Mr. {Dingell.} Chairman, I thank you for your courtesy.

3095 This question is to Gail Hillebrand and to Professor  
3096 Calkins. What authority will remain in the FTC to protect  
3097 the consumers after the Administration's plan has been  
3098 adopted if it is adopted in its current form?

3099 Ms. {Hillebrand.} Thank you, Chairman Emeritus. The  
3100 FTC retains all of its authority to bring section 5  
3101 enforcement subject only to a staff level of consultation,  
3102 coordination and discussion--

3103 Mr. {Dingell.} But we would lose that authority?

3104 Ms. {Hillebrand.} The FTC retains that authority. I am  
3105 going to give you a list of things it retains. It retains

3106 its section 5 authority. It retains its authority to bring  
3107 cases under the statutes and rules for the enumerated  
3108 consumer statutes. That is our alphabet soup: ECOA, EFTA,  
3109 reg Z and so on. It retains--well, those are the big things  
3110 that it retains. It also retains its pure fraud authority.  
3111 I mean, there are financial services and then there are  
3112 people who tell lies who say sign up with me and give me your  
3113 Social Security number and your checking account number and  
3114 you will never see me again. It retains that authority.  
3115 Those folks are not selling financial services, they are  
3116 selling lies, and it retains that authority, and we have  
3117 recommended that it also be given the same kind of backstop  
3118 authority that it now has currently and would have under this  
3119 proposal for the existing consumer statutes with respect to  
3120 enforcement of the CFPB rules. That is not yet in the  
3121 proposal.

3122 Mr. {Dingell.} Now, what would it lose? What would FTC  
3123 lose? What consumer protection jurisdiction would it lose?

3124 Ms. {Hillebrand.} Yes. The FTC would lose the  
3125 jurisdiction that has been important but difficult for it to  
3126 use which is its authority to develop unfair and deceptive  
3127 acts and practices rules in the financial services area. I  
3128 am sure you are aware the last time that authority was used  
3129 was in the credit practices rule, which came into effect in

3130 the mid-1980s.

3131 Mr. {Dingell.} Okay. Now, why should that be taken  
3132 away from FTC?

3133 Ms. {Hillebrand.} If we were looking at just the FTC,  
3134 there would be no reason to take it away, but the problem is,  
3135 we need--

3136 Mr. {Dingell.} There is no reason to take it away?

3137 Ms. {Hillebrand.} No, I am not quite finished.

3138 Mr. {Dingell.} Let us just go a wee bit further and  
3139 explain to me why we should give it some of those goodhearted  
3140 folks who led the fight for the repeal of Glass-Steagall who  
3141 deregulated banking and financial services and who left us  
3142 this glorious mess which we now have in the form of probably  
3143 the biggest depression that this country has had since 1929.  
3144 Now, why should we do that?

3145 Ms. {Hillebrand.} We need to give the authority to an  
3146 agency that can make one set of rules that applies to the  
3147 bank provider and the non-bank provider. If the FTC--

3148 Mr. {Dingell.} I have no objection to taking care of  
3149 the bank regulatory agencies. Let them create them and let  
3150 them do their thing. But why wouldn't we want the honest men  
3151 and women at FTC looking over their shoulder and why wouldn't  
3152 we want them looking over the shoulder of those goodhearted  
3153 banks and financial folks and MBAs up in New York that

3154 created this mess? Now, help me. Why wouldn't we want that?

3155 Ms. {Hillebrand.} We definitely want oversight. We  
3156 want someone who can look over no matter what kind of--

3157 Mr. {Dingell.} Do you like the idea of having the FTC  
3158 sort of keep an eye on those people?

3159 Ms. {Hillebrand.} We like the idea of having an agency  
3160 that can look at everybody, not just the non-bank providers,  
3161 keep an eye, and we think the best way to--

3162 Mr. {Dingell.} And what about all the goodhearted banks  
3163 that are going to be engaging in all kinds of things? They  
3164 are going to be engaging in real estate, they are going to be  
3165 engaging in issuing of bonds and securities. They are going  
3166 to be engaged in all kinds of wonderful activities on  
3167 derivatives which are really gambling devices. So why  
3168 shouldn't the FTC retain its continuing and ancient  
3169 jurisdiction over keeping honest men honest and maybe  
3170 occasionally catching a rascal? Now, why should we take that  
3171 away from FTC?

3172 Ms. {Hillebrand.} Mr. Chairman Emeritus, I respectfully  
3173 suggest--

3174 Mr. {Dingell.} You represent consumers. Why shouldn't  
3175 we just leave FTC as it is and let these other folk go about  
3176 their nefarious business under the kind of weak-minded  
3177 regulation that the Treasury has traditionally given to these

3178 institutions?

3179 Ms. {Hillebrand.} We are absolutely in favor of--

3180 Mr. {Dingell.} I will give you a good reason for that.

3181 You are speaking here for the consumers, and I am trying to  
3182 figure out do you really understand the consumers' needs or  
3183 are you engaged in perhaps disregarding the consumers because  
3184 these other folks have done a better job of telling you what  
3185 a wonderful job they are going to do after they have brought  
3186 about not one but two depressions?

3187 Ms. {Hillebrand.} I am looking at it from the point of  
3188 view of the ordinary person who is trying to get a mortgage,  
3189 and they want to know--I mean, the consumer doesn't think it  
3190 is--

3191 Mr. {Dingell.} No, no, you are giving me a wonderful  
3192 answer but it is to the wrong question. Answer my question,  
3193 please.

3194 Ms. {Hillebrand.} The answer is, we think--

3195 Mr. {Dingell.} Why should we not keep FTC in its  
3196 traditional jurisdiction of protecting consumers? When I was  
3197 a boy, Roosevelt tried to give FTC jurisdiction over the  
3198 stock market, and you can't imagine the outrage that this  
3199 generated in New York because they were scared to death of  
3200 the Federal Trade Commission, which is under the jurisdiction  
3201 of the committee. We keep them honest. And we find that as

3202 soon as the FTC got away from this committee, they all of a  
3203 sudden became a wholly owned subsidiary of the securities  
3204 industry and the banking industry. Now, why should we  
3205 sanctify that by stripping the consumers of the one remaining  
3206 protection which they have, the FTC, in favor of giving it to  
3207 a congregation of folks well known to be influenced by some  
3208 of the worst scoundrels in our society?

3209         Ms. {Hillebrand.} Are you ready for my answer? We  
3210 believe that we need to put it in one place so that the non-  
3211 banks aren't saying oh, don't regulate us the banks can still  
3212 do that. The banks are saying oh, don't regulate us because  
3213 the other guy can still do it.

3214         Mr. {Dingell.} We don't mind having this agency that  
3215 would be created by the Administration's proposal do that.  
3216 What we want is to have the FTC there so as to sort of watch  
3217 over these people and let them know that there are honest men  
3218 and women watching them so that the rascality is diminished  
3219 and the consumers are protected. What is wrong with that?

3220         Ms. {Hillebrand.} I think we have the same goal and  
3221 perhaps a different with respect about how to get there.

3222         Mr. {Dingell.} So then are you telling me that you like  
3223 the idea of having the FTC continue its jurisdiction while  
3224 these other goodhearted folk go about their nefarious  
3225 business?

3226 Ms. {Hillebrand.} We have endorsed full retention of  
3227 FTC enforcement authority but we think--

3228 Mr. {Dingell.} We have talked about what FTC is going  
3229 to lose and you are apparently advocating the losing of it.  
3230 I am not of a view that maybe we want FTC to lose that  
3231 jurisdiction and maybe we want FTC to be around to sort of  
3232 provide a minor dampening of the rascality which is going to  
3233 continue to occur in the financial services industry. Now,  
3234 what is your objection to that?

3235 Ms. {Hillebrand.} We believe that you need--

3236 Mr. {Dingell.} Dear friend, in just a few words, what  
3237 is your objection?

3238 Ms. {Hillebrand.} Put the rulemaking in one place so  
3239 that it is very clear whose job it is, and then you can hold  
3240 them accountable.

3241 Mr. {Dingell.} They arranged that one-stop shopping  
3242 when they moved this whole thing across the hall, and since  
3243 then the whole financial services industry of the United  
3244 States has had to be bailed out to the amount of \$700  
3245 billion, which was congregated by Mr. Paulson, who came from  
3246 that industry, and which has done nothing but enriched the  
3247 same rascals that had caused trouble, and it has not only  
3248 enriched those rascals but it has given us something new to  
3249 think about, and that is, it has seen to it that they have

3250 had the funds to pay the same scoundrels who made the mess  
3251 enormous bonuses amounting to as much as \$165 million in one  
3252 instance. Obviously, this is the product of one-stop  
3253 shopping which I suspect you were telling me you support or  
3254 maybe you want to tell me now you don't support.

3255 Ms. {Hillebrand.} We are trying to end the ability to  
3256 shop for your regulator by having one entity write the rules  
3257 no matter what kind of charter and what kind of provider.  
3258 That is our position.

3259 Mr. {Dingell.} Well, I have to say, I think somebody  
3260 else wrote your statement but I thank you for your presence,  
3261 and Mr. Chairman, I thank you for your courage and ability to  
3262 bring this event about. Thank you.

3263 Mr. {Rush.} The Chair thanks the chairman emeritus.  
3264 The Chair thanks the witnesses. This hearing now stands  
3265 adjourned. But before we adjourn, I wanted to let you know  
3266 how grateful we are for you to extend your time with us and  
3267 spend your time with us.

3268 By unanimous consent, I request that members submit all  
3269 questions to be sent to the witnesses for the record within  
3270 seven calendar days and that witnesses will respond promptly  
3271 to the questions that are submitted to them. Thank you so  
3272 very much, and safe travel.

3273 [Whereupon, at 2:15 p.m., the subcommittee was

3274 adjourned.]