September 12, 2016

Dear Representative,

The Center for Responsible Lending writes to express its serious concerns with the Financial CHOICE Act and to urge you to oppose this legislation. The over 500 page bill is replete with destructive policies that roll back the essential protections that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) put in place. Moreover, the bill eliminates regulatory powers that pre-date Dodd-Frank. Contrary to its stated purpose to create hope and opportunity, the bill would re-expose consumers, investors, and the public to a host of risky and abusive financial practices, including many of the practices that contributed to the last recession and foreclosure crisis.[1]

The Bill Attacks the CFPB's Structure and Authority, Frustrating the CFPB's Ability to Fulfill its Mission

Title III of the bill is aimed at obstructing the CFPB's ability to fulfill its mission to protect consumers from predatory financial products and practices. This title severely weakens the CFPB's structure and authority in the following ways:

(1) changes the structure of the CFPB from its current, effective single-director structure to a less effective five-member commission;[2]

(2) eliminates independent funding of the CFPB, putting it at the mercy of an annual appropriations process and disregarding the long-standing practice of independent funding for banking regulators;[3]

(3) eliminates the CFPB's examination authority for more than half of the banks it currently supervises;

(4) repeals the CFPB's authority to stop abusive acts and practices in consumer finance;

(5) weakens the CFPB's administrative enforcement process by giving industry defendants the option to move proceedings to federal court; and

(6) separates market monitoring and supervisory functions, muddying the CFPB's mandate and creating unnecessary bureaucracy.

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[1] This letter focuses on a subset of CRL's objections to the bill. For further detail, please refer to the letter issued by American for Financial Reform.

[2] A recent analysis from Compass Point Research & Trading LLC, a financial services investment banking and research firm, acknowledged this impact, concluding "that shifting the CFPB's governance from a directorship to a commission would double the bureau's already elongated rulemaking timeline [and] cut its enforcement activity by 50% to 75%." Ben Lane, Are Richard Cordray's days as CFPB director numbered?, Housing Wire (Jun. 3, 2016), http://www.housingwire.com/articles/37193-are-richard-cordrays-days-as-cfpb-directornumbered?eid=331536434&bid=1423800.

[3] Moreover, the CFPB's funding is already more constrained than that of other financial regulators; the CFPB's budget is unique in being capped by Congress.

The CFPB's recent consent order with Wells Fargo highlights the necessity for a robust consumer watchdog agency.[4] The CFPB, OCC, and Los Angeles City Attorney's office found that Wells Fargo was for years engaged in a widespread illegal practice of secretly opening unauthorized deposit and credit card accounts. Spurred by sales targets and compensation incentives, several thousand Wells employees opened up more than two million accounts that may not have been authorized by consumers. Egregious cases like this serve as a stark reminder for why the CFPB's ability to enforce the law and protect consumers must not be weakened.

The Bill Seeks to Undermine CFPB Efforts to Protect Consumers in Key Areas

The bill stymies the CFPB's efforts to advance protections in payday lending, arbitration, mortgage, and auto lending. First, the bill would allow states and federally recognized tribes to waive implementation of the CFPB's final rule on payday and small dollar loans for a period of five years. The debt trap created by repeat 400% interest payday and small dollar loans is widely recognized as unfair and deceptive. States and tribes should not be able to deny their residents the common-sense protections this rule aims to provide – ensuring that small dollar loans are made only those who have the ability to repay them.

The bill also prevents implementation of the CFPB's proposed rule prohibiting forced arbitration clauses that contain class action bans. Class action bans routinely deny consumers their day in court to remedy financial abuses they have suffered. The importance of the arbitration rule is further illustrated by Wells Fargo shielding itself from a 2015 class action lawsuit alleging that Wells employees were engaging in fraud by opening unauthorized customer accounts, the very conduct that this month earned the bank a $185 million dollar fine from the CFPB, OCC, and Los Angeles City Attorney's office. The bank successfully raised forced arbitration clauses in its agreements as a defense in order to block the class action challenge.[5] In addition, the bill seeks to stall the CFPB's enforcement of anti-discrimination laws in the auto industry, allowing racial discrimination in auto lending to go uncontested. Finally, the bill would also effectively end the meaningful release of information about consumer complaints, eliminating an important public resource for understanding and avoiding consumer abuses.

Furthermore, several sections of the bill would exempt a wide range of mortgages from the CFPB's qualified mortgage rule, *e.g*., loans held in portfolio, manufactured housing. This is particularly disturbing, as the qualified mortgage and ability-to-repay rules addressed the frontline abuses that led up to the 2008 financial crisis. These rules define bright line standards to move the market away from high-risk, unsustainable loans and ensure borrowers have an ability

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[4] Michael Corkery, Wells Fargo Fined $185 Million for Fraudulently Opening Accounts, New York Times (Sept. 8, 2016), http://www.nytimes.com/2016/09/09/business/dealbook/wells-fargo-fined-for-years-of-harm-to-customers.html?rref=collection%2Ftimestopic%2FWells%20Fargo%20%26%20Company&action=click&contentCollection=business®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection.

[5] The federal district court overseeing the class action case granted Wells Fargo's request to force plaintiffs to arbitrate their claims. Plaintiffs appealed the decision to the Ninth Circuit Court of Appeals. Following the CFPB, OCC, and Los Angeles City Attorney's action, the parties notified the appeals court that they had reached a settlement. *See* Stipulation to Dismiss Appeal Without Prejudice, *Jabbari, et. al. v. Wells Fargo & Company and Wells Fargo Bank, N.A.*, No. 3:15-cv-02159-VC (Sept. 8, 2016), *available at* http://www.krcomplexlit.com/wp-content/uploads/2015/09/JntStipDismiss090816.pdf.

to repay the loans they receive. Irresponsible mortgage lending that ignored borrowers' ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. The CFPB's qualified mortgage and ability-to-repay rules promote product features that will help reorient the housing market back toward safe, sustainable lending for all borrowers.

Moreover, these reforms have not hurt mortgage lending or access to credit. Instead, these reforms support sustainable homeownership and wealth building opportunities for lower-wealth households. The 2014 Home Mortgage Disclosure Act (HMDA) data does not show that federal mortgage underwriting rules have had a "cooling effect" on mortgage lending. In fact, the data is very much consistent with market trends immediately preceding the implementation of the rule. The Federal Reserve's seasonally adjusted origination numbers show a slow increase in monthly originations from 2011 through 2014 with no discernable decrease when the rules were fully implemented in January 2014. After considering the data the Federal Reserve concluded, "The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability."[6] The Urban Institute attributes continued access to credit problems to overcorrections in the post-crises market that results in constrained lending. This environment is most harmful to lower-wealth households with lower FICO scores and lower down payment needs.[7]

The Bill Hampers Regulatory Agencies' Ability to do Their Job

The bill includes provisions that make it virtually impossible for regulatory agencies to engage in rulemaking to address critical financial matters. The bill contains a multitude of new analyses that an agency must complete to justify a rulemaking, some of which are so broad and vague that it is questionable whether they could ever be satisfied. For example, the legislation requires regulators to quantitatively measure all "anticipated direct and indirect" effects of a new regulation before it is implemented, and to perform an "assessment of all available alternatives to the regulation." The bill would also require explicit bicameral congressional approval of any significant new financial regulation. This unprecedented new requirement would make regulatory oversight of Wall Street subject to the same paralysis we see in Congress.

Moreover, the bill would change the Office of the Comptroller of the Currency and the Federal Housing Finance Agency single-director structures into commissions, bogging the agencies in partisan gridlock and thwarting their effectiveness.

Additionally, the bill would reverse the *Chevron* doctrine, a longstanding Supreme Court precedent requiring courts to defer to a government agency's reasonable interpretation of a statute it is charged with enforcing. This means that in any lawsuit claiming that a regulatory

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[6] Board of Governors of the Federal Reserve System, The 2014 Home Mortgage Disclosure Act Data, 4 (2015). *available at* http://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf. *See also* Jim Parrot et. al., Data show surprisingly little impact of new mortgage rules, Urban Institute, (August 21, 2014) *citing* Board of Governors of the Federal Reserve System, July 2014 Senior Loan Officer Opinion Survey on Bank Lending Practices (2014), *available at* http://blog.metrotrends.org/2014/08/data-show-surprisingly-impact-mortgage-rules.
[7] *See* Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), *available at* http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf.

action was unjustified, the judge could automatically disregard the agency's reasonable interpretation and substitute his or her views for that of the regulatory agency.

In sum, this bill undercuts the essential reforms of Dodd-Frank and would inflict immense harm on consumers, investors, and the public. We urge you to reject the bill.

Sincerely,

Center for Responsible Lending