Oppose S. 737

Replacing CFPB Director with Commission and Changing the Funding Structure Would Weaken the Bureau's Accountability and Independence

April 2010 Contact: Susanna Montezemolo – susanna.montezemolo@responsiblelending.org

S. 737 would threaten the independence of the newly-enacted Consumer Financial Protection Bureau (CFPB) and would harm the ability of the Bureau to properly protect consumers from predatory and abusive financial practices. The bill, which would remove the independent funding mechanism and fundamentally change the structure of the CFPB from a single, accountable director to a weak five-person commission, would derail the consumer protections enacted under the Dodd-Frank Act (P.L. 111-203).

We urge Congress to reject this bill and maintain the independence and accountability of the Bureau for the following reasons:

- **CFPB should be implemented and given a chance to succeed before changes to its structure are enacted.** CFPB will not be up and running until July 2011, still months away, and a Director has not even been named, let alone confirmed by the Senate. Dodd-Frank carefully crafted the structure of CFPB to protect the public from abusive lending practices; Congress should give it a chance to do so, and then enact changes only when necessary to strengthen the Bureau's mission to protect consumers.

- **Greater independence:** S. 737 would tie CFPB's funding to the appropriations process, putting the Bureau's independence at risk by allowing big banks and other financial players to exert undue political influence on the rulemaking process. Dodd-Frank created the current system, in which the vast majority of CFPB's budget is transferred from the Federal Reserve Board and subject to a statutory cap, to preserve the independence of the Bureau. This is on par with the banking regulators, which receive funding independent of the appropriations process.

- **Greater accountability:** The reason CFPB was necessary and ultimately enacted is that previously, responsibility for consumer financial protection was scattered among too many agencies, and agencies charged with consumer protection did not use their authority to protect borrowers from predatory practices. CFPB was created to ensure accountability moving forward, and a single director structure maximizes that accountability. A single director is clearly answerable to Congress and the American people. Directors who overstep their authority or who do not go far enough to protect consumers cannot deflect blame for their actions. Commissioners, on the other hand, can avoid responsibility by pointing to the other four people who make up the Commission.

- **Checks on CFPB power are already in place:** Even with a single director, the CFPB rulemaking process is expected to be slower than normal because of the many checks to the agency's power under Dodd-Frank. Like other federal agencies, it will be subject to the Administrative Procedures Act. Unlike any other banking regulator, it will also have to convene small business panels under the Regulatory Flexibility Act before issuing a proposed rule—a process that is expected to add at least six months to the rulemaking process. In addition, the Financial Security Oversight Council (FSOC) may veto the rule by a 2/3 vote when a rule would pose a systemic threat to the financial sector. CFPB must also publicly review its rules every five years to ensure that they are not overly burdensome and address key problems. CFPB's funding is also statutorily capped. These additional checks on CFPB's power will surely lead to a slower rule-making process with a single director; under a commission structure, however, they could lead to gridlock and inaction.

- **Streamlined decision-making:** A single director is better able to exert decisive leadership in promulgating rules and enforcing them. This results in streamlined decision-making that avoids the lowest-common-denominator rulemaking that often faces commissions. The commission structure in S. 737, however, could be slowed down or even halted if the Senate failed to confirm consumer-oriented nominees. This has happened previously in the case of other commissions, such as the Consumer Product Safety Commission and the Federal Trade Commission.

  In fact, the Senate's painfully slow confirmation process has become so bogged down that a bipartisan group of Senators (including Majority Leader Reid, Minority Leader McConnell, and Senators Schumer, Alexander, Collins, and Lieberman, among others) have sponsored S. 679, which would reduce or streamline the number of executive branch positions requiring Senate confirmation by one-third. Getting a CFPB director through the Senate confirmation process is likely to be hard; getting five Commissioners through would be much more challenging and could further stymie the agency.

- **CFPB's Director structure is comparable to that of the strongest banking regulator:** A major reason for the creation of CFPB was that federal banking regulators—in particular the Office of the Comptroller of the Currency (OCC), which regulates national banks—ignored consumer protection obligations and put the short-terms interests of banks over the long-term interests of consumers and the broader economy. What resulted was the mortgage crisis, which sparked one of the worst economic crises in our history. Even since enactment of CFPB, OCC has advocated for preemption policies that would harm consumers. OCC's single-director structure has allowed it to act quickly and effectively to protect the short-term interests of the big banks. CFPB's current single-director structure is necessary to ensure that there is counter-pressure to protect the interests of consumers and the overall economy.

Give the CFPB a chance to succeed before making changes to its structure – oppose S. 737