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April 26, 2017

Representative  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Re: CHOICE Act of 2017 (oppose)

Dear Representative,

The National Consumer Law Center, on behalf of its low income clients, writes to express our strong opposition to the “Financial CHOICE Act of 2017.” This bill is more accurately titled the “Wrong CHOICE Act.” The bill appears to have been written by a team of lawbreakers and predatory lenders putting together their wish list of how to undo consumer protections. Even by the standards of other anti-consumer protection legislation, this bill is breathtaking in its assault on ordinary Americans, responsible companies who want a level playing field, and safeguards for the economy as a whole.

In this letter, we will touch briefly on many (but not all) of the provisions that directly attack consumer protections and the Consumer Financial Protection Bureau. We join in the letter by Americans for Financial Reform in opposing other provisions that gut the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, thus exposing consumers, investors and the economy to far greater risk of abuses, instability and another financial crisis.

The financial crisis of 2008 cost from \$6 to \$14 trillion in lost economic output alone.<sup>1</sup> That enormous figure underestimates the full toll on millions of families who lost their jobs or homes due to the crisis.<sup>2</sup> Lax regulation and oversight led to the financial crisis, and the bill would undo essential reforms adopted to prevent shoddy financial practices from returning. Indeed, the bill would weaken regulatory powers that long pre-date Dodd-Frank, making financial regulation significantly weaker than it was even in the years leading up to the 2008 crisis.

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<sup>1</sup> United States Government Accountability Office, “Financial Regulatory Reform: Financial Crisis Losses and The Potential Impact of the Dodd-Frank Act”, GAO 13-180, January 2013. Luttrell, David, Tyler Atkinson and Harvey Rosenblum, “How Bad Was It? The Costs and Consequences of the 2007-2009 Financial Crisis and Its Aftermath”, Federal Reserve Bank of Dallas Staff Paper No, 20, July, 2013.

<sup>2</sup> Americans for Financial Reform, “Costs of the Crisis,” Briefing Paper, Updated July 2015.

Any claim that the Dodd-Frank Act and overregulation are harming our economy is baseless.<sup>3</sup> Commercial bank loan growth has been almost 6 percent over the past three years, well above the historical average of 4 percent.<sup>4</sup> Community banks are doing well, with faster loan growth than larger banks.<sup>5</sup> Wall Street has also thrived since the passage of the Dodd-Frank Act.

The risk of harm from deregulation far outweighs any purported benefits. Below we briefly address some of the more alarming provisions of the CHOICE Act.

***The CHOICE Act Eviscerates the Consumer Financial Protection Bureau's Ability to Protect Consumers and Stop Abusive Financial Practices.***

The bill makes numerous changes that eliminate core powers of the CFPB. Currently, the CFPB appropriate has a range of different tools that it can use to uncover and address problems in financial services. The bill would make it much harder for the CFPB to spot problems in the first place or to address them appropriately. The legislation:

**Eliminates the CFPB's Supervision and Enforcement Authority for Large Banks.<sup>6</sup>**

Problems in the mortgage market were quite apparent before the financial crisis. But bank regulators without a focus on consumer protection ignored those warning signs because bank profits were doing well. The bill would end the CFPB's ability to examine or enforce the law against large banks and return that authority to agencies that failed to use it effectively in the past.<sup>7</sup> Problems continue today. Just one example is the recent internal report by the OCC on its dramatic failures in examining Wells Fargo in the many years before the CFPB and the Los

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<sup>3</sup> Americans for Financial Reform, *Dodd-Frank And Economic Growth*, Fact Sheet, January 2017. Available at <http://ourfinancialsecurity.org/wp-content/uploads/2017/01/Dodd-Frank-and-Economic-Growth-Final.pdf>

<sup>4</sup> Americans for Financial Reform analysis of total loans and leases in bank credit, deflated using Implicit Price Deflator for Gross Domestic Product. Long run average calculated using all data available since 1973. Source Federal Reserve Board Release H.8, Assets and Liabilities of Commercial Banks In The United States. Available at <https://fred.stlouisfed.org/series/TOTLL>; GDP deflator U.S. Bureau of Economic Analysis. Available at <https://fred.stlouisfed.org/series/GDPDEF/>

<sup>5</sup> Federal Deposit Insurance Commission, "Quarterly Banking Profile", Various Dates, <https://www.fdic.gov/bank/analytical/qbp/>.

<sup>6</sup> Section 727(a)(5) & 727(a)(6) of Discussion Draft of Financial CHOICE Act of 2017 ("Discussion Draft"), [https://financialservices.house.gov/uploadedfiles/choice\\_2.0\\_discussion\\_draft.pdf](https://financialservices.house.gov/uploadedfiles/choice_2.0_discussion_draft.pdf).

<sup>7</sup> See, e.g., Testimony of Lauren Saunders, National Consumer Law Center, On behalf Americans for Financial Reform et al. Before the Subcommittee on Monetary Policy, Committee on Financial Services, U.S. House of Representatives, Hearing on Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve (July 16, 2009), [https://www.nclc.org/images/pdf/regulatory\\_reform/testimony-safeguarding-consumer-protection.pdf](https://www.nclc.org/images/pdf/regulatory_reform/testimony-safeguarding-consumer-protection.pdf).

Angeles City Attorney took action against the bank for opening some 2 million fake accounts.<sup>8</sup>

**Blocks CFPB Supervision of Large and Growing Nonbanks and Others that Cause New Problems.**<sup>9</sup> The bill freezes the CFPB’s authority to examine nonbank financial companies to those it currently examines. This provision has two harmful impacts. First, a credit reporting agency, debt collector, student loan servicer, remittance provider, or auto lender that is small today but grows in size will never be examined, even if its similarly sized competitors are subject to supervision. Second, the CFPB will not be able to identify new markets that need closer supervision, such as the debt settlement market – long a hotbed of fraud – or the installment loan market, which is growing in importance and presents many new problems. Examination is a critical tool that enables the CFPB to identify and address problems before they rise to the point that an enforcement action is warranted.

**Repeals CFPB Authority To Stop Unfair, Deceptive, and Abusive Acts and Practices (UDAAP).**<sup>10</sup> The bill eliminates the ban on *abusive* acts and practices. The CFPB has used that authority to stop firms from targeting 9/11 heroes and depriving them of millions of dollars in compensation funds for their injuries,<sup>11</sup> to prohibit Wells Fargo from opening fake accounts in their customers’ names,<sup>12</sup> to stop lenders from making false threats in debt collection<sup>13</sup> or pushing people into new loans they cannot afford to repay,<sup>14</sup> and to require refunds to consumers tricked into paying for worthless credit card add-on services and fake protections.<sup>15</sup>

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<sup>8</sup> Office of the Comptroller of the Currency, “Lessons Learned: Review of Supervision of Sales Practices at Wells Fargo,” Enterprise Governance Supervision, April 19, 2017. Available at <https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-wells-fargo-supervision-lessons-learned-41917.pdf>.

<sup>9</sup> Section 727(a)(4), Discussion Draft.

<sup>10</sup> Section 736, Discussion Draft.

<sup>11</sup> CFPB, Press Release, “CFPB and New York Attorney General Sue RD Legal for Scamming 9/11 Heroes Out of Millions of Dollars in Compensation Funds” (Feb. 7, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-sue-rd-legal-scamming-911-heroes-out-millions-dollars-compensation-funds/>.

<sup>12</sup> Summary and legal documents available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>

<sup>13</sup> *See, e.g.*, summary and legal documents available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-navy-federal-credit-union-pay-285-million-improper-debt-collection-actions/>.

<sup>14</sup> CFPB, Press Release, “CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt” (July 10, 2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/>.

<sup>15</sup> Summaries and legal documents available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/>; <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citibank-to-pay-700-million-in-consumer-relief-for-illegal-credit-card-practices/>; <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/>.

The bill strips the CFPB of the power to take enforcement actions against unfair or deceptive practices or to write rules to define or prevent those practices. UDAAP authority is especially important to address new problems that are not addressed in older regulations.<sup>16</sup> No agency would have the authority to write rules to give banks clarity on what practices are unfair or deceptive, and that is largely true for nonbanks as well, as the FTC has unworkable rulewriting powers.<sup>17</sup> This would leave important areas of consumer protection, such as first-party debt collection by non-banks (i.e., collection by payday lenders and other creditors themselves), without comprehensive and uniform rules.

**Ends the CFPB's independence.** The bill would end the CFPB's status as an independent agency, allowing the President to fire the Director without cause,<sup>18</sup> making the CFPB hesitant to protect consumers from powerful interests. It would also specifically require CFPB rules – unlike the rules of the other independent banking agencies – to be reviewed by non-experts in the White House, directly politicizing consumer financial protection.<sup>19</sup>

**Gives politicians more control through appropriations.** The CFPB's funding would be subject to the appropriations process,<sup>20</sup> increasing lobbyist power by giving Congress the ability to threaten funding or to attach policy riders if their donors are unhappy.

**Creates new bureaucracy and eliminates useful functions.** The bill would create a new, unnecessary, duplicative bureaucracy within the agency,<sup>21</sup> while eliminating the CFPB's market monitoring functions that allow it to gather information and base its actions on responsible data collection.<sup>22</sup> The bill would also threaten the advisory boards that help the Bureau's work be informed by consumer advocates, academics, community banks, and credit unions.<sup>23</sup>

**Slashes CFPB employee salaries below those of all other federal financial regulators.**<sup>24</sup> This

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<sup>16</sup> Carolyn Carter, NCLC, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes* (Feb. 2009), [https://www.nclc.org/images/pdf/udap/report\\_50\\_states.pdf](https://www.nclc.org/images/pdf/udap/report_50_states.pdf).

<sup>17</sup> For a description of the requirements that apply to the FTC and their effects, see AFR Letter Opposing HR 5112, May 20, 2016. Available at <http://ourfinancialsecurity.org/wp-content/uploads/2016/05/OppoLetterHR5112-5-12-16-1.pdf>.

<sup>18</sup> Section 711(a)(1)(D), Discussion Draft.

<sup>19</sup> Section 712, Discussion Draft.

<sup>20</sup> Section 713, Discussion Draft.

<sup>21</sup> Section 717, Discussion Draft (establishing an Office of Economic Analysis). For a detailed discussion of these harmful provisions, see Letter to Congress: AFR Opposes H.R. 5211, Legislation to Weaken the CFPB (June 21, 2016), <http://ourfinancialsecurity.org/2016/06/letter-congress-afr-opposes-hr-5211-legislation-weaken-cfpb/>.

<sup>22</sup> Section 724, Discussion Draft.

<sup>23</sup> Section 726, Discussion Draft.

<sup>24</sup> Section 723, Discussion Draft.

would undermine the agency's capacity to attract and retain highly-qualified financial professionals and give consumer protection a second class status.

**Eliminates both enforcement and rulewriting jurisdiction over payday and title loans and expands usurious lending.**<sup>25</sup> One of the most predatory financial markets would be completely outside the CFPB's authority. To make matters worse, the bill makes it easier for lenders to use rent-a-bank arrangements to make 300% APR loans that evade state interest rate caps.<sup>26</sup>

**Blocks a rule on forced arbitration clauses.**<sup>27</sup> Wells Fargo has been using forced arbitration clauses with class action bans to stop a court from addressing all of the harm of the 2 million fake accounts it created. The CFPB would be barred from finalizing a rule that would provide access to justice for victims of widespread wrongdoing.

**Keeps the public in the dark about consumer complaints.**<sup>28</sup> The CFPB could not reveal information about the complaints it has received, eliminating an important public resource for understanding and avoiding consumer abuses.

#### **Undermines enforcement of anti-discrimination laws:**

- The bill seeks to stall the CFPB's enforcement of anti-discrimination laws in the auto industry, thereby allowing racial discrimination in auto lending to go unchecked.<sup>29</sup>
- The bill would scale back data collection under the Home Mortgage Database Act, weakening a critical tool to fight redlining.<sup>30</sup>
- The bill would abandon the effort required by Dodd-Frank to learn more about small business lending through systematic data collection,<sup>31</sup> undermining enforcement of the Equal Credit Opportunity Act and missing a badly needed opportunity to better understand the small business lending market and help small businesses access credit.

These provisions would leave the CFPB powerless to protect consumers.

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<sup>25</sup> Section 733, Discussion Draft.

<sup>26</sup> Section 581, Discussion Draft.

<sup>27</sup> Section 738, Discussion Draft. *See also* Letter to Congress: Reject Proposals That Interfere with CFPB's Authority on Mandatory Arbitration (May 19, 2016) (AFR and 70 organizations), <http://ourfinancialsecurity.org/2016/05/letter-congress-2-2/>.

<sup>28</sup> Section 725, Discussion Draft.

<sup>29</sup> Section 734, Discussion Draft. *See also* Letter to Congress: AFR, 65 Organizations Urge Congress to Stand Against Discriminatory Auto Lending and Reject HR 1737 (Nov. 16, 2015), <http://ourfinancialsecurity.org/2015/11/letter-to-congress-afr-65-organizations-urge-congress-to-stand-against-discriminatory-auto-lending-and-reject-hr-1737/>.

<sup>30</sup> Section 576, Discussion Draft.

<sup>31</sup> Section 561, Discussion Draft.

### **The CHOICE Act Makes it More Difficult for Any Financial Regulator to Protect the Public.**

The CHOICE Act contains a set of drastic new bureaucratic analytic, legislative, and legal requirements for financial regulatory agencies that would add thousands of pages and months if not years to agency rulemakings, interpretations or even guidances. The bill would make it much easier for abusive industries to tie actions up in court and block them from ever going into effect. The new roadblocks to action include:

- Regulators complete dozens of additional analyses prior to issuing any new regulation, guidance, or interpretation. Required analyses include broad, vague, impossible and subjective mandates such as measuring all “direct and indirect” costs and benefits of a regulation and assessing “all available alternatives” to a regulation. The adequacy of any of these analyses could be challenged in court.<sup>32</sup>
- Congress must approve any major regulation, guidance or interpretation, or any rule for which measured quantitative benefits did not exceed measured quantitative costs.<sup>33</sup> This would vastly increase the delay and complication of regulatory action.
- Overturning longstanding precedent, courts need not defer to experts in regulatory agencies. Instead, judges with only legal training could second guess technical issues that an agency spent years studying with experts and extensive public input.<sup>34</sup>

These requirements would effectively halt any new rulemaking, interpretation, or guidance that was opposed by financial interests with the resources to mount a lawsuit or to lobby Congress.

### **The CHOICE Act Eliminates Protections Against Unaffordable Mortgage Lending**

The CHOICE Act would deem most mortgages held in bank portfolios – including those originated by the largest Wall Street banks – to be “Qualified Mortgages” without requiring those loans to comply with the ability to repay protections adopted after the financial crisis, thus denying homeowners meaningful recourse.<sup>35</sup> This provision is based on the false premise that portfolio loans are inherently safe. Washington Mutual and Wachovia—two large regional banks—failed because of the significant losses in mortgage loans held in their own portfolios. The bill would further weaken protections against hidden fees and other traps by changing the calculation for determining Qualified Mortgage status and high-cost loan protections, making it

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<sup>32</sup> Subtitle A of Title III, Discussion Draft; additional analytic requirements for banking agencies are included in Subtitle J of Title V, Discussion Draft.

<sup>33</sup> Subtitle B of Title III, Discussion Draft; Section 312(b)(4) in Subtitle A of Title III of Discussion Draft

<sup>34</sup> Subtitle C of Title III, Discussion Draft.

<sup>35</sup> Section 516, Discussion Draft. For a detailed discussion of this provision, see Letter to Congress: Oppose HR 1210, the “Portfolio Lending and Mortgage Access Act,” July 27, 2015. Available at <http://ourfinancialsecurity.org/wp-content/uploads/2015/07/Oppose-HR-1210-Barr-Portfolio-with-sign-ons-final-7.27.15.pdf>.

easier for predatory mortgage loans to be made.<sup>36</sup> The bill also would subject vulnerable homeowners with higher-priced mortgages to deceptive mortgage marketing by allowing many lenders to exclude escrow payments from any loan held in portfolio for three years.<sup>37</sup>

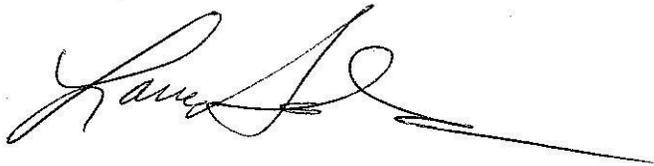
Separately, the bill would also eliminate a wide range of consumer protections for home buyers who borrow to purchase manufactured housing, including by permitting higher interest rates in this market before basic consumer protections applied.<sup>38</sup> These loans are generally made to lower income people, and there is a record of both past and recent abuses in this market.<sup>39</sup>

The bill would also eliminate the independence of the Federal Housing Finance Agency, giving the White House direct control over the conservatorships of Fannie Mae and Freddie Mac, which finance nearly half of the home mortgages in the United States.

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Overall, the Wrong CHOICE Act would take us back to the days when predatory lenders wreaked havoc on American families and destroyed our economy. The bill puts the interests of Wall Street banks and financial wrongdoers ahead of the American public. We urge you to reject this bill in its entirety.

Sincerely,



Lauren K. Saunders  
Associate Director

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<sup>36</sup> Section 506, Discussion Draft. For a detailed discussion of this provision, see Letter to Congress: Oppose HR 685, March 18, 2015. Available at <http://ourfinancialsecurity.org/wp-content/uploads/2015/04/CRL-Oppose-H.R.-685-Mortgage-Choice-Act-3.18.15.pdf>

<sup>37</sup> Section 531, Discussion Draft.

<sup>38</sup> Sections 501 & 502, Discussion Draft. For a detailed discussion of these provisions, see Joint Letter: AFR Joins 15 Organizations in Supporting Low Income Families, Opposing HR 650 (Feb. 26, 2015), <http://ourfinancialsecurity.org/2015/02/joint-letter-afr-joins-15-organizations-in-supporting-low-income-families-opposing-hr-650/>.

<sup>39</sup> Baker, Mike and Daniel Wagner, “The Mobile-Home Trap: How A Warren Buffet Empire Preys on the Poor,” Seattle Times / Center for Public Integrity, April 2, 2015. Available at <http://www.seattletimes.com/business/real-estate/the-mobile-home-trap-how-a-warren-buffett-empire-preys-on-the-poor/>.