

September 18, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

Thank you for providing additional time to review H.R. 3126, the “Consumer Financial Protection Agency (CFPA) Act,” before moving the legislation through Committee.

The undersigned organizations agree that reform is necessary and firmly support sound consumer protection. Ensuring that regulators have the tools to weed out fraudulent and predatory actors and that consumers receive clear and concise disclosures about financial products is essential. However, we believe H.R. 3126 is not the correct approach because it will have severe unintended consequences for consumers and the economy.

While our organizations have additional and varied concerns regarding H.R. 3126, we write today as a coalition representing a diverse spectrum of industries across the economy to express our shared concerns regarding the unprecedented scope and regulatory authority of H.R. 3126.

Although often described as a bill targeting consumer financial products and the institutions that offer them, H.R. 3126 would in fact extend far beyond traditional consumer finance. It would empower the proposed new Consumer Financial Protection Agency with an unprecedentedly broad scope of authority to regulate businesses and professionals across all sectors and sizes – many of which have at best a tangential relationship to consumer finance.

Under Title I, Section 101, the definition of “covered person” dramatically expands the legislation to apply broadly to the business community at large. Even a cursory analysis of the terms and their subsequent definitions (or lack thereof) included in the definition of “covered person” reveals an unprecedented allocation of regulatory authority over businesses, large and small.

For example, the definition of “financial activity” encompasses “engaging in any activity in connection with extending credit or servicing loans.” At the same time, H.R. 3126 broadly defines “credit” to mean “the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purpose.” **Accordingly, any business that extends credit to a consumer and allows that consumer to pay with any flexibility would fall within this definition.** Many businesses, particularly small businesses, offer their customers flexibility to pay over time – whether through accounts receivable, programs such as lay-away, monthly installment plans and general

financing, or simply permitting a tab that is payable at the end of an established timeframe. This includes retailers, restaurants, doctors, lawyers, accountants, utilities, manufacturers, hospitals, and countless other sectors and client-based professionals.

In addition, the bill would cover businesses that either “directly or indirectly” provide a consumer financial product or service, or that provide a “material service” to a provider of a consumer financial product or service. These key terms vastly expand the scope of the legislation. This could include providers of technology and communications services and equipment, advertisers, newspapers and other publications, accountants, and shipping and storage services as well as countless others. Lastly, it outlines broad categories of coverage that would further encompass businesses outside the financial services sector, such as technology services and equipment and the sale or issuance of stored value – including any retailer, communications provider or other business that issues gift cards.

Further, the CFPA would have unchecked regulatory powers over the industries and businesses it can regulate. The CFPA would have authority to assess fees on covered persons to fund the agency, establish operating standards for covered persons, prohibit what the agency determines to be unfair or deceptive practices, require covered persons to offer standard financial products or services, mandate the form and content of disclosures to consumers in connection with financial products or services, impose “fair dealing” requirements, regulate sales practices and compensation, and restrict mandatory pre-dispute arbitration. Taken together, this authority would enable the CFPA to regulate virtually every aspect of a covered persons’ business that in any way relates to consumer transactions.

In addition, while the legislation would require the CFPA to “consult” with other federal agencies, the CFPA is free to reject the views of those agencies. In fact, should the CFPA enact a regulation that threatens the safety and soundness of the financial system, would devastate a particular industry, or that would have a harmful impact upon consumers, the only means to stop the agency from implementing the regulation is through the passage of law.

In short, the scope of H.R. 3126 would impose a new regulatory framework for the vast majority of the business community, a significant portion of which has no direct interaction with a consumer or a consumer financial transaction. At the same time, the agency would have the authority to regulate any aspect of a covered entity’s business to which there can be even a weak connection drawn to a consumer transaction – with little redress for affected industries or their primary regulators.

At the very moment there are signs that the economy may be starting to recover, we believe the drastic powers granted to a new agency in H.R. 3126 will impose severe unintended consequences on businesses and consumers alike.

It is important to enhance consumer protection. However, creating a stand-alone agency with these vast regulatory powers is not the correct approach. Rather, enhancing the regulatory powers of the existing prudential regulators accomplishes the same goal and does not create such unintended consequences.

Thank you for taking our views into account as you consider the legislation this fall, and for your commitment to our shared goal of enhancing consumer protection.

Sincerely,

American Advertising Federation
American Escrow Association
American Financial Services Association
American Land Title Association
American Resort Development Association
Association of American Advertising Agencies
Association of National Advertisers
Business Roundtable
Consumer Bankers Association
Consumer Data Industry Association
Consumer Electronics Association
Direct Marketing Association
Financial Services Institute
Financial Services Roundtable
Interactive Advertising Bureau
National Association of Homebuilders
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
National Association of Wholesaler-Distributors
Property Casualty Insurers Association of America
Real Estate Services Providers Council, Inc.
The National Business Coalition on E-Commerce and Privacy
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce
United States Organization for Bankruptcy Alternatives

Cc: The Members of the United States Congress