



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

June 7, 2017

Via Electronic & Overnight Mail

Hon. Paul Ryan
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

Hon. Kevin McCarthy
Majority Leader
U.S. House of Representatives
H-107, The Capitol
Washington, D.C. 20515

Hon. Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

Hon. Steny Hoyer
Minority Whip
U.S. House of Representatives
H-148, The Capitol
Washington, D.C. 20515

Re: The Financial CHOICE Act of 2017 (H.R.10)

Dear Speaker Ryan, Majority Leader McCarthy, Minority Leader Pelosi, and Minority Whip Hoyer:

On behalf of the undersigned State Attorneys General and the Executive Director of the Office of Consumer Protection for the State of Hawaii (the “States”), we write to express our strong opposition to H.R. 10 (the “Act”), which we understand the full House of Representatives intends to vote on this week. The proposed Act will eliminate many of the critical consumer protections implemented as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in the wake of, and in response to, the financial crisis. As the chief consumer protection officers in each of our respective States, we write to call your particular attention to those portions of the Act that would effectively eviscerate the role of the Consumer Financial Protection Bureau (“CFPB”), the only independent federal agency exclusively focused on consumer financial protection. While the Act purports to protect consumers from over-regulation by federal agencies, its far-reaching consequences would make consumers more vulnerable to fraud and abuse in the marketplace. The undersigned States support the work of the CFPB and oppose any effort to curtail its authority. While we find numerous provisions of the Act to be objectionable, we write to highlight certain provisions that would significantly impact consumer protection – a core function of our States.

I. BACKGROUND

Our States' work to protect consumers from unscrupulous marketplace actors and practices is greatly enhanced when the federal government serves as an effective partner. In the years leading up to the global financial crisis, residents of our States suffered the consequences of a federal government that failed to fulfill its basic obligations to U.S. consumers to prevent fraud and misconduct by mortgage providers, servicers, and other financial firms. Families nationwide suffered dire financial consequences as a result of lax federal oversight and inaction.

Since its inception, the CFPB has emerged as the independent federal consumer watchdog the nation has long needed, and as a key partner in critically important consumer protection work undertaken by our States and by State Attorneys General across the country. The exceptional record of the CFPB speaks for itself. As of January 1, 2017, the CFPB has handled over one million consumer complaints, and obtained \$11.8 billion in relief for 29 million consumers.¹ The CFPB has taken enforcement actions to stem abuses by student loan originators and servicers, for-profit schools, debt collectors, credit reporting agencies, payday lenders, and foreclosure "rescue" companies, among others. Among its more recent, significant enforcement actions have been cases against mortgage servicer Ocwen Financial Corporation for widespread mortgage servicing failures, including improperly calculating balances, misapplying payments, and failing to investigate consumer complaints,² student loan servicer Navient for student loan servicing abuses, including failing to notify struggling borrowers of their eligibility for income-based repayment plans and steering such borrowers into more costly forbearance plans,³ and Wells Fargo bank for its widespread practice of opening unauthorized bank and credit card accounts for consumers.⁴ In addition, as part of its statutory mandate, the CFPB has conducted thorough and nuanced studies of complex financial issues that impact consumers,⁵ and has issued rules intended to protect consumers in a thoughtful, consensus-driven manner.⁶

¹ See CFPB, *Consumer Financial Protection Bureau: By the Numbers*, Dec. 2016, available at http://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf.

² See CFPB, *CFPB Sues Ocwen for Failing Borrowers Throughout Mortgage Servicing Process*, Apr. 20, 2017, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-ocwen-failing-borrowers-throughout-mortgage-servicing-process/>.

³ See CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, Jan. 18, 2017, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>.

⁴ See CFPB, *Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts*, Sept. 8, 2016, 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/>.

⁵ See, e.g., CFPB, *Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)*, Mar. 2015, available at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

⁶ See, e.g., CFPB, *We've Updated Our Mortgage Servicing Rules to Provide Great Protections for Mortgage Borrowers and Other Homeowners*, Aug. 4, 2016, available at <https://www.consumerfinance.gov/about-us/blog/weve-updated-our-mortgage-servicing-rules-provide-greater-protections-mortgage-borrowers-and-other-homeowners/>; CFPB, *We've*

II. THE DEVASTATING EFFECTS OF THE ACT ON CONSUMER PROTECTION

The Act would effectively cripple the CFPB from doing the job it has been doing so effectively since its inception.

A. *The Act Would Eliminate the CFPB's Rulemaking and Enforcement Authority Over Unfair, Deceptive, and Abusive Acts and Practices*

Section 736 of the Act would eliminate the CFPB's authority to prohibit unfair, deceptive, and abusive acts and practices ("UDAAP").⁷ The CFPB's authority to prohibit entities it supervises from engaging in UDAAP violations has been the basis for many of the CFPB's most significant enforcement actions, including the Ocwen, Navient, and Wells Fargo matters discussed above. In addition, several of the undersigned States have jointly filed cases with the CFPB against businesses and individuals engaged in unfair, deceptive, or abusive practices.⁸ UDAAP authority gives the CFPB the flexibility to respond swiftly to new technologies and practices that harm consumers, without the need to wait for legislation expressly addressing a given practice.

B. *The Act Would Eliminate the CFPB's Supervision and Enforcement Authority Over Large Banks*

Section 727 of the Act would similarly eliminate the CFPB's supervision and enforcement authority over large banks and permit financial institutions that meet certain criteria to elect to be exempted from the CFPB's supervisory authority. This provision is concerning in a number of ways, not the least of which is that it is through the supervision process that the CFPB often learns of systemic issues in the companies and industries it regulates. The CFPB is the only federal agency that has been conducting consumer protection reviews as the focus of their supervisory authority

Proposed a Rule to Protect Consumers from Payday Debt Traps, June 2, 2016, available at <https://www.consumerfinance.gov/about-us/blog/weve-proposed-rule-protect-consumers-payday-debt-traps/>; CFPB, *Summary of the Final Mortgage Servicing Rules*, Jan. 17, 2013, available at http://files.consumerfinance.gov/f/201301_cfpb_servicing-rules_summary.pdf.

⁷ Dodd-Frank empowered the CFPB to, among other things, "exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services . . . consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination." 12 U.S.C. § 5511(b)(2).

⁸ See, e.g., CFPB, *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, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-sue-rd-legal-scamming-911-heroes-out-millions-dollars-compensation-funds/> (a case against a structured settlement company that targeted 9/11 first responders and former professional football players suffering from brain injuries); *People of the State of Illinois v. CMK Investments, Inc.*, 2014 CH 04694 (Cook County), removed to 1:14 CV 2783 (N.D. Ill.) (alleging violation of 12 U.S.C. §5536(a)(1)(B) for abusive lending of Defendant's loan product which included a mandatory account protection fee); *People of the State of Illinois v. Alta Colleges, Inc., et al.*, 2012 CH 01587 (Cook County, Sec. Am. Compl.), removed to 1:14 CV 3786 (N.D. Ill.) (alleging violations of 12 U.S.C. §§5531(c) and (d) for unfair and abusive lending of Defendant's institutional student loans); *Consumer Financial Protection Bureau and States Take Action Against Freedom Stores for Illegal Debt Collection Practices Against Servicemembers*, Dec. 18, 2014, available at <http://www.oag.state.va.us/media-center/news-releases/417-december-18-2014-cfpb-and-states-take-action-against-freedom-stores-for-illegal-debt-collection-practices-against-servicemembers> (recovery of \$2.5 million in consumer relief in action by CFPB, Virginia, and North Carolina against three companies that used illegal practices in collecting debts from military service members).

(rather than safety and soundness), which is important for the reasons previously discussed. In addition, many of the CFPB's enforcement actions have been against the large banks.

C. *The Act Would Eliminate the CFPB's Authority to Regulate Payday and Vehicle Title Loans*

Section 733 of the Act expressly prohibits the CFPB from engaging in any rulemaking or enforcement with respect to payday and vehicle title loans. Payday lending, as the CFPB's own extensive research has documented, has adversely affected the lives of millions of financially vulnerable consumers across the country. The CFPB has been at the forefront of curbing abuses in the payday lending industry and has supplemented state enforcement by taking enforcement actions against payday and other lenders that are attempting to collect on loans that are void under state law. The CFPB has been similarly aggressive in uncovering and confronting abuses in the vehicle title loan industry, where consumers risk the loss of their vehicle (with the corresponding loss in mobility) if they find themselves unable to repay their loans. The Act will strip the CFPB of all authority in these areas, including its enforcement authority and the ability to adopt sensible and common sense rules to prevent consumers from falling into debt traps that are often the result of payday and vehicle title loans.

D. *The Act Would Permit Third Party Debt Collectors to Charge Usurious Interest Rates*

Section 581 of the Act would restrict states' abilities to enforce interest rate caps. Currently, there are no federal interest rate caps that cover financial products and services offered by national banks. Rather, national banks are permitted to export the interest rate of their home state and disregard the more stringent interest rates of other states in which they do business. Section 581 of the Act would add language to four federal statutes to provide that, when a national bank sells or assigns debt covered by the National Bank Act, the buyer or assignee has the right to collect that same interest rate, regardless of the law of the state where the buyer or assignee is located. This would make it more difficult to ensure that debt buyers, online lenders, fintech companies, and rent-a-bank schemes comply with state interest rate caps. It is essential to preserve the ability of individual states to enforce their existing usury caps and oppose any measures to enact a federal law that would preempt state usury caps.

E. *The Act Would Eliminate the CFPB Rulemaking Authority Regarding Mandatory Arbitration*

Section 738 of the Act would repeal the provision of Dodd-Frank that granted the CFPB authority to study and issue rules regarding arbitration in financial services contracts. Dodd-Frank expressly authorized the CFPB to study arbitration provisions in financial services contracts, and to issue regulations prohibiting or restricting such provisions if the CFPB concluded that doing so would be "in the public interest and for the protection of consumers." After a thorough review, the CFPB concluded that tens of millions of Americans use financial products or services subject to mandatory arbitration clauses that prohibit proceeding on a class basis and that the effect of such provisions is to prevent consumers from seeking redress, particularly for small dollar claims. Elimination of the CFPB's authority in this area can only operate to the detriment of consumers.

F. *The Act Would Reduce Transparency and Deprive Consumers of a Valuable Source of Information*

Finally, the Act would end the CFPB's current practice of publicly posting information concerning individual consumer complaints in a searchable database.⁹ This information helps consumers make informed decisions about the companies with which they choose to do business, and increases transparency in the marketplace. Eliminating the release of this information provides no benefit to consumers, but only to companies whose practices generate repeated complaints.

III. CONCLUSION

For these and other reasons, the undersigned States urge you to support robust and engaged consumer protection in the financial services industry by voting against the Act. A rollback of these significant post-financial crisis rules and regulations would substantially harm consumers and the public in general. If we can provide any further information or assistance, please do not hesitate to contact us.

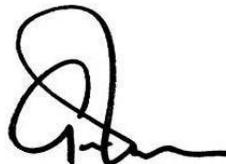
Respectfully submitted,



ERIC T. SCHNEIDERMAN
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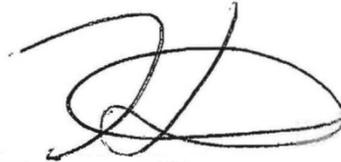


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⁹ See CFPB, Consumer Complaint Database, available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>.



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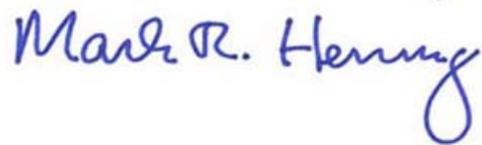
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