COMMITTEE ON FINANCIAL SERVICES

H.R. 1121: "The Responsible Consumer Financial Protection Regulations Act of 2011"

Sponsored by Chairman Spencer Bachus

Summary of H.R. 1121

- The bill amends Title X of the Dodd-Frank Act by replacing the Director of the CFPB with a five-person Commission.
- The language is identical to Section 4103 of the regulatory reform bill passed by the House last year (H.R. 4173).
- The CFPB Commission would be empowered to prescribe regulations and issue orders to implement laws within its jurisdiction.
- Each member of the CFPB Commission would be presidentially appointed and Senate confirmed, and Commissioners would serve staggered five-year terms, which would initially be established by the President for terms of 1, 2, 4 and 5 years, respectively.
- The Chair of the CFPB Commission would be selected by the President from among the Commission's members.
- No more than three Commission members could be members of the same political party.
- The Chair's discretion would be bound to policies set by the entire Commission, though the Chair would fulfill the executive and administrative functions of the CFPB.

Claims and Facts

CLAIM: "A unitary director model, like that of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, enhances accountability and enables streamlined, decisive leadership and decision-making. H.R. 1121 would make the CFPB less accountable."

FACTS:

- Individuals are susceptible to shortsighted decision making in isolation and bring a limited background and understanding of the issues.

- A commission structure is more thorough and ensures impartial decision making. It provides a necessary check and balance.

- The rules promulgated under single-directors could easily be overturned by a new Director, which would foster regulatory uncertainty. This is less likely to be an issue with a commission structure, as it promotes continuity and stability.

- A commission structure was what Elizabeth Warren originally envisioned for the agency, and what the Obama Administration proposed in their June 2009 draft language. Further, the language of H.R. 1121 is identical to Section 4103 of the regulatory reform bill passed by House Democrats last year (H.R. 4173). Accordingly, we find it strange that these same entities are now so vehemently opposed to their own idea.

CLAIM: "A commission structure could become problematic if the Senate is slow to confirm the members. The Commission would be more likely to slip into gridlock and inaction."

FACTS:

- The bill language anticipates this issue and makes the necessary accommodations by altering the quorum requirements and extending terms until a successor has been confirmed.

- For the initial quorum, when up to two members are confirmed, one member serves as a quorum.

- Once three members are confirmed, the quorum requirements are as follows: pending a vacancy on the Commission, three members shall constitute a quorum; if two vacancies, then 2 members shall constitute a quorum.

- The bill language also provides that each member of the Commission may continue to serve for one year after the expiration of the term of office until a successor has been appointed by the President and confirmed by the Senate.

- Supporters of the single director structure should be stopped from complaining about the Senate confirmation process. President Obama has had more than nine months to nominate a candidate to head the CFPB. We are still waiting. He can't blame the Senate this time.

CLAIM: "The CFPB is more accountable than any other Federal agency."

FACTS:

- The only individual in the Bureau that needs to be confirmed by the Senate is the Director. This means that staff that has not been appointed or Senate-confirmed can easily do the political bidding of the Director without backlash from Congress.

- Traditionally, Congress has had an important oversight and funding role for each federal entity. However, Congressional Democrats ceded these responsibilities when creating the CFPB, instead tasking the *Director of the CFPB* with the important duty of determining the budget, which is drawn from the Federal Reserve Board. It appears that the CFPB is being entrusted with the honors-system approach to funding, when other agencies tasked with consumer protection, such as the FTC, the SEC and the CFTC do not enjoy similar privileges.

CLAIM: "The CFPB should be given a chance to prove itself before it is reconfigured by Congress."

FACTS:

- It is absurd to condone complacency. Isn't it the job of Congress to ensure that laws – and especially the structure of new and overarching agencies – are in the best possible working order before being set in motion?

- The stakes are too high to let one agency's rules create significant risks to the safety and soundness of financial institutions, which could ultimately drive up the cost and reduce availability of credit.

CLAIM: "Republicans would have us return to the pre- Dodd-Frank world where the banking regulators ignored their responsibilities for consumer protection."

FACTS:

- We believe in strong, effective consumer protection. This bill would not in any way hinder the CFPB's authority to promulgate and enforce regulations.

- The goal of this bill is simply to ensure that CFPB is run by balanced and impartial leadership.

H.R. 1315: "Consumer Financial Protection Safety and Soundness Improvement Act"
Sponsored by Representative Scott Duffy

Summary of H.R. 1315

- H.R. 1315 amends Section 1023 of the Dodd-Frank Act and streamlines the FSOC's process for reviewing CFPB regulations.

- The bill would reduce the vote required to set aside CFPB regulations from two-thirds of the FSOC's voting membership to a simple majority, excluding the Director of the CFPB. In other words, under H.R. 1315, instead of requiring 7 members to overturn a rule, only 5 would need to object.

- The bill would clarify that the FSOC *must* set aside any CFPB regulation that is inconsistent with the safe and sound operations of U.S. financial institutions.

- The bill would lift the strict time limits for the FSOC to review and vote on regulations, allowing the FSOC to take the time necessary to fully consider the consequences of CFPB regulations on the safe and sound operation of the banking system.

Claims and Facts

CLAIM: "No other financial regulator is subject to having its rules overturned by the FSOC. Why should the CFPB be singled out for this treatment?"

FACTS:

- The CFPB is unique among FSOC member agencies because it is a product regulator rather than a prudential regulator. There are a lot of things that might be in the best interest of consumers in the short run that are not in the best interest of the safety and soundness of financial institutions. Balance is needed: what is good for a financial institution is not necessarily bad for a consumer. And what is bad for a financial institution is not necessarily good for a consumer. It is in every American's interest to have a safe and sound financial services industry so they can access credit that they want and need. Punitive regulations hurt everyone.

CLAIM: "Republicans would have us return to the pre- Dodd-Frank world where the banking regulators ignored their responsibilities for consumer protection."

FACTS:

- Republicans believe in strong, effective consumer protection. This bill would not hinder the CFPB's authority to promulgate and enforce regulations.

- The goal of this bill is simply to ensure that safety and soundness concerns do not take a back seat in the new regulatory environment.

CLAIM: "Safety and soundness means profitability, so any consumer regulation that decreases profitability is already 'inconsistent with the safe and sound operations of a financial institution."

FACTS:

- Profitability and safety and soundness are not equivalent. While a bank must be profitable to be considered safe and sound, profitability alone is not sufficient for a bank to be safe and sound. If profitability were the sole criterion, there would be no need of minimum capital ratios.

- There is no real conflict between safety and soundness of financial institutions and transparency and fairness for consumers.

- In fact, a reduction in safety and soundness could likely result in a reduced offering of financial products and access to credit.

CLAIM: "Reducing the FSOC veto authority from two-thirds to a simple majority would effectively eviscerate the Bureau."

FACTS:

- The Bureau will still have broad authority to implement and enforce all federal consumer financial laws.

- Giving a majority of FSOC members veto authority over CFPB rules that are inconsistent with safety and soundness will not prevent the CFPB from ensuring that the market for consumer financial products is fair, transparent, and competitive.

- As it currently stands, it is quite easy for a CFPB rule that is detrimental to safety and soundness to escape an FSOC veto, as only 3 of the 10 voting member s are required. One of these three votes would of course come from the CFPB Director; thus, only two other member agencies would need to side with the CFPB in order to escape the FSOC veto.

CLAIM: "By eliminating the time limits for the FSOC to review and vote on regulations, House Republicans are taking every step possible to ensure that a regulation gets overturned."

FACTS:

- The only CFPB regulations that will get overturned as a result of this bill are those that a majority of the nation's top regulators find to be inconsistent with the safe and sound operations of U.S financial institutions.

- By removing the time limits for FSOC review, we are simply permitting FSOC to perform its statutorily mandated duty, i.e. "to respond to emerging threats to the stability of the United States financial system."

CLAIM: "Consumer protection regulations cannot hinder a financial institution's safety and soundness."

FACTS:

- Poorly conceived regulations, promulgated in the name of consumer protection, could:
    - (1) limit a bank's ability to assess and to adjust for credit risk on an ongoing basis;
    - (2) hinder a bank's ability to maintain prudent credit underwriting standards; or
    - (3) hinder a bank's ability to prevent deterioration in the quality of its assets.

CLAIM: "The CFPB should be allowed a vote when the FSOC reviews CFPB regulations."

FACTS:

- It would not be appropriate for the CFPB director to get a vote on whether to overturn his own regulation. There is no reason to think that the Director can objectively evaluate the effect of his regulation on the safety and soundness of financial institutions and the stability of the financial system.

H.R. 1667: "The Bureau of Consumer Financial Protection Transfer Clarification Act"
Sponsored by Subcommittee Chairman Shelley Moore Capito

Summary of H.R. 1667

- Pursuant to the Dodd-Frank Act, the Treasury Department designated July 21, 2011, as the date when the Federal Reserve, FDIC, NCUA, OCC, OTS and HUD will transfer their consumer protection functions to the Consumer Financial Protection Bureau (CFPB). If a CFPB director is not Senate-confirmed by July 21, H.R. 1667 would postpone the transfer of those functions until the CFPB has a confirmed and accountable director in place.

- If CFPB does not have a Senate-confirmed Director by July 21, the Bureau may continue to operate under the Treasury Secretary's 1066(a) authority. The Secretary's authority to carry out these functions terminates when a director is confirmed.

    - Among other things, 1066(a) grants the Secretary the authority to:

        - Prescribe rules, issue orders and produce guidance related to the Federal consumer protection laws that were, prior to the designated transfer date, within other regulators' authority;

        - Conduct examinations of banks, savings associations and credit unions with total assets in excess of $10 billion;

        - Enforce all orders, resolutions, determinations, agreements and rulings that have been made or allowed to become effective prior to the designated transfer date with respect to a bank, savings association or credit union with total assets in excess of $10 billion.

- Despite urgings from Democrats, Republicans and interested private actors, President Obama has still not nominated anyone for the position.

- Because the Dodd-Frank Act places so much authority — with such little accountability — in the hands of one person, it provides that the President's nominee for the Bureau's Director must be vetted and approved by the Senate. Senate confirmation of the President's nominee is explicitly required by the bill that he signed into law.

- The President is free to nominate whomever he pleases. But as the founding fathers realized — and as every child knows — our government is a system of checks and balances. Because the Bureau will be, effectively, whatever its Director wants it to be, the legitimacy of the Bureau depends on ensuring that its Director is nominated and confirmed in accordance with the requirements of both the Dodd-Frank Act and the Constitution.

- This is not a partisan view. The former chairman of the Senate Banking Committee, and author of the reform legislation, Chris Dodd, repeatedly expressed opposition to a recess appointment for the CFPB director (and even interim, unconfirmed leadership like exists today). "We need a director. And someone that's confirmable," he has said. "And anything short of that, I think, you put this bureau in some jeopardy."

- H.R. 1667 does not create an enforcement vacuum because the existing prudential regulators – the Fed, FDIC, NCUA, OCC, OTS and HUD – will continue to enforce the laws.