Testimony of Elizabeth Warren
Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau
Before the Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs
Committee on Oversight and Government Reform
United States House of Representatives
Tuesday, May 24, 2011

Introduction

Thank you Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee for inviting me to testify about the work of the Consumer Financial Protection Bureau (CFPB). I appreciate the opportunity to report to Congress about the structure and management of the consumer bureau.

Two and a half years ago, I began my work in Washington as Chair of the Congressional Oversight Panel (COP). The COP produced detailed monthly reports for Congress about the Department of the Treasury's administration of the Troubled Asset Relief Program. I came to Capitol Hill on many occasions to testify on behalf of the COP about our oversight efforts. Based on that experience working on behalf of Congress, I became a firm believer in the importance of oversight.

Two months ago, I testified before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit. At that appearance, I provided 34 pages of detailed written testimony on the following topics to shed as much light as possible on the efforts underway to establish the CFPB:

- The CFPB's mission
  - Background
  - Goals for the Bureau
  - Implementing the CFPB's goals

- The CFPB's priorities
  - Mortgages
  - Credit cards
  - Financial education
  - Consumer complaints
  - Supervision, enforcement, and fair lending
  - Information technology

- Accountability and transparency
  - Oversight of the CFPB
  - Budget
  - Organizational structure and hiring

- CFPB headquarters
- Public disclosure of my schedule
- Availability to Members of Congress

- Public Engagement
  - Industry
  - Consumer advocates and faith leaders
  - Military families
  - Attorneys general

It is the hope of those of us working at the consumer bureau that the testimony I provided then and in today's hearing will provide you with the information you are looking for to oversee our efforts.

The Crisis of 2008: What Went Wrong

Last year, the Dodd-Frank Wall Street Reform and Consumer Protection Act established the CFPB, in part, to increase accountability in government by consolidating consumer financial protection authorities that had existed across seven different federal agencies into one. Consumer financial protection had not been the primary focus of any Federal agency, and no agency had effective tools to set the rules for and oversee the whole market. The result was a system without effective rules or consistent enforcement. We have seen the results, both in the 2008 financial crisis and in its aftermath.

In April, after two years of bipartisan investigation, the U.S. Senate Permanent Subcommittee on Investigations released a 635-page report on the key causes of the financial crisis. The report highlighted several causes of the crisis, including high-risk mortgage lending, inflated credit ratings, structured products sold by investment banks, and repeated failures of regulatory agencies to provide adequate oversight of the financial services industry. Senator Carl Levin, who chaired the committee, said that the report "catalogues conflicts of interest, heedless risk-taking, and failures of federal oversight that helped to push the country into the deepest recession since the Great Depression."[1] Senator Tom Coburn, the committee's ranking member, said that "Blame for this mess lies everywhere from federal regulators who cast a blind eye, Wall Street bankers who let greed run wild, and members of Congress who failed to provide oversight."[2]

The conclusions of the Senate Permanent Subcommittee on Investigations have been echoed elsewhere. During the recent hearing on the CFPB before the House Subcommittee on Financial Institutions and Consumer Credit, Chairman Shelley Moore Capito similarly observed, "I think

[1] Press conference, Wall Street And The Financial Crisis: Anatomy of a Financial Collapse (April 13, 2011) (video online at http://www.youtube.com/watch?v=lmlhvkEcb7Y).
[2] U.S. Senate Permanent Subcommittee on Investigations, *Senate Investigations Subcommittee Releases Levin-Coburn Report On the Financial Crisis* (April 13, 2011) (online at http://hsgac.senate.gov/public/index.cfm?FuseAction=Press.MajorityNews&ContentRecord_id=51BF2C79-5056-8059-76A0-6674916E133D).

we could all agree that there were lapses in oversight and inherent problems within the regulatory structure."[3]

Last month, the Chief Executive Officer of one of our nation's largest financial institutions made a similar point. He wrote to his company's shareholders that, "Indeed, had there been stronger standards in the mortgage markets, one huge cause of the recent crisis might have been avoided.... As recently as five years ago, most Americans would have called the U.S. mortgage market one of the best in the world – boy, was that wrong! What happened to our system did not work well for any market participant – lender or borrower – and a careful rewriting of rules would benefit all."[4]

The conclusion is bipartisan and shared by both those in government and those in private industry: Failures of our regulatory system were an important contributor to the country's worst financial disaster since the Great Depression.

Congressional Response: A New Consumer Bureau

To address a root cause of the financial crisis of 2008, Congress established the CFPB: 1) to ensure that consumers have timely and understandable information to make responsible decisions about financial transactions; 2) to protect consumers from unfair, deceptive, or abusive acts or practices, and from discrimination; 3) to reduce outdated, unnecessary, or overly burdensome regulations; 4) to promote fair competition by enforcing the Federal consumer financial laws consistently; and 5) to advance markets for consumer financial products and services that operate transparently and efficiently to facilitate access and innovation.

As Congress recognized in creating the CFPB, every market needs rules. Antitrust rules, for example, ensure that companies don't conspire to fix prices or to squeeze out competitors and lock down a whole market. Those regulations ensure that every business – small, large, established, or start-up – has a chance to compete and to innovate. The rules also guarantee that customers have choices. The ability of customers to choose means that competition works at its best: The best businesses – those that produce goods and services that customers want most at the most affordable price – can flourish while those whose products aren't as good or whose prices are too high do not.

A fair, efficient, and transparent market presupposes that consumers are able to compare the costs and benefits of different products effectively and to use that information to choose the product that is best for them. In the world of consumer financial services today, that is a questionable premise. Fine print and overly long agreements make it difficult for consumers to

---

[3] Subcommittee on Financial Institutions and Consumer Credit, Statement by Chairman Shelley Moore Capito (March 16, 2011) (video online at http://www.c-span.org/Events/Warren-Defends-Consumer-Financial-Protection-Bureau/10737420228-1/).

[4] Letter from Jamie Dimon, to JPMorgan Chase shareholders (April 4, 2011) (online at http://files.shareholder.com/downloads/ONE/1225684322x0x458384/6832cb35-0cdb-47fe-8ae4-1183aeceb7fa/2010_JPMC_AR_letter_.pdf). Dimon also noted that, "we fully acknowledge that there were many good reasons that led to the creation of the CFPB and believe that if the CFPB does its job well, the agency will benefit American consumers and the system."

understand and compare products, and that obstacle to sound markets is not removed by disclosures that are too complicated or that do not focus on the key information consumers need. The principal role of consumer protection regulation in credit markets is to make it easy for consumers to see what they are getting and to make it easy for customers to compare one product with another, so that markets can function effectively.

At the consumer bureau, we believe in markets – markets that make prices and risks clear and that give consumers the basic information they need to determine who is offering the best deals. Our primary goal is to make markets for consumer financial products and services work in a fair, efficient, and transparent manner. That means ensuring that consumers have access to information to help them understand the terms of the deal. Fair and transparent markets encourage personal responsibility and smart decision-making. When consumers are presented with a clearer choice between two financial products and they can easily know the costs, benefits, and risks of those products, they will be better able to make decisions that work for themselves and for their families.

Consumers expect to be held responsible for the financial decisions they make. If they don't keep up with their debt payments, they expect to face the consequences. Personal responsibility is critical. But consumers want to know the costs up-front and don't want to be blindsided by hidden fees, interest rate changes, or payment shocks. Informed decision-making allows consumers to drive the financial marketplace so that providers offer products that meet consumer needs and preferences.

Getting Started: Markets that Work

At the CFPB, we believe that a simple and straightforward presentation of key credit terms is the best way to level the playing field between borrowers and lenders and to foster honest competition. Our goal is shorter, clearer forms for the most common credit products, the kind that consumers can read in a few minutes with high levels of understanding. The CFPB is working to give consumers the transparency they deserve to make the choices that work for themselves and their families, while easing unnecessary regulatory burdens for their lenders.

In my first week on the job, the Treasury Department sponsored a symposium that brought together lenders and consumer advocates to discuss how to simplify federal mortgage disclosures. Consumer groups explained that many consumers didn't use current disclosures to assess costs or to compare alternatives because the forms are complicated and hard to use. The forms came under even more intense criticism from those who have to fill them out. Mortgage originators, particularly community banks and credit unions that work closely with their customers, described paperwork that was costly to complete, even as it produced little value for borrowers. Now, after months of consultation with borrower and lender representatives, we have developed prototype short mortgage shopping sheets that will be tested with actual consumers and, eventually, result in a simple, streamlined mortgage disclosure that will replace the two existing, complicated forms.

The new consumer bureau is making the early form drafts publicly available, long in advance of the formal process of notice-and-comment for official rule-making. We are seeking feedback early and often from consumers, lenders, brokers, and others now, and we will continue to do so as we refine the forms. We have posted draft forms online, while they are still in the design phase, and we have asked the public to weigh in. We will share the input we receive with our testers and designers, factoring it into our design process. We hope that these expanded procedures will permit us to engage a broader constituency, helping us deliver on the promise of this agency embodied in the Dodd-Frank Act.

A significant part of our mission will also be to help level the playing field for smaller lenders, such as community banks and credit unions. We recognize that the regulatory pressures on banks have increased substantially over time. While regulatory costs may be manageable on a per-account basis for the largest financial institutions, for smaller businesses, all the complicated rules, extensive paperwork, and expensive compliance reviews can be daunting. If we continue on our current regulatory trajectory, traditional banks and credit unions will be put at a further disadvantage that could push many out of business.

American consumers are best served by a strong and diversified financial services industry. Many community banks and credit unions embrace relationship lending, and they often work in partnership with the families they serve. Some smaller institutions provide a banking presence in otherwise-underserved communities, both in our cities and in rural areas. If community banks and credit unions continue to face competitive pressures triggered by a complex regulatory system, then those institutions will not be as able to serve American families. In that case, not only do the banks lose, but families lose as well.

The CFPB is committed to working with smaller institutions to reduce regulatory costs. We have already begun that work, and we are pleased to report to Congress that the spirit of openness and cooperation expressed by community banks and credit unions has been extraordinary. The mortgage disclosure integration project is one area in which we are seeking to reduce regulatory burdens, and we expect that it will serve as an excellent test case as we design our ongoing processes for how the consumer bureau and smaller institutions can work together to increase the ability of these institutions to spend less time on regulations and more time serving America's families.

Structure and Management: Organizing the CFPB

Under Section 1066 of the Dodd-Frank Act, the Secretary of the Treasury is authorized to perform certain functions of the CFPB. On September 17, 2010, the Secretary appointed me to be his Special Advisor for this role. The President is in the process of considering candidates to nominate as the Bureau's first Director.

One of our main tasks since last September has been to develop an organizational design that will provide the infrastructure the Bureau will need to meet its responsibilities in the months and years ahead. Late last year, the CFPB began providing its draft organizational chart to Members of Congress and the media. In early February, we posted the chart to our newly launched CFPB website. In developing the CFPB's organizational structure, we have asked for comments and critiques from individuals in the private sector, community groups, and academia, as well as from Members of Congress.

Our primary goals in designing the CFPB organizational chart have been: 1) to engage the American public; 2) to ensure that the Federal consumer financial laws will be administered by the Bureau consistently, efficiently, and effectively; 3) to help create a level playing field for community banks and credit unions to compete with large banks and non-depository financial companies; 4) to make the CFPB a data-driven agency by making research and market analysis core to all of its work; 5) to advance financial education opportunities for all Americans; 6) to continue an open and candid dialogue with Members of Congress; and 7) to create accountability within the CFPB.

The CFPB team currently consists of more than 200 members and includes the following senior managers:

- Steve Antonakes, the former Commissioner of Banks in Massachusetts, serves as Assistant Director for Large Bank Supervision for institutions such as banks and thrifts.

- Leonard Chanin, the former Deputy Director of the Federal Reserve Board's Division of Consumer and Community Affairs, serves as Assistant Director for Regulations.

- Richard Cordray, the former Attorney General of Ohio, serves as Assistant Director for Enforcement.

- Raj Date, who worked in consumer finance and banking for more than a decade and was a Managing Director at Deutsche Bank Securities, serves as Associate Director of Research, Markets, and Regulations.

- Patrice Ficklin, who has practiced law at the law firm Relman, Dane & Colfax and has provided fair lending, fair housing, and other consumer law advice regarding mortgage products, pricing, and servicing while working at Fannie Mae, serves as Assistant Director for Fair Lending.

- David Forrest, who spent 16 years helping develop the Motley Fool, a multimedia financial-services company that promotes investor education, serves as Chief Technology Officer.

- Meredith Fuchs, who worked in the U.S. House of Representatives as Chief Investigative Counsel of the Committee on Energy and Commerce, serves as Principal Deputy General Counsel.

- Roberto Gonzalez, who served in the Office of White House Counsel, serves as Deputy General Counsel.

- Michael Gordon, who was Counselor to the General Counsel in the Treasury Department, serves as Deputy General Counsel.

- David Gragan, formerly Chief Procurement Officer for the District of Columbia, serves as Assistant Director of Procurement.

- Gail Hillebrand, who joined Consumers Union in 1985 and was a Senior Attorney there, serves as Associate Director of Consumer Education and Engagement.

- Len Kennedy, former General Counsel of Sprint Nextel and long-time regulatory attorney, serves as CFPB's General Counsel.

- Zixta Martinez, an expert on housing policy who last worked at Freddie Mac, serves as Assistant Director of Community Affairs to work with consumer, civil rights, and other organizations.

- Patricia McCoy, a scholar on the housing market and chaired professor at the University of Connecticut who has served as Director of its Insurance Law Center, serves as Assistant Director for Mortgage and Home Equity Markets.

- Holly Petraeus, a top financial educator for military families, leads the Bureau's Office of Servicemember Affairs as Assistant Director.

- David Silberman, who built a successful affinity credit card business and then served as a banking consultant, serves as Assistant Director for Card Markets.

- Dennis Slagter, formerly Director of Human Resources at the Millennium Challenge Corporation and Director of Strategic Initiatives for the Assistant Secretary of the Army (Manpower and Reserve Affairs), serves as Assistant Director for Human Capital.

- Corey Stone, formerly a Chairman of the Board of a community bank and CEO of an alternative credit reporting business, serves as Assistant Director for Credit Information Markets.

- Peggy Twohig, formerly Associate Director of the Division of Financial Practices at the Federal Trade Commission, serves as Assistant Director for Non-Bank Supervision.

- Elizabeth Vale, who started her professional career with 16 years in community banking and eventually served as a managing director at Morgan Stanley, serves as Assistant Director for Community Banks and Credit Unions.

- Catherine West, a former President of the credit card business at Capital One, serves as Chief Operating Officer of the CFPB.

As this list shows, the leadership of the CFPB is diverse, with people coming from a variety of backgrounds – public and private, banking and non-banking, large institutions and small institutions. The expertise and diversity represented by our leadership team is extraordinary. There is no single point of view that dominates this group, other than a shared vision to make consumer financial markets work better for all Americans.

Public Engagement: Reaching Out in Many Directions

The CFPB is currently a construction site and, like most construction sites, it should be in plain view for anyone who is interested. That is why we launched our website in early February, more than five months ahead of the time the agency would assume many of its powers. We posted our draft organizational chart when we launched, and we have posted additional information about our budget and our progress in standing up the new agency over the time since. We have also consulted with various organizations dedicated to transparency in government to explore how we might add more information to our website or provide other useful data to the public.

We are committed to letting everyone know how we are working for the American people. One way we have sought to accomplish that is through the public release of my calendar. We began to post my calendar to the Treasury website proactively on November 24, 2010, even before we launched our website. We have now posted my calendar online each month and will continue to do so as a commitment to our openness.

The posted schedule gives everyone an opportunity to see who we are meeting with and what perspectives we are hearing. Our hope is that by releasing my schedule, the public will see that the agency is listening to a variety of viewpoints about how the consumer bureau should be shaped and where its efforts should be focused. The calendars show that we have now spoken directly with dozens of executives from large banks and banking trade associations. We have also spoken with leaders of community banks, credit unions, and other small financial services providers from all 50 states. We have met with dozens of consumer advocates, both in Washington and around the country. We have met with servicemembers on visits to military bases. We have spoken with state attorneys general and bank supervisors from across the country, and we have had multiple meetings with other federal regulators. We have also met with entrepreneurs, innovators, retailers, leaders of non-profit organizations, and a wide variety of others both in and outside of the financial services industry.

In addition, since September, I have had more than 90 one-on-one conversations with Members of Congress. We have been in close touch with many who supported the creation of the CFPB and many who opposed it. My presence here today reflects our commitment to working closely with you and your colleagues.

Oversight: Significant Limits on the CFPB

In recent weeks, there have been many overblown claims about the nature of the CFPB's power. Critics have claimed that the CFPB is "the most powerful regulatory agency that's ever been put together," that it is "the most powerful agency ever created," and that it "doesn't have to explain what it does to anybody." These claims disregard the limits on the consumer bureau's authorities and the very meaningful oversight that Congress imposed over its functioning – oversight that is consistent with that which exists over other independent agencies.

I have been told that if you say anything in Washington often enough, it is eventually treated as fact – regardless of whether it is true or false. While making baseless claims might be shrewd tactics for those who want to undermine the Bureau's work, they are flatly wrong. The CFPB's jurisdiction is fundamentally limited to consumer financial products and services. Even within the world of consumer finance, huge sectors, including investments and insurance, are explicitly excluded from its jurisdiction, left instead to other state and federal regulators. The scope of the CFPB's authority is carefully limited.

False claims about CFPB's power also ignore the structural oversight and accountability that limit the reach of the CFPB. Like all other agencies in the federal government, the CFPB is subject to the requirements and limitations of the Administrative Procedure Act. We are one of only three agencies anywhere in government (and the only banking regulator) that is required to conduct SBREFA panels, a process to gather input directly from small businesses about the potential impact of proposed rules. And we are also specifically required to consider the benefits and costs of any proposed rules to consumers and providers. The CFPB's activities are subject to judicial review, ensuring that the CFPB operates within the constraints set by Congress and the U.S. Constitution.

In addition to being subject to judicial review, the Bureau is the only bank regulator whose rules can be overruled by a council made up of other federal agencies. In an unprecedented restriction unlike that on the authority of any other Federal financial regulator, Congress determined that a two-thirds majority of the banking regulators and other members of the Financial Stability Oversight Council can veto any rule issued by the consumer bureau if the council determines that it would put the safety and soundness of the banking system or the stability of the financial system at risk. And, of course, like with any federal agency, Congress can always overturn the Bureau's rules if the legislature disagrees with our judgments.

The CFPB is also the only bank regulator that is expressly limited in its ability to determine its own funding levels. If the Office of the Comptroller of the Currency believes it needs more funds to hire more examiners, it can raise more through assessments on the industry. But the consumer agency's independent funding is statutorily capped at a portion of the Federal Reserve System's operating expenses. If the CFPB concludes that it needs additional funding, it must persuade Congress to provide that funding.

Other forms of oversight exist as well:

1) The CFPB must submit annual financial reports to Congress.

2) The CFPB must report to Congress twice each year to justify its budget from the previous year.

3) The Director of the CFPB must testify before and report to Congress twice each year regarding the CFPB's activities.

4) The GAO must conduct an audit each year of the consumer bureau's expenditures and submit a report to Congress.

5) The CFPB must submit its financial operating plans and forecasts and quarterly financial reports to the Office of Management and Budget.

6) The Inspector General of the Federal Reserve Board (and the Inspector General of the Treasury Department, during this interim period) have been charged with reviewing the CFPB's activities to inform Congress and the public about the consumer bureau's work.

The formal restraints over the agency are substantial, but informal restraints are significant as well. The financial services industry has substantial resources to ensure that its views about the CFPB and its work are well known and fully considered.

Recent proposals to alter the CFPB's structure – including those that the House Financial Services Committee recently passed – overlook the many constraints already in place. The work facing the new bureau is very challenging; additional restrictions would undermine the consumer bureau before it even begins its work of protecting American families.

Proposals to change the consumer bureau have been put forward in the name of accountability. But accountability is ultimately about being responsible for getting a job done on behalf of American families. Those families know that they are held accountable every day. They have to pay their credit card bills and student loans. They see money disappear from their checking accounts when they make a mistake. And, as millions of families have witnessed first-hand in the past few years, when they default on mortgages they cannot afford, they lose their homes. American families expect to pay what they owe, but they also want to make sure that the rules are fair and followed. They want an agency that will be accountable for getting that basic job done, and, so long as it has the tools, the CFPB will be that agency.

Conclusion

Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee, thank you again for inviting me to testify today about the CFPB.

I understand – and greatly appreciate – the important role of oversight. Oversight is a deeply important feature of our democracy that provides for checks and balances and helps prevent overreach, violations of law, and misguided expenditure of public funds. Oversight of the CFPB – during its stand-up and beyond – will build greater confidence in the consumer bureau by the public. That is why I welcome the opportunity to discuss our efforts and to update you on our progress.