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June 24, 2009

The Honorable Barney Frank
Chairman,
House Financial Services Committee
2129 Rayburn HOB
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member,
House Financial Services Committee
B-371A Rayburn HOB
Washington, DC 20515

RE: Hearing on "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation"

Dear Chairman Frank and Ranking Member Bachus:

On behalf of the 5,000 members of the Independent Community Bankers of America, I write to express our significant concern with the Administration's plan to create a Consumer Financial Protection Agency (CFPA). There is little doubt that this far-reaching expansion of government will do more harm than good by unduly burdening our nation's community bankers who did not engage in the types of deceptive practices targeted by the proposal.

The success of community banking depends on superior customer service consumers cannot find with the competition. This higher level of customer service, combined with more favorable terms and conditions on financial products is, at the end of the day, what makes any community bank a viable enterprise. The existing regulatory framework, while often costly to a fault, allows community bankers to ensure their customers are fully informed and educated of their choices, while also allowing the bank to operate in a safe and sound manner. As such, community bankers agree that consumer protection is a cornerstone of our financial system.

The Administration's deeply flawed proposal rests on incorrect assumptions about consumers and the motives of financial institutions – assumptions that do not reflect the way community banks conduct business. One rationale for the CFPA is that banks will attempt to exploit consumers with complicated products and incomprehensible contracts. The proposal suggests this tendency is exacerbated by a regulatory environment more attuned to the soundness of institutions and markets, than to consumer protection.

The proposal suggests that consumers need to be protected from themselves. Therefore, a core function of the CFPA is to promote the "simplicity" of financial products because any product that is not simple is likely to be bad for consumers. To be sure, community banks prefer to offer consumers simpler products when it is appropriate; but "simplicity" as a doctrine should not be promoted at the expense of all other products. Not every consumer's situation is best served by the simplest product. This proposal simply does not reflect the nature of community banking, particularly the emphasis community bankers place on maximizing long-term relationships with their customers. It is a one-size-fits-all prescription will add significant costs to small banks.

Because community banks are so closely tied to their local economies, the success or failure of a community bank depends on its ability to know and encourage what is in the best interest of its customers. As a consequence, community bankers have no incentive to peddle inappropriate or unwise financial products. While community banks are fairly risk-averse and conservative lenders, we are concerned this agency will place too great a value on "simplicity" and generic lending products, which are not always in the best interest of the consumer or the local economy.

As an example, many community banks have been offering balloon loans for decades. These loans were the only product that many rural, underserved, or otherwise risky consumers could possibly qualify for, so they extended the credit. However, community banks would not turn around and sell or securitize these loans, instead keeping them on their books, maintaining all of the risk and all of the incentive to ensure those consumers met their obligations. The proposed CFPB would make it costly, burdensome, and a bureaucratic nightmare for a community bank to do that in the future. Requiring banks to offer less diverse financial products limits the ability of many consumers to gain access to credit, and will unintentionally create an economic environment catering to higher-income consumers who possess greater economic flexibility.

The regulatory and enforcement powers shifted to the CFPB would unwisely separate consumer protection from safety and soundness enforcement, when both types of enforcement must co-exist under one agency for efficient financial services regulation. Separating this enforcement among two different agencies would only give each agency half of the information it would need. If the CFPB is not equally interested in the safety and soundness of the lender, it is likely to promulgate burdensome regulations that make many currently safe financial products, which are beneficial to consumers but might be considered complicated, unavailable or too costly to offer. Furthermore, this lack of perspective could lead to the CFPB issuing directives that compete or run contrary to those issued by the prudential regulator. A community bank could find itself in a position with two conflicting mandates, each of which must be followed, with no clear means of resolution.

Giving the CFPB jurisdiction over the Community Reinvestment Act (CRA) highlights this issue for community banks. Unlike statutes such as the Truth in Lending Act, the CRA does not regulate consumer products or consumer rights. The CRA regulates bank services, lending and investments, all of which are integral to overall bank operations, which is the central concern of safety and soundness regulators. Separating enforcement of CRA from safety and soundness regulation, as the Administration has proposed, could easily result in conflicts between the CRA requirements of the CFPB and the safety and soundness requirements of banking agencies, leaving banks in the middle. It would be far better to leave with the banking agencies jurisdiction over statutes, such as the CRA, that directly govern bank operations.

We urge Congress to focus the CFPB on the lack of oversight of non-bank entities – which were at the heart of the current crisis – not on increasing regulation of community banks. ICBA believes this is the best way to avoid future abuse in the marketplace. Creating yet another agency and layer of bureaucracy for community banks that are already heavily examined and regulated, is not. ICBA believes that the examinations regularly conducted by bank regulatory agencies are the best means to ensure compliance with consumer protection requirements established by statute and regulation.

On behalf of our nation's community banks, thank you for considering our views. The ICBA looks forward to working with you and the members of your committee on this issue and the other aspects of financial regulatory reform that will be addressed in the future.

Sincerely,

/s/

Camden R. Fine
President and CEO

CC: Members of the Financial Services Committee