Consumer Federation of America

June 22, 2016

Dear Representative,

Consumer Federation of America[1] writes to express our opposition to the Financial Services and General Government appropriations bill. The Financial Services and General Government (FSGG) Appropriations Act of 2017, H.R. 5485 rolls back important consumer protections and undermines the ability of crucial agencies to fulfill their missions of protecting consumers through riders in the text as well as through offered amendments.

1. **The bill threatens the viability of the Consumer Financial Protection Bureau (CFPB) by drastically weakening its funding mechanism, organizational structure and reporting requirements.** Tying the hands of the CFPB is contradictory to what American consumers need and expect. The CFPB already extensively reports to Congress and senior Bureau staff has testified before Congress numerous times. The funding structure of the CFPB was specifically drafted like that of every other bank regulator to be insulated from partisan and special interest attacks. Modifying the single director structure of the CFPB to a five-member commission would thwart the agency from quickly working to ensure fairness in the financial marketplace.

   Therefore, we urge you to SUPPORT amendments that would strike harmful language in the FSGG Appropriations bill that weaken the CFPB, including:
   - Amendments #49 and #50, which would remove provisions from the text of the Appropriations bill that would make the CFPB the only federal bank regulator without independent funding. The CFPB's funding is already more constrained than that of other financial regulators; only the CFPB's budget is capped by Congress.
   - Amendment #48, which would remove a rider changing the structure of the CFPB from its current, effective single-director structure to a less effective five-member commission.
   - Amendment #64, which would remove a rider to stall CFPB protections against payday loans for at least a year and impose new, unnecessary hurdles to regulating payday loans after that period expires. The CFPB's rule is rooted in the principle that lending must be based upon a borrower's ability to repay the loan – a basic principle for mortgages, credit cards and other loans. This principle is critical to stopping the vicious debt trap that is fundamental to the payday lending industry.
   - Amendment #55, which would hinder the ability of the CFPB to make financial services contracts more fair for consumers. The Dodd-Frank Act specifically gave the CFPB the

[1] Consumer Federation of America (CFA) is a national organization representing approximately 300 organizations at the state, local and national level that conducts public education and policy analysis on behalf of consumers, with a particular focus on low- and moderate-income consumers.

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authority to regulate forced arbitration clauses in financial services contracts. These restrictive contract terms are required as part of obtaining a particular financial service and consumers have virtually no ability to opt out of these terms when seeking to obtain a credit card or student loan, for example. These mandatory arbitration clauses limit consumers' access to a fair resolution process by restricting consumers' participation in class actions and forcing consumers to forfeit access to the judicial system and resolve complaints in a private system lacking important procedural protections.

2. **We urge you to OPPOSE amendments that would significantly reduce the authority of financial and other regulators, including:**
   - Amendment #1, which would require Congress to approve major regulations before an agency rule could become law.
   - Amendment #52, which would thwart bank regulators' enforcement efforts to prevent the banking system from being used to facilitate illegal activity.
   - Amendment #86, which would block all regulation until January 21, 2017. This would entirely thwart the promulgation of necessary consumer protections.

3. **We urge you to OPPOSE amendments that would restrict the CFPB's ability to protect consumers, including:**
   - Amendment #32, which would rescind the CFPB's auto lending guidance and undermine the CFPB's enforcement of antidiscrimination laws. The amendment would restrict the CFPB's ability to inform lenders about how they can avoid violating the law and interfere with the CFPB's and the Department of Justice's work to promote a fair auto lending market for all consumers. This provision is part of an ongoing effort to attack the CFPB's enforcement work in auto lending.
   - Amendment and #98, which would hamper the CFPB from informing consumers about critical consumer protection tools. CFPB should have the same ability as other agencies to make consumers aware of options available to address concerns associated with financial products.
   - Amendment #8, which impacts CFPB statute of limitations.

4. **We urge you to OPPOSE riders that would weaken the CFPB's Qualified Mortgage rules.** These vital Dodd-Frank consumer protections were put in place to make home buying safer and more transparent. The last housing crisis showed that high loan-originator compensation and exorbitant loan pricing were key drivers of abusive lending and Congress directed the CFPB to protect homeowners from those practices.
   - Therefore, we urge you to SUPPORT Amendment #60, which would strike riders to weaken Qualified Mortgage protections for owners of manufactured homes. The CFPB rules now in place, as mandated by Congress, already account for the higher costs of manufactured home finance and have higher fee and interest rate triggers that exceed those in place for the traditional mortgage market.

5. **This bill would underfund financial regulators, hindering their ability to protect investors, foster market integrity and promote capital formation.**
   - **First, the bill would underfund the Securities and Exchange Commission (SEC).** Therefore, we urge you to SUPPORT Amendment #110, which would increase the SEC's

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budget by $50 million, providing the agency with critical resources to help fulfill its important responsibilities to investors and our capital markets. In particular, significant additional resources are necessary to increase the examinations of investment advisers. While the agency is making the most of what limited resources it has through risk-targeted exams, it is currently able to examine only about 10 percent of investment advisers annually. Increasing funding would allow the SEC to hire more examiners to conduct additional examinations of investment advisers, as well as improve oversight and examination functions related to other regulated entities, including broker-dealers, clearing agencies, transfer agents, SROs, including FINRA and the PCAOB, swaps data repositories, municipal advisors, and crowdfunding portals. This amendment would also bring funding in line with what the Senate Appropriations Committee has approved.

Second, this bill would dangerously underfund the Commodity Futures Trading Commission, which would seriously compromise the agency's ability to fulfill its responsibilities. The agency is tasked with overseeing and regulating derivatives markets so as to protect the public from fraud, manipulation, abusive practices and risks to the financial system. Without substantially more resources, derivatives markets and our broader economy will be exposed to increased misconduct and systemic risk.

6. **We urge you to OPPOSE amendments that would weaken privacy, specifically**, <u>Amendment #5</u>, which would prohibit the FCC from implementing, administering or enforcing any of the rules proposed in the Notice of Proposed Rulemaking adopted by the FCC on March 31, 2016 (FCC16-39) to regulate consumer privacy obligations as necessitated by the FCC's net neutrality regime. The FCC's net neutrality order has been upheld by the courts and the Communications Act, which was enacted with a strong bi-partisan support in Congress, recognizes the sensitivity of consumers' communications and mandates that the FCC protect them. Just as telephone companies cannot eavesdrop on customers' calls and use the information gleaned from their conversations for marketing or other purposes unrelated to providing telephone service, the FCC's proposed rules cited in this amendment would set reasonable requirements for Internet service providers' use of information about what their broadband customers do online.

7. **We urge you to SUPPORT a provision to ensure FCC jurisdiction over net neutrality**, specifically, <u>Amendment #65</u> that strikes section 632 of the bill which would prohibit the FCC from implementing the net neutrality order until certain court cases are resolved, requires the newly proposed regulations to be made publicly available for 21 days before the Commission votes on them, prohibits the FCC from regulating broadband rates, and requires the FCC to refrain from further activity of the recently proposed set-top box rule until a study is completed.

8. **We urge you to SUPPORT a provision that would increase funds for the Federal Trade Commission**, specifically, we support Amendment #16, which would increase funding for the Federal Trade Commission by $1 million for additional enforcement of the Do Not Call Registry and education for the public about avoiding telemarketing deception and abuse. The FTC is receiving an increasing number of complaints about illegal robocalls and other telemarketing abuses. The increase in funding would enable it to bring more actions to deter

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violations of consumers' do not call rights and educate consumers about how to distinguish between legitimate sales calls and fraud.

9. **In addition to undermining financial regulator's ability to protect consumers in the financial marketplace, this bill also would undermine regulators' ability to protect consumers in the consumer product marketplace.**
   - The bill would prevent the U.S. Consumer Product Safety Commission (CPSC) from promulgating a rule to establish critical safety standards for recreational off-highway vehicles. The recreational off-highway vehicle industry has had years to work on a voluntary standard that adequately addresses the key hazards posed to consumers and which have been associated with 335 deaths and 506 injuries from January 2003 to April 2013 deaths, but has failed to do so. CPSC must be able to move forward with this important safety standard. CFA and its partners documented at least 75 fatalities associated with ROVs from January 2015 through December 2015. This number may grow as more data becomes available about additional deaths.[2]
   - We urge you to OPPOSE Amendment #7, which would prohibit the CPSC from finalizing, implementing administering or enforcing the CPSC's proposed rule on Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices. CFA supports the Voluntary Recall Rule because it will provide a new measure of safety for consumers. In particular, the new rule will allow the CPSC to use its years of experience in developing corrective action plans to make them more effective, will eliminate delays that currently occur when details that should not be negotiable take days, weeks, or months to negotiate, and will allow the CPSC and recalling firms to more effectively use new tools such as social media to reach consumers. By making the agreements legally binding, CPSC can better ensure that the plan will be carried out in a timely manner and in the manner that was negotiated.

We strongly urge you to oppose the Financial Services and General Government Appropriations bill and harmful Amendments, discussed above, that roll back important gains and put consumers at risk. Further, we urge you to oppose all policy riders in the context of the appropriations process.

Sincerely,

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Director of Investor Protections

[2] CFA Press Release, January 7, 2016, available on the web at http://consumerfed.org/press_release/more-than-500off-highway-vehicle-deaths-in-2015/.

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