Statement
of the
U.S. Chamber
of Commerce

ON: "The Effect of Dodd-Frank on Small Financial Institutions and Small Businesses"

TO: House Sub-Committee on Financial Institutions & Consumer Credit

DATE: March 2, 2011

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance – is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

INTRODUCTION

Chairman Capito, Ranking Member Maloney, and distinguished members of the Committee, my name is Jess Sharp, Executive Director for the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. We appreciate the opportunity to testify before the Subcommittee today on behalf of the businesses that the Chamber represents.

The focus of my testimony this afternoon will be on the potential impact of the Dodd-Frank Act's new Consumer Financial Protection Bureau (CFPB) on America's small businesses.

The Chamber firmly supports sound consumer protection regulation that weeds out fraudulent and predatory actors and ensures consumers receive clear and concise disclosures about financial products. We also want to work with the CFPB to ensure that the Bureau takes a targeted approach to regulation and enforcement, taking care to prevent sweeping policies that would impose duplicative regulatory burdens on small businesses and, perhaps even more importantly, that would prevent small businesses from obtaining the credit they need to expand, and create the new jobs that our economy so desperately needs.

The Chamber recognizes that building an agency from the ground up is a tough job. While the Bureau will not be fully constituted until the July 21 designated transfer date, the Bureau and its federal and state partners have an opportunity to begin establishing some clear lines of jurisdiction and coordination that give some structure to the regulatory process to come, and some certainty to the regulated community.

Ultimately, the goal should be to construct a nimble, effective, transparent, and fair new agency that fulfills its consumer protection mandate while ensuring that consumers and small businesses continue to have access to affordable credit from wide range of sources.

CFPB OVERVIEW – HOW ARE SMALL BUSINESSES IMPLICATED?

The CFPB has broad authority to regulate the consumer financial products and services of banks and non-bank financial institutions including, credit cards, mortgages, student loans, and payday loans.

However, the Dodd-Frank Act also gives the CFPB the authority to regulate a number of activities that are common to Main Street businesses well outside the financial services sector (e.g., over-the-counter financing of goods purchased), and in some cases regulate the service providers to those companies.

In addition to casting this very wide net of coverage, the Dodd-Frank Act also gives the CFPB a very broad standard to enforce – the prevention of "unfair, deceptive, or abusive acts or practices" in the consumer financial products market. While unfair and deceptive practices have been proscribed for years with decades of case law to guide compliance and enforcement, the new abusive standard will require immediate interpretation by the Bureau that will likely continue to evolve into the future.

Together, these vague standards give the CFPB tremendous power to interpret its mandate, and give the regulated community, including small businesses very little guidance to follow as we approach the July 21 transfer date. The full universe of covered entities is unknown, and the standards by which those entities will be judged compliant or non-compliant have yet to be written.

THE IMPORTANCE OF SMALL BUSINESSES

It is widely recognized that small businesses play a critical role in the American economy, as job creators and as innovators. According to the Small Business Administration's (SBA) Office of Advocacy:

- There are more than 27 million small businesses in America.
- Small businesses are 99.7% of all businesses.
- Very small firms with fewer than 20 employees annually spend 45% more per employee than larger firms to comply with federal regulations.
- Small businesses employ just over half of all private sector employees, and pay 44% of total U.S. private payroll.
- Small businesses have generated 64% of net new jobs over the past 15 years, and hire 40% of high-tech workers (such as scientists, engineers, and computer programmers). This proportion of small business job creation is even higher in the early stages of an economic recovery.

In addition, while the U.S. commercial banking system remains an incredibly important source of credit and capital to small businesses in the U.S. many small businesses do not have the option of relying on commercial borrowing to capitalize their operations. Traditional lending requires credit history, collateral, and financial statements that many start-ups or even ongoing small businesses lack.

So large numbers of small businesses turn to the same affordable and accessible consumer financial products to fund and grow their businesses that individuals and families use to extend their buying power. According to research conducted by the SBA's Office of Advocacy 80% of small firms used non-traditional sources such as owners' loans and personal and business credit cards, while 60% used six traditional types of loans, such as credit lines, mortgage loans, and others. In 2009, about 77% of all small businesses used at least one credit card in 2003, and about 47% used personal cards rather than business cards.

OUR CONCERNS ABOUT THE CFPB'S IMPACT ON SMALL BUSINESSES

The CFPB poses two significant threats to small businesses:

First, small businesses may be subject to the CFPB's regulation and other oversight because they engage in one of the 10 broadly described activities laid out in the law, or are a service provider to one of those companies. Virtually all of these businesses are already subject to oversight by the Federal Trade Commission. The Chamber fears that overlap and duplication will be inevitable as the federal agencies sort out lines of jurisdiction and responsibility. In the meantime, even those businesses that are ultimately deemed to be outside the CFPB's authority may see their compliance costs go up in the short term because there is still so much uncertainty about the extent of the CFPB's jurisdiction

Second, CFPB regulation may decrease the availability or increase the costs of the forms of credit small businesses rely on to provide working capital, as described above— home equity loans, credit cards. In this scenario it is even possible that policies that seem to benefit consumers could indirectly harm their small businesses by limiting their access to the credit they need.

I should point out that Congress did put in place some helpful safeguards to mitigate the potential small business impact of the Bureau's activities. The most notable protection is the requirement that the Bureau must follow the process set out under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to solicit input from small businesses as part of every rulemaking.

While this is a very important provision, it will require vigilance on the part of a number of a number of federal agencies—the Bureau, the SBA, and the Office of

Management and Budget—to ensure meaningful compliance. In addition, SBREFA only covers the rulemaking process, while regulatory agencies, like the CFPB, often make policy outside that process through enforcement actions. So small business considerations will not necessarily be taken into account in all of the Bureau's activity.

SUGGESTIONS TO MITIGATE THIS IMPACT

Yesterday, the Chamber and a number of other trade associations sent a letter to Treasury Secretary Geithner, with copies to the Chairmen and Ranking Members of the House Financial Services Committee and Senate Banking Committee, laying out a series of recommendations to guide the Bureau's development. With the Chair's permission, I'd like to walk through a short summary of these recommendations and submit the full letter for the record.

Develop an Effective and Efficient Structure to Facilitate Protection of Consumers and Promotion of Economic Growth

1. The CFPB must organize in such a way as to promote intra-agency coordination and information sharing to avoid the pitfalls that have hobbled other agencies over the years. The Chamber was pleased to see that Elizabeth Warren has established a Chief Operating Officer position. This kind of cross-cutting job should help prevent the "siloing effect" that could inhibit coordination among the CFPB's offices.

Empower Consumers by Rationalizing Disclosure Requirements

2. The CFPB can be most effective by improving and simplifying disclosure in a way that does not limit consumers' choices in the market for financial products. The Federal government requires multiple disclosures to consumers, in the mortgage market, for instance. Too much disclosure or disclosure that is duplicative or even conflicting does not help consumers make choices.

Prevent Duplicative and Inconsistent Regulation of Main Street Businesses

3. After July 21, 2011, the CFPB will have broad new authority, some imported from other agencies, and should move to quickly clarify lines of jurisdiction to prevent sending mixed and overlapping messages. The CFPB should make clear its relationship with the FTC and the State Attorneys General. In addition, the Dodd-Frank Act gives the CFPB the ability to exempt any category of businesses from coverage under the Act. The Bureau should exercise that authority to relieve from regulation under the Act Main Street businesses with a minimal, and tangential, involvement in the activities that trigger the Act's coverage—as well as to clarify the scope of the Act's exemptions.

Preserve Small Business Access to Credit

4. The CFPB must keep in mind at every stage of its rulemaking and compliance processes that many small businesses access credit the same way individuals do. Preserving options in the financial products market is good for our job creators, so the Bureau's decisions should be tailored carefully to prevent broad outcomes that dry up essential sources of capital.

Ensure Coordination with Federal and State Prudential Regulators

5. Regulation of consumer financial products can have an impact on an institution's safety and soundness, so the CFPB must move quickly to establish a high-level consultation process with the prudential regulators.

Defer Rulemaking Until After Confirmation of a Director

6. Until a Director is confirmed, many of the Dodd-Frank Act's consumer financial protection authorities are under the control of the Secretary of the Treasury. While it may be unlikely the Secretary intends to begin making policy before the President nominates and the Senate confirms a CFPB Director, the Chamber believe a statement to this effect would calm concerns in the business community and ensure an orderly rulemaking process.

Before closing I would like to briefly touch on two concerns about the CFPB that are not directly tied the Bureau's small business impact, but have broader implications. First, while we understand that the CFPB's unusual structure as a standalone entity within the Federal Reserve, immune from the budget process, was intended to give the bureau a level of independence, we are concerned that in doing so, Congress has largely written itself out of the oversight process. Second, the Bureau will have a single Senate-confirmed Director, rather than bi-partisan leadership through a multi-member commission or Board similar to the FDIC or the SEC, and it will draw its funding from the Federal Reserve outside the Congressional appropriation process. I believe this combination is unique in government— some agencies have singular leadership, but are subject to the budget process or vice versa, but none that I know of have this double layer of insulation.

This set up leaves Congress with very few opportunities to have meaningful input into the Bureau's policymaking except through amendments to the underlying statute, particularly given the broad authority granted the Bureau to oversee such a massive portion of our economy.

CONCLUSION

Thank you again for the opportunity to testify before the Subcommittee today. The Chamber looks forward to working with Congress and the CFPB to help achieve these objectives. I am happy to answer any questions you may have.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Jess Sharp	U.S. Chamber of Commerce
3. Business Address and telephone number:	
[redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature:	2/28/11

Please attach a copy of this form to your written testimony.