U.S. PIRG Statement for the Record
Hearing on Assessing the Effects of Consumer Finance Regulations, 5 April 2016
U.S. Senate Committee on Banking, Housing and Urban Affairs
by Edmund Mierzwinski, Consumer Program Director

Chairman Shelby, Senator Brown and Members of the Committee:

On behalf of state PIRG consumer members around the nation, thank you for the opportunity to present this brief statement for the record for Tuesday's hearing "On Assessing the Effects of Consumer Finance Regulations" and in advance of "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress" hearing on Thursday.

SUMMARY:

Defend the CFPB, It Works: U.S. PIRG stands in strong support of the Consumer Financial Protection Bureau (CFPB), including support for its single-director structure, its independent funding insulating it from special interest chicanery and its broad authority and tools to make all financial markets work. Without any doubt, establishment of the CFPB is the most important consumer financial protection action by the Congress since the establishment of deposit insurance in the 1930s. And, independent funding is neither a controversial nor new idea; it's been the law since 1864 for all bank regulators.

The Public Complaint Database Works For All of Us: While we associate our remarks today with those of other Americans for Financial Reform coalition (AFR) members whose statements will focus on defending the CFPB and on mortgage lending, credit card markets, credit reporting, CFPB enforcement actions, current rulemakings on predatory payday and auto title lending and arbitration reform and other aspects of the CFPB's work, we will emphasize the importance of the CFPB's public Consumer Complaint Database as a mechanism to both aid its enforcement and selecting its rulemaking priorities but also to help it avoid the calcification of, or worse, regulatory capture of, its predecessor consumer regulators.

The "Durbin Amendment" Works to Improve a Broken Payment Card Marketplace While Benefiting Small Banks and Credit Unions: All consumers pay more at the store and more at the pump due to "market power" exerted by the Visa/Mastercard card network duopoly, which allows banks to impose excessive "swipe fees" on merchants. The "Durbin amendment" limiting the duopoly's power to allow big banks to collect these excess rents has worked. Contrary to testimony that may be provided to the committee, there is strong evidence that the Durbin amendment has helped small banks and credit unions, which continue to offer both free checking and debit rewards programs. Further, perhaps less-discussed but also important provisions of the amendment have encouraged merchants to give consumers "price signals," resulting in more competition from fraud-resistant "PIN" networks against the riskier and fraud-prone but lucrative-to-banks "signature" network transactions preferred by Visa and Mastercard.

1. THE CFPB WORKS AND SHOULD NOT BE WEAKENED

In less than five years of existence (its fifth birthday will be July 21) the success of the CFPB has demonstrated the wisdom of Congress both in establishing it and in insulating it from special interest chicanery. Its independent funding is neither a controversial nor new idea; it's been the law since 1864 for all bank regulators. Further, despite allegations by special interests, the CFPB is neither rogue nor immunized from Congressional oversight. The director's appearance before Congress Thursday will be approximately the 59th by him or another senior CFPB official.

The CFPB has already provided over $11 billion in refunds, restitution and other relief to consumers harmed by unfair financial practices of banks, credit card companies, mortgage companies, for-profit student lenders, debt collectors, payday lenders and other wrongdoers. Its work has protected all of us but placed an emphasis on protecting servicemembers and veterans, older Americans, young Americans (students) and consumers at greater risk of discrimination. We would urge the committee and the full Senate to reject the self-serving demands of powerful special interests to weaken the bureau's independent funding or gut its single-director structure (there is no evidence that commissions are better than single-directors, nor is the claim that all financial regulators are run by commissions even close to true). Further, a variety of other special-interest proposals would subject the CFPB to a death by a thousand cuts, for example, by eliminating its authority over auto financing or to issue predatory lending rules or to tie it in regulatory knots or even to weaken its highly-successful public consumer complaint database.

2. THE CFPB'S PUBLIC CONSUMER COMPLAINT DATABASE WORKS FOR ALL OF US

In just four and one-half years, the CFPB now has the largest public consumer complaint database of any federal agency, with over 834,000 complaints collected as of 1 March 2016. Over 540,000 of the 834,000 complaints to the CFPB have been posted in the Public Consumer Complaint Database (others are still being processed or have been referred to other agencies).

It is important to point out, however, that transparent public consumer complaint databases are now the rule, not the exception. Other examples include the Consumer Product Safety Commission (saferproducts.gov) and National Highway Traffic Safety Administration (safercar.gov). U.S. PIRG maintains an appendix of these and several other searchable government consumer complaint databases in each of its six (so far) reports on CFPB Consumer Complaint Database. We drill down into the CFPB database on issues from credit reporting to mortgages.[1]

We commend the CFPB for its efforts, first to stand up the database while ensuring both that consumers had legitimate account relationships and that businesses had ample opportunity to comment on, respond to and dispute consumer claims, <u>but not to censor complaints</u>, as they routinely demand to do. Further, the CFPB should be commended for making the work of government more transparent and open while also protecting customer privacy.

[1] See our page "Reports: The CFPB Gets Results for Consumers," linking to reports on bank accounts, credit cards, credit reports, debt collection, mortgages and student lending here at http://www.uspirgedfund.org/page/usp/reports-cfpb-gets-results-consumers Open any report and scroll to the Appendix B, "Searchable Public Databases of Government Consumer Agencies."

By publishing consumer complaints, the CFPB has improved its own ability to police the marketplace and prioritize use of its own scare resources while simultaneously enabling independent and academic researchers, other consumers and other firms to better analyze consumer complaints and concerns.

- Researchers, from PIRG to academics to industry consultants, are identifying trends and developing more insights about good and bad marketplace practices;
- Consumers are making better marketplace choices after searching the database. They more wisely choosing institutions based on a more robust understanding of a firm's behavior toward its other customers, accountholders or – in the case of "dead-end markets" such as debt collection and credit reporting – the consumers it maintains files on. Those potential customers will also be able to see if a problem that they are having is the same the problem other consumers are having;
- Other firms are better able to identify patterns and practices that they might change, or affirmatively choose to avoid, and then be able to market their firm as more consumer-friendly, making it easier for good actors to gain market share and stimulating competition positively, by better aligning the interests of firms with those of their customers and potential customers. Firms without "tricks and traps" should do better in a more transparent marketplace. (In fact, news stories have pointed out that industry consultants are recommending improvements to customer service as a best practice;[2] so are consultant reports, such as one from Deloitte[3]);
- Researchers, armed with more robust data, will be better able to build models to provide early warnings of the kinds of unsafe consumer practices that could otherwise lead to a systemic collapse such as occurred in 2008.

Narratives Are a Very Important Improvement to the Database: Last year, as of June, following a public comment period, the CFPB made consumer narrative or "story" fields public, but only with the consumer's informed opt-in consent. Approximately half of all new complaints come with narrative fields. The narratives make the database more accessible and understandable and provide a more robust picture of marketplace practices than mere coded "issue" (problem) fields were able to do. Stories should also encourage more consumers to use the database. This positive feedback loop or "network effect" will increase its value to everyone as the financial services marketplace becomes more transparent.

[2] See e.g., this 11 September 2013 American Banker story, "Customers Are Now Banks' Greatest Regulatory Threat" by Rachel Witkowski: "You want to reduce the number of complaints to the CFPB and a way you can do that is to cut them off at the pass," said Alan Kaplinsky, who heads the consumer financial services group at Ballard Spahr. Banks should "have a very good system in place from the get go to resolve a complaint quickly." http://www.americanbanker.com/issues/178_176/customers-are-now-banks-greatest-regulatory-threat-1061975-1.html

[3] See page 9, "CFPB's consumer complaint database analysis reveals valuable insights," Deloitte, September 2013, available at http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/FSI/US_FSI_CFPBConsumerComplaintDatabaseFINAL2_091913.pdf

Of course, the bureau already had access to the narrative information and was already using these data points in its supervision, enforcement, rulemaking and public education. But the bureau itself now will benefit from more eyes aimed at potential marketplace problems. In addition, the public, including outside academics, "civic hackers" and other researchers are expected to develop new crowd-sourcing and other analytic tools using the new data points.

Monthly Snapshots Are Also an Important Improvement to the Database: Last year, the CFPB also took another of our recommendations when it began publishing its own detailed monthly complaint summaries.[4] Since July, the monthly snapshots produced by CFPB Consumer Response have added an important new window into the financial marketplace. Each snapshot examines a particular financial sector in depth, profiles complaints in a different geographical area and ranks complaints by company and product category, with trend analysis.

The Database Works To Prevent Regulatory Capture: The CFPB is a transparent, data-driven agency which publishes vast amounts of information for public examination and review. It devotes substantial resources to rulemaking, examination, enforcement and public education. Yet, the database may be among its most important tools against the complacency that has led to calcification and regulatory capture among other government agencies. The database provides an important way for the CFPB to hear from consumers, not just from the typical insider lobbyists and lawyers for regulated firms. As CFPB Director Richard Cordray told AFR members on the occasion of the CFPB's fourth birthday last July:

> Each complaint that people take time to submit to the Consumer Bureau can provide invaluable information and insight. Consumer complaint data is part of our DNA and these complaints play an important role in our supervision of companies, our enforcement actions, our rulemakings, and our engagement with servicemembers, students, the economically vulnerable, and older Americans. Each complaint is a chance for us to evaluate a perceived problem and see if it can be addressed successfully. But more importantly, complaints make all the difference by informing our work and helping us identify and prioritize problems. We know that if we hear about the same problem from fifty consumers, it likely looms larger than if we hear about it only from one or two. All of these complaints have real people behind them. Each tells us a story about how consumers view their experiences with financial institutions, as they struggle to manage the ways and means of their economic lives. Often consumers ask simply to be treated with fairness, dignity, and respect. And we all know in our hearts that this is exactly what each of us deserves.[5]

[4] The most recent CFPB complaint snapshot, released at the end of March and drilling down into debt collection complaints and complaints from the Florida region, is here http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-examines-debt-collection-complaints/

[5] See "Prepared Remarks of CFPB Director Richard Cordray At the Americans for Financial Reform Event on the CFPB's Fourth Anniversary (16 July 2015):"http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-americans-for-financial-reform-event-on-cfpb-anniversary/

3. THE DURBIN AMENDMENT LOWERING DEBIT CARD SWIPE FEES WORKS, DESPITE CLAIMS TO THE CONTRARY

We also want to take this opportunity to offer U.S. PIRG's continued strong support for another benefit of the Dodd-Frank Act, its "Durbin Amendment," which reduced allowable "swipe fees" imposed on merchants accepting debit cards from banks over $10 billion. A lesser known impact is that the amendment also prevents banks from imposing unfair limits on the ability of merchants to give "price signals" to their customers by explaining that certain payment methods – such as rewards cards, especially credit and debit card rewards cards – cost the merchant more and force it to raise everyone's, including cash customers, prices.

Everyone pays more at the store and more at the pump due to anti-competitive swipe (interchange) fees, which have declined in nearly every country, but continue to rise in U.S. markets due to market power of the primary card networks. Although the Visa and Mastercard networks are now publicly traded, they remain controlled by the big banks. High swipe fees also impose a regressive tax on lower-income cash customers, who are forced to subsidize the rewards cards of more affluent credit card customers.

We have seen numerous unfounded claims that the Durbin amendment's price caps on debit cards offered by the largest banks are somehow responsible for a decline in fee revenue which allegedly harms small banks and credit unions and has supposedly ended free checking and debit card rewards everywhere.

These claims are not backed up by any sort of evidence. In fact, there is much statistical and survey evidence to the contrary. The most recent issue of the Philadelphia Federal Reserve Bank's Banking Trends[6] explains that the Durbin amendment reduced interchange fee revenue at big banks, as intended, it did not harm and even helped small bank fee revenue:

> "There is substantial evidence that the ceiling did lower interchange fees collected by banks with assets above $10 billion, from around 44 cents to about 22 cents per transaction. But there was no such decline for small banks. Furthermore, after the ceiling was imposed, the volume of transactions conducted with cards issued by exempt banks grew faster than it did for large banks. Finally, Zhu Wang shows that interchange revenue fell substantially at large banks after the fee ceiling was imposed but continued rising for small banks." [citations omitted]

Nor has the Durbin amendment been shown to harm free checking programs at large or small banks. The ABA itself finds that "61% of consumers" pay no fees at all for "checking account maintenance

[6] See James DiSalvo and Ryan Johnston, "How Dodd-Frank Affects Small Bank Costs: Do Stricter Regulations Enacted Since The Financial Crisis Pose A Significant Burden?", In "Banking Trends," First Quarter 2016, page 14, Federal Reserve Bank of Philadelphia, available at https://www.philadelphiafed.org/-/media/research-and-data/publications/banking-trends/2016/bt-how_dodd_frank_affects_small_bank_costs.pdf

or ATM access.[7]" There are no independent data showing any link to any decline in the availability of so-called free checking to the Durbin amendment at large banks; if so, 61% of consumers could not be paying zero fees.

Bankrate.com's most recent survey finds that more large and small (76%) credit unions are now offering free checking, up from 72% last year.[8] Finally, nor has the Durbin amendment restricted the ability of large or small banks or credit unions to offer their own debit card rewards programs to members. In January, Credit Union Times reported:

> "Debit rewards programs at big institutions may be few and far between, but industry experts said they're rapidly becoming the new secret weapon for credit unions interested in snagging market share. The trigger was the Durbin Amendment, which is part of the Dodd-Frank Act."[9]

CONCLUSION:

Thank you for the opportunity to present these brief comments to the committee. Strong consumer regulations, and a strong CFPB, are critical to making financial markets work. They better align the interests of buyers and sellers so sellers don't depend on "gotcha" practices and buyers (consumers) gain more trust and confidence in the regulated financial system. Strong consumer rules also reduce the amount of risk placed in the system by unsafe, unsustainable products, further reducing the threat of future financial crises.

The idea of the CFPB needs no defense, only more defenders.

Respectfully submitted,

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[7] See "Survey: Most Americans Pay Nothing for Bank Services," 15 August 2016, available at http://www.aba.com/Press/Pages/081815SurveyonBankCosts.aspx

[8] See Claes Bell, "Credit unions: Where free checking still reigns," undated article based on 2016 Bankrate.com 2016 Checking Account Survey, both available at http://www.bankrate.com/finance/checking/want-free-checking-check-out-credit-unions-1.aspx

[9] Tina Orem, "Credit Unions Pile Into Debit Card Rewards," Credit Union Times, 21 January 2016, available at http://www.cutimes.com/2016/01/20/credit-unions-pile-into-debit-rewards Also, re large bank rewards programs, see CU Today's "Despite Durbin, Debit Card Reward Programs Remain Vibrant," 29 March 2016, available at http://www.cutoday.info/Fresh-Today/Despite-Durbin-Debit-Card-Reward-Programs-Remain-Vibrant