Testimony of Michael S. Barr

before the

Maryland Financial Consumer Protection Commission, Gary Gensler, Chair

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Barely a decade ago, financial recklessness and regulatory neglect fueled a global economic crisis and the Great Recession.[1] Millions of Americans lost their homes and jobs and businesses, and trillions of dollars in wealth disappeared. And those most affected were those that needed the most protection. The young, the elderly, our nation's service members and veterans, minority households and, in fact, all working families across our nation were brutally assaulted by the crisis.[2] It was an experience that most Americans, regardless of political party, would be unwilling to repeat--indeed, in a recent poll the vast majority felt that Wall Street needs tougher rules and enforcement.

After inheriting the crisis, the Obama administration and Congress worked together to reduce the risks that it would ever happen again. As a guiding principle, Dodd-Frank Act of 2010 was based upon the idea that it should not matter what a financial institution calls itself--a bank, a thrift, an insurance company--but should be regulated for what it does, and what risks it poses.[3] And because predatory mortgage lending was at the heart of the boom and bust, the Consumer Financial Protection Bureau was created as an independent watchdog for the public, so that no exploding mortgage could threaten a family's entire livelihood.[4] The crisis demonstrated all too well that today's abusive consumer practice, while it may be profitable in the short term, leads to greater long-term risk if unaddressed. The Administration worked globally to toughen capital rules and rein in risky practices.[5]

By and large, the steps taken post-crisis are working. Credit card customers have seen costs go down--saving on average about $300 per year for those who carry a balance--while the volume of consumer credit is back to pre-crisis levels and regulations have clamped down on hidden fees. Banks are as profitable as ever, and the Dow is at record highs. And yet the Trump administration and many congressional Republicans seem all too eager to take us back on the road to financial ruin. But turning a blind eye to recklessness would sow the seeds of the next financial crisis.

Perhaps no image better demonstrates this shift than the dueling director battle at the Consumer Financial Protection Bureau. As Ohio Attorney General during the crisis, Richard Cordray knew the importance of strong consumer protections in people's everyday lives, and brought that experience to the CFPB every day as its Director, carrying out tough enforcement and thoughtful regulation to ensure a fair financial marketplace. When the Director steps down, as Cordray just did, Dodd-Frank provides that the Deputy

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[1] This testimony is based on Michael S. Barr & Joe Valenti, Financial Recklessness, Fortune (forthcoming).
[2] See, e.g., Michael S. Barr, NO SLACK: THE FINANCIAL LIVES OF LOW INCOME AMERICANS, Brookings Institution Press, 2012; Michael S. Barr and Daniel Schaffa, *Nothing Left to Lose?,* Washington Center on Equitable Growth Working Paper 2016-09 (Sept. 2016), http://equitablegrowth.org/working-papers/nothing-left-to-lose/.

[3] See Testimony of Michael S. Barr, Before the United States House Committee on Financial Services Hearing on the Financial Choice Act of 2017, April 26, 2017.

[4] See Michael S. Barr, Howell E. Jackson, and Margaret E. Tahyar, Financial Regulation: Law and Policy (Foundation Press 2016), pp. 58-63.

[5] *See* Michael S. Barr, *Who's in Charge of Global Finance?,* GEORGETOWN JOURNAL OF INTERNATIONAL LAW 45, no. 4 (2014): 971-1027.

Director "shall" become the Acting Director. Instead, President Trump appointed his OMB Director to fill that role, and a district court refused to block the move.

Having a White House official also serving as director of an independent consumer agency—and automatically also therefore as a board member of the Federal Deposit Insurance Corporation and on the Financial Stability Oversight Council—not only violates the Dodd-Frank Act, but also is a horrible idea. It will undermine financial regulator independence and weaken oversight. His appointment, as noted by Michigan Law professor Nina Mendelson, also delays and denies the Senate its ability to review and confirm a permanent director, further concentrating power alone in President Trump. The CFPB was designed to be both independent, and to be accountable to the public, and should be protected.[6]

This is not the first time an Acting Trump official has stepped into regulatory shoes and the precedent is not positive. President Trump's Acting Comptroller of the Currency rescinded guidance that restricted banks from engaging in predatory, payday-like short-term loans—a product that Wells Fargo had been one of a handful of banks to offer. He declared that discrimination and illegal practices do not necessarily count against banks under the Community Reinvestment Act. And he worked to block the Consumer Financial Protection Bureau's effort to restore victims' right to band together and take financial companies to court rather than being forced into arbitration, likely contributing to the repeal of CFPB's arbitration rule by the narrowest of margins after Vice President Pence cast a tiebreaking vote.

There have been countless other examples of the administration taking the side of financial recklessness, from delaying a rule requiring that financial advisers put their clients' interests first, to signing a repeal of the CFPB's rule on arbitration clauses,[7] to declaring that American International Group, or AIG—the poster child of the financial crisis and bailout—should no longer be subject to tough oversight by the Federal Reserve.

To be sure, no bill or regulation is perfect, and unanticipated concerns inevitably come up after the fact. But Dodd-Frank and related rules need a careful hand, not dynamite.

It's not too late to turn the car around before it plunges off the cliff. Some of the more moderate recommendations from recent Treasury reports could provide a basis for bipartisan measures to get the balance right on regulation, for example, for small community banks, while avoiding the rollbacks contemplated for larger firms and other markets, and the attacks in the reports on the consumer agency or tougher capital rules. The Federal Reserve, one of the nation's oldest independent bodies, has choices to make under Chairman Powell that may continue strong oversight. Congress can eschew massive deregulation such as the CHOICE Act, and instead take steps to help consumers, including expanding their credit rights after this year's Equifax breach. That all depends on leaders in Washington remembering history and being unwilling to act as accomplices in driving toward the next crisis.

States can and must push back with strong protections for households and businesses. The Dodd-Frank Act permits state attorneys general, for example, to enforce federal consumer protection law, and that authority is needed now more than ever. States can fill in the regulatory gaps, for example, that may be created by federal rollbacks by protecting consumers from abusive practices in payday lending and

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[6] See Michael S. Barr, *Accountability and Independence in Financial Regulation: Checks and Balances, Public Engagement, and Other Innovations,* LAW & CONTEMPORARY PROBLEMS 78(3): 119-128 (2015, symposium issue). See also Barr, Levitin & Gupta, PHH Corp. v. CFPB, No. 15-1177, BRIEF ON REHEARING EN BANC OF AMICI CURIAE FINANCIAL REGULATION SCHOLARS IN SUPPORT OF RESPONDENT (D.C. Cir. 2017).

[7] For background on arbitration clauses, see Michael S. Barr, *Mandatory Arbitration in Consumer Finance and Investor Contracts,* NEW YORK UNIVERSITY J. OF LAW AND BUSINESS vol. 11-4: 794-817 (2015).

protecting small businesses from being taken advantage of in the marketplace, where there are no federal protections to speak of today.

The financial system is more resilient than it was in 2008, but that is no reason to turn back and recreate the conditions that led to the last crisis and the Great Recession. Instead, we need to stay on the path of reform.[8]

[8] See, e.g., Michael S Barr, *The Financial Crisis and the Path of Reform,* 29 YALE J. ON REG. 91-119 (2012); Michael S. Barr, ed., FINANCIAL REFORM: PREVENTING THE NEXT CRISIS, The Russell Sage Foundation Journal of the Social Sciences, Vol. 3:1 (Jan. 2017).