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A higher purpose.*

Evangelical Council for Financial Accountability

440 West Jubal Early Drive, Suite 130 • Winchester, VA 22601

November 12, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515-2104

Re: H.R. 3126, Consumer Financial Protection Agency Act of 2009

Dear Mr. Chairman,

ECFA is an accrediting organization representing over 1,400 nonprofit organizations throughout the United States, which are supported by 35 to 40 million donors. Since its founding in 1979, ECFA has been among the leaders in promoting financial integrity, accountability, and transparency for nonprofit organizations.

We appreciate the general intent and purposes of the Consumer Financial Protection Agency Act of 2009. However, the legislative language included in the current draft is so broad that it will subject thousands of nonprofit charitable and educational programs—many conducted by churches and other faith-based charities among ECFA's membership—to costly, burdensome, and unnecessary regulation, thus reducing the availability of important consumer financial education programs to the poorest among us—those who most need these programs to be able to recognize financial predators.

As drafted, H.R. 3126 defines a covered “financial activity” to include anyone acting as a “financial adviser” to any person, including—

- providing financial and other related advisory services;
- providing educational courses and instructional materials to consumers on individual financial management matters; or
- providing credit counseling, tax-planning, or tax-preparation services to any person.

Program issues. The breadth of this definition would include every nonprofit organization, including community-based nonprofits, churches, and other faith-based nonprofits, that provides education or other assistance relating to consumer and family finances.

The following examples are illustrative:

1. Churches and nonprofits throughout the country often provide education and counseling to individuals who come to them asking for financial help to pay their bills. The purpose of these programs is both to help with the immediate need but also to help the individual to chart a course leading to financial stability and independence.
2. Churches and other nonprofits operate IRS-approved Volunteer Income Tax Assistance clinics,¹ helping low-income, elderly, and military taxpayers complete their income tax returns.
3. Many public and private secondary schools include both courses and extracurricular activities to teach young people “financial literacy”—helping them understand the essential concepts and practical importance of responsibility for their personal finances.

To the extent that the proposed legislation would impose additional costs and requirements on these providers, some—perhaps many—of them will choose to cease providing these important services to those who most need them.

This unintended consequence is diametrically opposed to the Act’s objectives of “ensuring that consumers have the information they need to make responsible decisions about consumer financial products or services; consumers are protected from abuse and deception; and that traditionally underserved consumers and communities have access to financial services.” H.R. 3126, §121(b).

Fundraising issues. In addition to placing restrictions on nonprofit organizations’ ability to carry out their tax-exempt purposes, the definition of “financial activity” is also so broad as to subject to regulation every nonprofit organization that is funded by contributions from donors. This would include organizations providing information about donating; the income, estate, and gift tax deductions provided by the Internal Revenue Code to those who donate; and particularly in the case of “planned gifts,” such as gifts in the forms of charitable remainder trusts and annuities, information about the income the donor might receive in connection with the gift.

¹ The IRS has programs under which trained volunteers provide tax return preparation assistance to low-income families, as well as to the elderly and military personnel.
<http://www.irs.gov/individuals/article/0,,id=107626,00.html>.

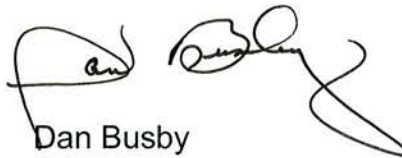
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Even if churches and nonprofit organizations are able to meet the as yet unknown requirements of the proposed new oversight body, the increased cost of compliance will create an additional administrative burden, thereby diminishing the effectiveness of donor's dollars to help those they are trying to aid in this time of financial turmoil.

Conclusion. For these reasons, we ask that you revise the definition of "financial activity" to exclude noncommercial public service activities conducted by nonprofit organizations. I have attached a proposed change to the definition for your consideration.

We thank you in advance for your consideration of this revision. Please contact me or John Van Drunen, ECFA's In-House Counsel, if you have any questions or would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Busby", written over a horizontal line.

Dan Busby
President

Proposed legislative modification to encourage nonprofit organizations to provide necessary financial information to the public:

Add the following “flush” language at the end of Section 101(18):

Notwithstanding any other provision of this paragraph, “financial activity” shall not include (1) any activity conducted by a nonprofit organization that is exempt from federal income tax under section 501(a) of title 26 or by a State or political subdivision of a State, from which neither it nor any person who is a disqualified person with respect to the organization, within the meaning of section 4958 of title 26 (or who would be a disqualified person if the organization were described in section 501(c)(3) or section 501(c)(4) of title 26, earns a profit, as measured by generally accepted accounting principles, or (2) any activity conducted by an organization that is exempt from federal income tax under section 501(a) of title 26 in connection with the solicitation (or any agent or contractor acting on behalf of a tax-exempt organization) that consists of providing information, advice, or instruction about making donations to tax-exempt organizations, estate planning, or tax deductions to persons who have previously made a donation to the organization or who are being solicited to make a donation to the organization (or to any organization that is controlled by or in connection with the organization).

For purposes of the preceding sentence, a “donation” includes any transaction in which the donor transfers to the organization money or property whose fair market value exceeds the fair market value of any money, property, or other benefits received by the donor in exchange for the transfer.

However, nothing in this paragraph shall prohibit the Agency from prohibiting the dissemination of false or fraudulent information; information that promotes any illegal, deceptive, or fraudulent activity; or information that materially misrepresents any tax or other benefits that may result from the making of a donation.