

STATEMENT OF SENATOR RICHARD C. SHELBY
Committee on Banking, Housing and Urban Affairs
September 6, 2011

“Thank you, Mr. Chairman.

“I don’t think it will surprise anyone to hear that we believe that today’s hearing is premature. We do not believe that the Committee should consider any nominee to be the Director of the Bureau of Consumer Financial Protection until reforms are adopted to make the Bureau accountable to the American people.

“Earlier this year, 43 of my Senate colleagues and I sent a letter to President Obama expressing our serious concerns about the Bureau’s lack of accountability. We also proposed three reasonable reforms to the structure of the Bureau.

“We had hoped to work with the majority to address this issue before the President nominated a Director. Unfortunately, neither the President nor the majority has made any effort to work with us to improve the accountability of the Bureau. Instead, the President has nominated Mr. Cordray to be the first Director.

“It is regrettable that the President and the majority have chosen to ignore our request rather than work with us to improve the Bureau’s accountability. It may be good politics for them, but it is certainly bad policy for the American people.

“One of our nation’s founding principles is that the government should be accountable to the people. Yet, the majority structured the Bureau to grant its Director unprecedented authority over the lives of the American people without any effective checks.

“All of the Bureau’s power is concentrated in the hands of its Director. The Director determines which rules are enacted and which enforcement actions are brought. The Director makes all hiring decisions and decides how the agency spends its resources. Because of the expansive jurisdiction of the Bureau, every American will be affected by the Director’s decisions. The Director will single handedly determine the financial products consumers can buy, as well as which consumers have access to credit, and which do not. Accordingly, the Director’s decisions will impact whether Americans can buy a home, a car or even basic household goods. It is staggering the amount of control the Director will exert over the daily financial choices available to Americans.

“Despite having such broad powers, however, there is no meaningful check on the Director’s authority. The Director cannot be removed except on extremely limited grounds of inefficiency, malfeasance, or neglect of duty. In other words, the Director cannot be removed for poor policy choices. In addition, bank regulators do not have a meaningful ability to ensure that the Director’s actions do not needlessly undermine the safety-and-soundness of our banks. While some claim that the Financial Stability Oversight Council could overrule the Director, this so-called check is simply illusory. The requirements needed for the Council to act are so onerous that in practice the Council will never be able to exercise this authority. That shouldn’t surprise anyone, it is the way it was designed.

“For example, the Director of the Bureau sits on the Council and will vote to determine whether or not the Council should overturn one of his decisions. It is not hard to guess how the Director will vote. As a result, the Director will be virtually free of any constraints on his authority during his 5-year term.

“No one person should have so much unfettered power over the American people. It blatantly violates the spirit of our democratic system of government. Our pursuit of better consumer protections should not require us to compromise our basic Constitutional values. This should be something on which we can all agree.

“Moreover, the principle involved will have real consequences. Unless the Bureau is reformed, it is only a matter of time before this concentration of power is abused or misused to the detriment of American consumers and the economy.

“The jobs figures we have seen over the summer demonstrate how the Administration’s heavy-handed regulatory agenda is crippling the economy with unnecessary costs and legal uncertainty. There could not be a worse time to give an unelected and unaccountable bureaucrat a blank check to impose even more ill-considered rules that could further undermine our weak economy. At a time when our nation’s unemployment rate is over 9%, this would be a very dangerous gamble.

“In closing, the Chairman today has attempted to turn the phrase “vocal minority” into a pejorative. Over the years, however, Senators from both parties have agreed upon rules governing this chamber that are designed to protect the rights of the minority. The requests made by this particular vocal minority seek only to preserve the system of checks and balances embodied in the Constitution – that is not what I would call a radical undertaking.

“Thank you, Mr. Chairman.”