August 30, 2011

Mr. Michael Chapman  michael.chapman@ocecd.org
Ms. Marta Trzcinska  marta.trzcinska@ocecd.org
Organisation for Economic Co-Operation and Development
2 rue Andre-Pascal
75775 Paris cedex 16, France

Re: Comments on Draft G20 High-Level Principles on Financial Consumer Protection for Public Consultation, August 1, 2011

Dear Mr. Chapman and Ms. Trzcinska:

On behalf of Consumers Union of U.S., Inc., the nonprofit publisher of *Consumer Reports*¹, the U.S. Public Interest Research Group (U.S. PIRG)², the National Association of Consumer Advocates (NACA)³, and Americans for Financial Reform (AFR)⁴ we write to offer these comments for your consideration as you finalize your draft of common principles on consumer protection in the field of financial services. We recognize the vital work the OECD is undertaking as an important component to completing the mandate requested and agreed to by the G20 French Presidency and the FSB.

We are pleased that you provided opportunities for concerned consumer organizations to share our thoughts on earlier versions of the draft principles. Your presence at the Consumers International World Congress in Hong Kong in May 2011, and also at the Trans Atlantic Consumer Dialogue conference in Brussels in June 2011, demonstrates the

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¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union’s publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union’s own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union’s income is solely derived from the sale of *Consumer Reports*, its other publications and services, fees, noncommercial contributions and grants. Consumers Union’s publications and services carry no outside advertising. Consumers Union does not accept donations from corporations or corporate foundations.

² The U.S. Public Interest Research Group (U.S. PIRG) serves as the Federation of State PIRGs, which are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members. For years, U.S. PIRG’s consumer program has designated a fair financial marketplace as a priority. Our advocacy work has focused on issues including credit and debit cards, deposit accounts, payday and other predatory loans and credit reporting.

³ The National Association of Consumer Advocates (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA’s mission is to promote justice for all consumers.

⁴ Americans for Financial Reform is a coalition of more than 250 national, state and local consumer, labor, investor, civil rights, community, small business, and senior citizen organizations that have come together to spearhead a campaign for real reform. Together, we are fighting for a banking and financial system based on accountability, fairness and security.
seriousness with which you are undertaking this task to seek input from concerned consumer organizations around the globe. We greatly appreciate all of your efforts.

According to this latest draft, “the high level Principles are designed to assist G20 countries and other interested economies to enhance financial consumer protection.” We are pleased to see that work is being done as a complement to the G20 leaders call at the November 2010 Seoul Summit. As you noted, that G20 leaders call asks for an investigation into and a report back on “options for advancing financial consumer protection through informed choices that include disclosure; transparency and education; protection from fraud, abuse and errors; along with recourse and advocacy.” Our comments are aimed at offering our views on how to best fulfill that mandate to derive principles that can “enhance” consumer protection.

Before we discuss the specifics of the latest draft, we urge the OECD to include more guidance regarding how to effectively implement the principles. Specifically, we would like the OECD to provide examples of how the principles can be used on a practical level. This would include the OECD’s vision on how the application of the principles can lead to real improvements in financial consumer protection.

Draft Framework

The Draft Framework on page 4 sets the tone for the principles that follow. We believe it is very important to provide a context in which the principles are being offered and to a large extent, the Draft Framework accomplishes this task. However, an important aspect of the context is the historical experience driving these efforts. To provide the proper historical context, we ask that you include within the preamble a statement that duly recognizes that the urgent matter at hand was precipitated by the financial crisis. While there are differing opinions about how the financial crisis began, one thing is clear, the G20 would not have issued this mandate had consumers not suffered significantly as a result of the financial crisis, and had failures of consumer protection not been one of the causes of the crisis.

Similarly, every effort must be made to encourage those countries who will be considering these principles to incorporate them into their regulatory frameworks. Though we would have liked to see otherwise, there is no doubt that adoption of the principles will be voluntary. A simple redraft, replacing the words: “They are voluntary principles designed to complement,” with: “The principles are designed to complement” may encourage greater adoption of the principles, thus benefiting more consumers around the globe. This would be consistent with efforts to “enhance” financial consumer protection.

We also support a proposal to give the principles the maximum opportunity to serve the public by strongly urging all G20 members to assess their national frameworks for financial consumer protection in light of the principles. As the G20 endeavors to build a stronger safety net for consumers of financial services on a global level, it will be important for all G20 members to collectively engage in this exercise. This will promote the international cooperation that is so necessary for the principles to be effective in leading to greater consumer protection.
Continuity of protection is a cornerstone for assessing the value that the OECD principles ought to provide. Consumers would not be well served if there is no ongoing oversight to ensure that the principles are truly benefiting the public. One option for ensuring longevity of protection is to create an international organization to oversee ongoing development of financial consumer protection. While FinCoNet is recognized as an organization which shares experience and expertise among national government financial consumer protection agencies, we understand that it does not have the resources nor the status to fulfill the kind of function which we believe is necessary. Therefore, we encourage you to add language that calls for the establishment of a permanent international organization with the ability to conduct research and publish national peer reviews using these principles as a benchmark. The body should have an independent consumer panel to monitor, advise and challenge the work of the organization. The work of the international organization should include addressing consumer protection issues arising from international transactions and cross border marketing and sales.

We would also caution against using language that could unintentionally narrow the perceived field of entities that are causing problems for consumers. The Draft Framework makes reference to the entry of "non traditional financial services providers" in a way that suggests that they may be more responsible for problems in the marketplace. We are aware that in the United States, many mainstream financial services institutions are at the heart of the failed financial services marketplace. We therefore request that you include an edit which removes the bias against non traditional institutions in the marketplace. This should include a statement that includes both traditional and non traditional financial service providers.

As the Draft Framework sets the tone for the principles which follow, we are concerned that there are numerous phrases in this section and throughout the draft principles which weaken the draft by limiting the scope of the principles. The purpose of the principles is to protect consumers, yet the draft offers protections only to consumers who engage in business with financial service providers "and their authorized agents" or "tied agents." All providers should be covered whether "authorized" or not. The same rule ought to apply to sponsors, such as the former investment banks that funded bad loans and shaped the market, and who could have nipped abusive lending at the start. Further, assignees should be liable for any unfair practices by the original seller. It was the lack of this accountability that led to the proliferation of predatory mortgage lending where originators took all of the fees up front, put homeowners at risk of default and foreclosure, and passed the risk on to others in the chain. Many assignees were unaware or turned a blind eye to the predatory lending practices of the originators. However, greater assignee liability would have created more incentives for assignees to be more vigilant, which could have reduced the origination market for predatory mortgage loans.

**Draft Principles**

**Legal and Regulatory Framework**

We recommend reinserting the reference to advertising contained in the previous draft, because unfair and deceptive advertising is certainly a serious risk that financial services consumers should be protected against. We also recommend removing ambiguities in
current draft language that could limit the scope of regulation. We recommend including language that is inclusive of all financial service providers, including agents and advisors that deal directly with consumers. We believe all of these entities should be appropriately regulated and supervised. It would be counterproductive to offer some entities implicit exemptions by listing only some of the potential sources of problems for consumers. Broader language will help ensure that consumers receive protection against illegal, unfair and deceptive practices regardless of the provider.

We caution against the reliance on disclosure regimes to protect consumers from unfair financial services marketplace practices. It is not enough to simply inform consumers that they will be subject to an unfair practice. Providing information in the form of a disclosure should never legitimize an unfair practice. Further, disclosures are not an excuse for failing to make products less complex and risky. Therefore, we recommend that the language be changed to suggest that regulators set minimum standards for financial products to ensure fair and comprehensible contract terms and charges. Financial service providers should be required to benchmark their products against a model product with minimum standards. Further, regulators should be given the ability to control fees charged to consumers and penalty fees imposed on consumers should be limited to reflect the costs incurred by the provider. In suggesting the latter, we do not intend to preclude using firm income for community reinvestment or other charitable purpose.

**Role of Oversight Bodies**

Once again, we caution against language that weakens the principles unnecessarily. Language such as, “should be encouraged as appropriate” is too weak to compel fair competition. We also recommend the inclusion of language which would protect consumers against the financial services equivalent of “product dumping” across borders. For example, the principles should encourage rules that prohibit exporting credit products that would be unlawful if distributed within the exporting country. Regulatory authorities should require products to conform to certain minimum standards to be released onto the market, or, for products already on the market, to continue to be sold. In order to weave the safety net that financial consumers need, we believe there must be a safety net of consistency among financial regulators in different jurisdictions. This consistency needs to be monitored internationally with the goal to maintain improved levels of consumer protection.

**Equitable and Fair Treatment of Consumers**

We support the overall spirit of this section of the draft. However, to eliminate potential ambiguities and confusion, we recommend eliminating the language referring to consumers benefiting “from comparable levels of financial consumer protection for similar products and services and for similar levels of consumer sophistication.” Instead, we recommend amending the next to the last sentence to read “All consumers should benefit from comparable and high levels of financial consumer protection, including against arbitrary discrimination, such as discrimination based on assumptions about the behavior or creditworthiness of particular groups.”
Disclosure and Transparency

As we mentioned earlier, disclosures should never be a substitute for appropriate regulation. However, effective, timely disclosures of appropriate terms are essential to achieve the goal of transparency and accountability. The current draft states, “Consumers should be made aware of the importance of providing financial service providers with relevant, accurate and available information.” We acknowledge that responsibility in the provision of information is important. However, service providers should be under an obligation to actively seek and verify relevant consumer information. To make this clear, we recommend adding a sentence after the one quoted above that states, “Service providers should be under an obligation to seek and verify such information.” Also, standardized pre-contractual disclosures that facilitate clear accurate comparisons between products should be required, not merely “promoted where applicable and possible.”

Financial Education and Awareness

Financial education and awareness is an important component of consumer protection but it is not a substitute for effective regulation of the financial services industry and the products it sells. We appreciate the OECD’s language that encourages financial education and awareness generally. However, to guard against the potential that this could be interpreted as an answer to marketplace problems, we recommend adding the following language: “Consumer education may be effective at developing certain skills, such as budgeting, but will never eliminate the information asymmetry between financial service providers and consumers. It should be borne in mind therefore, that consumer education does not diminish the need for sectoral regulation.”

Responsible Business Conduct of Financial Service Providers and Their Authorized Agents

From our perspective, responsible business conduct of all financial service providers is at the crux of any effective consumer protection measures. Also, we advise against narrowing the scope of those covered by these principles, wherever this appears in the draft. For reasons stated earlier, we do not believe requirements for responsible conduct should be limited to only “authorized agents” or “tied agents.” We recommend that you delete these limitations, especially since consumers deserve protection from any provider whether they are a direct provider, a broker, another form of intermediary, an authorized agent, a “tied agent” or an unauthorized agent. Additionally, product designers and distributors should be responsible and accountable to consumers.

The current draft notes that a key objective of financial service providers and their agents “should be the best interest of their clients.” We agree that the client’s interests should always come first and we would encourage the inclusion of a legal duty of care owed by service providers to their clients. This would create greater accountability for those providers who do not act in the best interest of their clients and level the playing field for those providers who operate under a legal duty of care.

Because the potential harm to consumers from providers operating under a conflict of interest, in addition to the language contained in the current draft, we recommend that the
principles clearly state that providers of financial services have explicit duties of care and fair dealing owed to consumers. Additionally, we recommend adding clear language that calls for the avoidance of potential conflicts of interest. Recent research indicates that disclosure of conflicts of interest tends to cause consumers to place more rather than less trust in salespeople. 5 We therefore recommend that the principles contain a clear statement that firms be required to avoid and remove conflicts of interest rather than disclosing them. This could be inserted before the sentence that reads, “Staff (especially frontline) should be properly trained and qualified.”

We agree that the remuneration structures of financial service providers are an important consideration. Consumers need to know how those they deal with are being compensated and ought to know whether those compensation structures create incentives for providers to act against the best interest of the consumer. We recommend adding language that requires intermediaries to fully disclose their mode of remuneration and any link they have with financial services providers that may affect the objectivity and adequacy of their advice. This was included in an earlier draft of these principles and we believe it is so important that it should be reinserted into the current draft. In addition a statement should be added that clearly calls for strong and independent mechanisms for monitoring such remuneration disclosure compliance.

Requiring objectivity in the provision of advice from any provider to a consumer should not be subject to qualification. Therefore, we recommend deleting the words “as” and “as possible” from the sentence regarding this subject. Instead, the sentence should simply begin with, “The provision of advice should be objective . . . ”.

Protection of Consumer Rights

This section of the draft contains a minimal statement (40 words) regarding the “protection of consumer rights.” Since a stated goal of the principles, and indeed the mandate from the G20, is to develop principles which enhance consumer protection, we believe a much more robust statement about the protection of consumer rights, with fewer qualifiers, is in order. Therefore, we recommend that this section should be amended to read, “Consumers’ deposits, savings, and other similar financial assets should be protected and prioritized by law providing depositor preference and by other appropriate control and protection mechanisms, including, when relevant, guarantee schemes and investor compensation schemes. Such schemes should aim, in the event of a banking collapse, to ensure a seamless transition of essential banking services in the case of transactional banking and access to savings up to a brief and defined deadline. The scope of guarantee schemes should be easily understandable by consumers.”

Protection of Consumer Data and Privacy

To strengthen this section we would add that consumers should also be protected against their data being held for an unreasonable period of time and that consumers should be

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entitled to the prompt correction of errors in the data collected or processed or held by any provider.

Complaints Handling

Requiring providers to respond promptly, honestly, and fairly to consumer complaints is appropriate, but requiring a consumer to seek redress directly from the provider before seeking redress from a regulator, an administrative proceeding, or the courts is not appropriate. Providers will have more incentive to delay processing the complaint if they know the consumer is required to first try to resolve the complaint through them. This places a consumer at an unfair disadvantage because some may simply give up after too much time passes. This means the consumer may never get the resolution he or she deserves. Therefore, we recommend removing the pre-requisite in the current draft requiring the consumer to first attempt to resolve the complaint with the provider. We also believe that the principle should include provisions for adequate redress, because simply having a place to file a complaint is of no use if there are no fair mechanisms for prompt redress. Further, we believe that any principles related to complaints handling and redress ought to include a clear statement that confirms the rights of consumers to seek redress from both independent regulatory bodies and from their country’s courts.

Competition

This section of the draft contains a good statement on competition: “Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice amongst financial services and place pressure on providers to keep prices competitive and service quality high.” However, the next and final sentence should be revised. First, the sentence starts with the qualifier “where appropriate”; this is not necessary, as it weakens what follows: a statement that “consumers should be free to search and switch between products and providers easily and at reasonable and disclosed costs.” We believe it should always be appropriate for consumers to do so. However, additionally, we believe this section of the draft should say more about competition than simply making sure that consumers can switch between providers and products in a fair manner. At the heart of competition should be a concern that the practice of permitting or compelling excessive consolidation of financial service providers has weakened competition among providers and has placed consumers at a disadvantage in many respects. We therefore suggest adding the following text to address this issue: “State intervention in the financial services sector on grounds of financial stability, should be subject to reviews based on ‘public interest tests’ and excessive consolidation should be prohibited so that competition is enhanced.” Finally, to further promote competition, standardized pre-contractual disclosures that facilitate clear accurate comparisons between products should be required, not merely “promoted where applicable and possible.”

In closing, we would like to make an important comment regarding the OECD G20 Task Force process. While we would like to also share our comments with the U.S. G20 Task Force representative, because of membership confidentiality we do not know to whom we should be directing these comments. Therefore, we would like to see more transparency in the process so that we and other commenters can speak directly with our national representatives. This will enable our national representatives to share the views
of all stakeholders in their respective countries with the G20 finance ministers who have committed to the vital goal of enhancing financial consumer protection on a global scale.

Thank you for this opportunity to comment on the OECD Draft G20 High-Level Principles on Financial Consumer Protection, 1 August 2011. Please do not hesitate to contact the undersigned should you have any questions regarding our position.

Very truly yours,

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