



Statement of the U.S. Chamber of Commerce

ON: “Enhanced Consumer Financial Protection After the
Financial Crisis”

TO: U.S. Senate Committee on Banking, Housing, and Urban
Affairs

DATE: July 19, 2011

The Chamber’s mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Mr. Chairman, Ranking Member Shelby, and members of the Committee:

My name is Andrew Pincus, and I am a partner in the law firm Mayer Brown LLP. Thank you for the opportunity to testify before the Committee today on behalf of the U.S. Chamber of Commerce and the hundreds of thousands of businesses that the Chamber represents.

The Chamber strongly supports sound consumer protection regulation that deters and punishes financial fraud and predation and requires that consumers receive clear, concise, and accurate disclosures about financial products. Everyone, businesses as well as consumers, benefits from a marketplace free of fraud and other deceptive and exploitative practices.

At the same time, consumer protection regulation must be efficient and focused, furthering these goals while avoiding duplicative and unjustified regulatory burdens. Unjustified burdens harm all Americans by diverting resources essential to fueling economic growth and, perhaps even more importantly, by preventing small businesses from obtaining the credit they need to expand—and create the new jobs that our economy so desperately needs.

We are heartened that the government officials working to organize the Bureau appear to endorse these goals, but good intentions by themselves do not ensure good results. The ability of a regulatory agency to carry out its mission successfully is influenced by—among other things—its organizational structure; its ability to coordinate effectively with other agencies operating in related areas; and its ability to maintain over the long term a consistent, evidence-driven approach to regulatory and enforcement issues.

The Bureau's unique and unprecedented structure deviates radically from the fundamental principles of accountability and checks and balances that have been a basic feature of our Federal Government for the past 224 years. We have significant concerns that this novel structure will make it impossible for the Bureau to carry out its mission successfully. Indeed, even though the Bureau has not yet come into existence, decisions already appear to be skewed toward inefficient and unjustified approaches as a result of the agency's structural defects.

My testimony today makes two basic points:

- The Bureau’s current structure confers on its Director unprecedented unchecked power of extraordinary breadth, far beyond that wielded by any other federal regulator of individuals and businesses.

Arguments that the Director’s authority is the same or similar to the power of other federal agency heads are simply false: there is no other agency head who exercises sole decisionmaking authority with regard to rulemaking, enforcement and supervision actions, and every other matter—and need not obtain the concurrence of colleagues on a multi-member commission; **and** who also has policy independence from the President such that he or she may be removed from office only “for inefficiency, neglect of duty, or malfeasance in office”; **and** who also has plenary power to appoint every one of the agency’s employees; **and** who also has the ability to spend more than half a billion dollars without congressional approval (*see* chart attached as Appendix A).

Similarly false is the contention that a multi-member commission would impose radical constraints on consumer protection activity. The commission model is the norm for federal agencies, was proposed by the President and approved by the House for this very agency, and has permitted the Federal Trade Commission (“FTC”) to pursue a vigorous consumer protection agenda.

- The Bureau’s unique structure appears to have resulted in a number of actions in recent months that demonstrate a troubling lack of accountability and fundamental misunderstanding of the extent of its statutory authority and its proper regulatory role.

Thus, the Bureau has failed to provide anything close to an adequate justification for the expenditures that it has made to date and those that it plans for the future; the Bureau appears to be overreaching its statutory authority and wasting resources in the approach adopted for creating the consumer complaint database; and the Bureau has thus far refused to provide meaningful guidance regarding how it will divide enforcement authority with other state and federal regulators, in particular the FTC.

Some have argued that it is more important to get a confirmed Director in place than to address these structural flaws, but the Chamber strongly believes that unless the Bureau’s structural flaws are remedied now, these problems in execution

will inevitably worsen and spread, harming consumers, legitimate businesses, and our entire economy.¹

I. NEED FOR CHECKS AND BALANCES

The fundamental principle of American government is that those who exercise power must be accountable to the people, acting through their elected representatives. Every government agency must satisfy this basic standard. Congress has for this reason historically, and uniformly, subjected all federal agencies, including independent regulators, to robust checks and balances that ensure their accountability and fidelity to law.

The need for these traditional constraints is particularly acute where the regulation of consumer finance is concerned. Consumer finance is critical to the strength of the American economy—and a major generator of beneficial innovation. Government action that imposes unjustified regulatory costs on lending institutions will limit consumer choice, threaten safety and soundness, and prevent businesses from obtaining the credit they need to expand—and to create the new jobs that our economy so desperately needs. American consumers and businesses alike can ill-afford such an outcome.

The risks of agency tunnel-vision, overreach, and politicization are real for all government regulators, including the Bureau. If these risks are not properly addressed at a *structural* level, agencies inevitably will, over time, abandon sound regulatory principles. Indeed, as discussed below, there are troubling initial signs that the unprecedented concentration of unreviewable and unchecked power in the Bureau's Director is already having ill effects.

¹ One argument advanced in favor postponing action to address these fundamental structural flaws is that the Bureau's plan to begin to exercise on the statutory transfer date its supervision authority under Section 1025 of the Act with respect to very large banks, savings associations and credit unions, will unfairly subject those entities to a greater regulatory burden than that borne by nondepository covered persons, who are not subject to supervision under Section 1024 until a Director takes office. But many of these nondepository institutions remain subject to regulation by the Federal Trade Commission and by state Attorneys General and other state regulators. And any delay can be remedied by acting quickly to subject the Bureau to the same level of accountability as other federal agencies.

II. UNPRECEDENTED LACK OF CHECKS AND BALANCES IN THE CFPB'S CURRENT STRUCTURE

In light of the fundamental importance of checks and balances in our system of government, we have deep concerns about the unprecedented lack of accountability of the Director of the CFPB.

A. The CFPB's Radical Structure Concentrates in a Single Individual Extraordinarily Expansive Power to Regulate the Private Sector

The Bureau's structure has a number of features that, when taken together, concentrate an amount of unchecked authority in a single individual—the Director—that is unprecedented for a federal agency that regulates private entities and individuals:

First, the Bureau will be headed by a *single Director* with complete, unilateral authority to make all regulatory and enforcement decisions and to hire and fire all personnel, including his or her own deputy.

By contrast, since the creation of the Interstate Commerce Commission in 1887, independent regulatory agencies have almost always been headed by a bipartisan, multi-member commission, usually consisting of five-members who serve for staggered fixed terms.² That is the structure of the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration (“NCUA”), the Federal Trade Commission (“FTC”), the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the Federal Communications Commission (“FCC”), the Federal Energy Regulatory Commission (“FERC”), the Consumer Product Safety Commission (“CPSC”), and other agencies. The Federal Reserve also follows this model, although there is no requirement of bipartisan representation on the Board of Governors. Congress has almost uniformly rejected periodic attempts to replace these multi-member regulatory commissions with a single administrator.

Second, the Bureau's Director does not serve at the pleasure of the President. Rather, during his or her five-year term, the Director may be removed only “for inefficiency, neglect of duty, or malfeasance in office.”³ That standard eliminates the

² The Bureau, although located for organizational purposes within the Federal Reserve System, is completely insulated from the Federal Reserve's supervision and control, and thus functions as an independent agency. *See* page 5, *infra*.

³ Dodd-Frank § 1011(c)(3).

President’s power to remove the Director based on a policy disagreement: once nominated and confirmed, the Director cannot be overruled by the President.

Moreover, although the Bureau is located within the Federal Reserve as an organizational matter, the Board of Governors of the Federal Reserve is expressly prohibited from reviewing any action of the Director.⁴ The President too lacks the power to conform the Bureau’s regulatory decisions to his own policy views and to reconcile them with the conflicting policy views of other agencies.⁵

Third, the Bureau is exempt from the congressional appropriations process. It is funded instead by a transfer of money from the Federal Reserve in an amount determined solely by the Director, subject only to a cap that already exceeds \$550 million, will increase 10% for the next fiscal year, and is subject to automatic inflation adjustments thereafter.⁶

Once again, the Director has authority that is not subject to checks or balances. We are not aware of any other federal official responsible for regulating private sector activity who exercises sole authority over an agency; has sole power to determine whether and how to spend hundreds of millions of dollars outside the congressional appropriations process; and serves for a fixed term and is subject to removal only for cause (and therefore exempt from Presidential control).

To be sure, as some have pointed out, none of these features is unique in and of itself. But the **combination** of all of these features **is** unique. The chart attached to my testimony (as Appendix A) makes clear that **no federal regulatory agency has the same combination of features as the Bureau, which concentrate unprecedented power in a single individual**—the Director—who is virtually unconstrained by the well-established checks and balances that traditionally have been relied upon to guide and constrain agency action.

⁴ Dodd-Frank § 1012(c)(2) & (3).

⁵ The statute does contain provisions for “review” of Bureau regulations—but not other decisions—by the Financial Stability Oversight Council, but the substantive and procedural constraints on the review process make that review process entirely illusory. *See* pages 16-17, *infra*.

⁶ *See* Dodd-Frank § 1017(a)(1) (providing that “the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law”); *id.* § 1017(a)(2) (setting amount) .

While no agency should have such unbridled authority, the CFPB's extraordinarily far-reaching powers and large budget mean that the absence of normal constraints raises extremely grave concerns.

To begin with, the Bureau is not limited to regulating banks and other financial service businesses. Because the Bureau's authority extends to any person or business who engages in any of 10 specified activities that are common throughout the economy, as well as service providers to such businesses,⁷ the Bureau will be regulating numerous Main Street businesses well outside the financial services sector.

The standard the Bureau will be enforcing is also very broad—the prevention of “unfair, deceptive, or abusive acts or practices” in the market for consumer financial products. The CFPB will have sole discretion to issue rules establishing what these terms mean and how they will be applied. While the FTC has proscribed unfair and deceptive practices for years, generating decades of case law to guide the CFPB's rulemakings on these standards (as well as its compliance and enforcement activities), the “abusive” standard is new and will require immediate interpretation by the Bureau. In issuing this interpretation, the CFPB will be writing on what is essentially a blank slate—and the standard likely will continue to evolve into the future. Misuse of these powers could substantially harm the participants in the markets for consumer financial products—including consumers themselves.

The Bureau also has the power to override safety and soundness regulators. With respect to regulations, the check provided by the Financial Stability Oversight Council (“FSOC”) is illusory, as I discuss below. But even that illusory constraint does not apply to the Bureau's enforcement actions—and those organizing the Bureau have repeatedly indicated that they plan to follow the approaches taken by the FTC and the SEC and define the statutory obligations of regulated businesses with respect to the “unfair, deceptive, or abusive” standard principally by bringing enforcement proceedings, and not through the issuance of rules.⁸ The Bureau may

⁷ See, e.g., Dodd-Frank §§ 1002(15) & (26), 1024, 1031, 1036. The statute's exemptions (*see id.* § 1027) are quite narrow by comparison.

⁸ *Oversight of the Consumer Financial Protection Bureau*: Hearing Before the Subcommittee on Financial Institutions and Consumer Credit, 111th Cong. 18 (2011) (testimony of Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau) (“Warren Financial Institutions Subcommittee Testimony”) (“While there certainly is a place for rules aimed at specific abuses, we do not envision new rules as the main focus of how the CFPB can best protect consumers.”).

institute any enforcement action that it wishes and seek far-reaching relief, without any obligation even to consult with federal safety and soundness regulators.⁹

In carrying out the CFPB's regulatory, enforcement, and supervisory activities, moreover, the Director will have very substantial spending authority. To put the Bureau's potential \$550 million-plus budget into perspective, in FY 2010, the budget of the CPSC was \$118 million, and the budget of the FTC (for both consumer protection *and* antitrust activities) was \$292 million. Both of those agencies are, of course, subject to the appropriations process.

The Director's broad authority, combined with the unique lack of accountability, leads to a position with unprecedented unchecked power over the nation's economy.

B. Myths About the CFPB's Structure

Many inaccurate statements have been made in recent months asserting that the Director's power is subject to meaningful constraints. It is important to dispel those myths so that Congress and the public understand the truly extraordinary nature of the Bureau's structure .

Myth #1: A commission structure is a radical approach that would undermine consumer protection

The CFPB's unaccountable structure is not at all inherent in the idea of an independent consumer financial protection agency. To the contrary, as I have discussed, a commission structure is the norm for independent federal regulatory agencies.

Indeed, the President's June 30, 2009 draft legislation proposing the creation of a Consumer Financial Protection Agency adopted the commission model,¹⁰ as did the financial reform legislation reported by the House Energy and Commerce Committee in 2009.¹¹ And although the House-passed bill provided for a single director to serve

⁹ Compare Dodd-Frank § 1022(b)(2) (requiring consultation in the rulemaking process) & *id.* § 1025(E)(3) (establishing process for resolving conflicts between Bureau and prudential regulators in the supervision process), *with id.* §§ 1053-1054 (no such requirement in enforcement process); *see also id.* § 1055 (describing broad relief, including injunctive relief, available in enforcement proceedings).

¹⁰ Sections 111-114, H.R. 3126, 111th Cong., 1st Sess. (2009) (as introduced), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-111hr3126ih/pdf/BILLS-111hr3126ih.pdf>.

¹¹ H.R. Rep. 111-367, Pt. 1, 111th Cong., 1st Sess. 8-9 (2009).

for 30 months from the date of the bill's enactment, a five-member commission would have come into existence at the end of that period.¹²

It was not until the Senate-passed version of the legislation that the commission model was dispensed with entirely in favor of a single, tenure-protected director serving for a fixed five-year term. That modification was then adopted in the final compromise legislation.

Professor Warren also has recognized the effectiveness of the commission approach. When she first introduced the concept of such an agency in a 2007 article for the journal "Democracy,"¹³ she identified the model for her proposed "Financial Product Safety Commission" as the CPSC, which is a multi-member, bipartisan decision-making body. That structure already has demonstrated its effectiveness in the consumer-protection context: in the words of Professor Warren in that article, "[t]he evidence clearly shows that CPSC is a cost-effective agency."¹⁴

Legislation substituting a multi-member commission for the Bureau's current single directorship thus would represent a *return to the original vision* for this agency, and would be consistent with the structure of virtually all other independent regulatory agencies.

A multi-member commission structure is also good policy. Expertise exercised in a non-partisan fashion, not the political imperative of the moment, should guide the Bureau's regulatory agenda. This common-sense notion counsels strongly in favor of governance by a commission, particularly given the legal difficulty, technical complexity, and economic importance of the Bureau's consumer protection mandate. The commission model inherently forces decision-makers to deliberate and compromise in making decisions, thus encouraging intellectual rigor and impartiality in regulatory approach. The need to accommodate multiple viewpoints also affords an important check against a regulatory agenda driven by one individual's potentially idiosyncratic or ill-considered policy views.

Some argue that a single Director can act more quickly and decisively than a commission. But there is no indication that the FTC's multi-member commission

¹² Section 4103, H.R. 4173 (111th Cong., 1st Sess.), available at <http://thomas.loc.gov/cgi-bin/query/F?c111:2:./temp/~c111k9XSYV:e988931>.

¹³ See Elizabeth Warren, *Unsafe at Any Rate*, Democracy, Summer 2007, available at <http://www.democracyjournal.org/pdf/5/Warren.pdf>.

¹⁴ *Id.* at 17.

model, for example, has prevented that agency from acting rapidly when necessary; to the contrary, the FTC is recognized as a very responsive and effective regulator.¹⁵ Moreover, speed does not necessarily mean better decision-making. This is a particular concern given that both the President and Congress lack ready tools with which to effectively check harmful action by the Bureau.

A robust deliberative process is particularly important when it comes to the CFPB because of the inherent tradeoffs and informational challenges involved in the regulation of consumer finance. For example, more stringent rules and even the prohibition of some types of credit could protect some credit users from fraud and, in some cases, the consequences of their own poor choices. But it also could lead to higher prices and less access to credit for small business—with potentially significant adverse implications for consumer well-being and economic growth. Smart, evidence-based decision-making in this complex area will depend on full consideration of a diversity of inputs and views. Only a multi-member Commission can guarantee such a process.

Finally, a commission approach would also facilitate continuity and stability in the Bureau's regulatory agenda. As the Bureau is currently structured, all of the accumulated knowledge gained by the Director during the course of his or her tenure would be lost upon departure. As a new appointee settles in and gets up to speed on the substantive issues, the agency may experience discontinuity and an extended period of mission drift. If a vacancy coincides with a different party assuming the Presidency, the departure of the incumbent director could lead to significant substantive policy shifts, presenting substantial uncertainty for regulated parties.

A multi-member commission with staggered terms, by contrast, ensures the continuous presence of a significant number of experienced members at all times, and prevents any gaps in agency effectiveness. And a commission structure helps ensure that a change in the party affiliation of the President is accompanied by a period of smooth and gradual transition.¹⁶

¹⁵ The contrast with the FTC's consumer-protection model is particularly instructive. The FTC's Bureau of Consumer Protection has a mission very similar to that of the CFPB, focusing its efforts on preventing unfair and deceptive marketing. But the final decision on whether to act rests with the FTC's bipartisan commission, not with the Bureau of Consumer Protection. I am not aware of any significant body of thought that this arrangement does not operate effectively, or that it should be changed.

¹⁶ Some have raised the concern that a commission structure would lead to gridlock if stalled confirmations render the CFPB unable to act. This concern is baseless. Legislation can easily be crafted to alleviate any such concern, and indeed the drafters of H.R. 1121, the Responsible Consumer Financial Protection Regulations Act, have done precisely that. H.R.

Myth #2: The CFPB's current structure is not unusual

Some have claimed that there is nothing unusual about the CFPB's structure, pointing to the OTS, the OCC, the Federal Reserve, and the FDIC as supposed precedents. But the significant differences between those entities and the CFPB in fact demonstrate clearly the extent to which the latter represents a radical departure from established practice.

Both the OCC and the OTS are part of the Department of the Treasury, and the Executive Branch has taken the position that that the heads of both components serve at the pleasure of the President.¹⁷ By contrast, the President can remove the CFPB Director only “for inefficiency, neglect of duty, or malfeasance in office”—a highly restrictive standard.

These dramatically different removal standards have important real-world implications. If the President believes that the Comptroller has adopted a dangerous regulatory approach that threatens significant economic harm, he can change the policy by removing that individual. By contrast, if the President reaches the same conclusion about the CFPB Director, he may well be powerless to exercise the power of removal (unless the approach is so unreasonable as to satisfy the “for cause” standard)—or to do much else to prevent the harm.

As the Supreme Court has recognized, “[t]he power to remove officers . . . is a powerful tool for control.” *Edmond v. United States*, 520 U.S. 651, 664 (1997). And the authority to remove at will—which the President has with respect to the Comptroller—is a much more powerful tool for control than the authority to remove for cause.

1121 makes clear that “[n]o vacancy in the members of the Commission shall impair the right of the remaining members of the Commission to exercise all the powers of the Commission.” It further provides that one member would serve as an initial quorum until more than two members have been appointed, and that thereafter two members shall constitute a quorum any time the commission’s membership drops to three or two members (although, in the latter case, the quorum will only last for six months). Moreover, the bill would provide that each member of the CFPB Commission may continue to serve for up to one year after the expiration of his or her term of office, or until a successor has been appointed.

¹⁷ See Memorandum Opinion for the General Counsel, Department of the Treasury, and the Chief Counsel, Office of Thrift Supervision, *Re: Post-Employment Restriction of 12 U.S.C. § 1812(e)* (Sept. 4, 2001).

Other significant accountability checks applicable to both the OCC and the OTS also do not apply to the CFPB. The Secretary of the Treasury, not the Comptroller and the OTS Director, appoints the Deputy Comptrollers and the OTS Deputy Directors. And the Comptroller and the OTS Director carry out their duties under the Secretary’s “general direction” (Comptroller) and “general oversight” (OTS), although they enjoy some measure of protection from his interference in their enforcement and rulemaking activities. By contrast, the Bureau’s Director will “appoint and direct[] all [its] employees,” including the Bureau’s Deputy Director.¹⁸ And the Board of Governors of the Federal Reserve System can exercise no direction or oversight over the CFPB—despite its status as a part of the Federal Reserve.

Thus, for multiple reasons, the Comptroller and OTS Director are politically and legally accountable—both to the President directly and indirectly through the Secretary of the Treasury—in a way that the CFPB Director simply is not. The fact that defenders of the CFPB’s current structure have identified these two agencies as its closest analogues, despite the obvious differences in conception and function, simply highlights the unprecedented nature of the Director’s power.

Banking regulators such as the Federal Reserve and the FDIC supply even weaker precedents. To be sure, like the CFPB, they are outside the budget process. But they have multi-member leadership, which in the FDIC’s case must be bipartisan, and thus are subject to the very significant protection afforded by collective decision-making—an accountability check that simply is not present when a single Director is in charge.

Myth #3: The CFPB is the “most accountable” agency in the federal government

Some have claimed that, despite the evidence to the contrary, the CFPB is in fact politically accountable—supposedly, the “most accountable” agency in the federal government. The radical structure of the agency demonstrates that this claim is simply not true. While some checks and balances do apply to the Bureau’s activities, they are far too weak to impose any real discipline on the agency.

Substantive standards and judicial review. Defenders of the Bureau’s current structure have pointed out that the Dodd-Frank Act requires it to adhere to

¹⁸ Dodd-Frank §§ 1011, 1013.

certain substantive standards in exercising its rulemaking and enforcement discretion. They also have noted that the CFPB’s regulations are subject to judicial review (and congressional override), and must be prescribed in accordance with the requirements of the Administrative Procedure Act (“APA”) that govern informal rulemakings.¹⁹ But saying these things is saying nothing at all, because an agency would not pass muster under the Constitution if it did not have to follow a set of congressionally-mandated substantive and procedural requirements in exercising its authority. That is a basic precondition for the rule of law, not a sufficient guarantee of accountability.

Indeed, the content of these substantive and procedural requirements affords little confidence that they will constrain overreaching by the CFPB. For example, the Dodd-Frank Act defines an act or practice as “abusive” if it “materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service,” or if it takes “unreasonable advantage” of a consumer’s “lack of understanding” of the “material risks, costs, or conditions of the product or service” or a consumer’s “inability” to protect his own interests “in selecting or using a consumer financial product or service.”²⁰ These standards are far from specific—consumers vary greatly in their ability to understand terms, conditions, and material risks and costs, and to protect their own interests—and leave much to subsequent interpretation by the Bureau and the courts. Depending on how the standards are interpreted, they may do little to constrain the CFPB’s regulatory authority.

It also is significant that the requirements governing CFPB rulemakings are less robust than those that the FTC must follow in exercising its authority under section 18(a)(1)(B) of the Federal Trade Commission Act (“FTCA”). That provision, which broadly authorizes the FTC to prescribe rules which define and seek to prevent “unfair or deceptive acts or practices,” was the model for the CFPB’s authority to prescribe rules that identify as unlawful and prevent “unfair, deceptive, or abusive acts or practices” relating to consumer finance. Even after the transfer date, in fact, the FTC will retain its general rulemaking authority under section 18(a)(1)(B) with respect to consumer financial products and services (as we discuss below, the Dodd-Frank Act instructs the two agencies to negotiate an agreement to avoid duplication or conflict). Thus, while the FTC and the CFPB will be exercising overlapping regulatory authority, and will be applying a similar standard in doing so, the CFPB will be subject to less rigorous procedural requirements than the FTC—even though the Bureau has the broader authority to regulate “abusive” acts and practices.

¹⁹ See, e.g., Warren, *supra* note 13, at 18-19.

²⁰ Dodd-Frank § 1031(d).

Congress imposed the more elaborate procedures set forth in the FTCA out of a concern that the standard APA procedures were insufficient to protect against the threat that FTC rules would have an adverse economic impact on small businesses and consumers, particularly given the reach of the Commission’s authority throughout the economy. The economic importance of consumer finance, and the broader scope of the CFPB’s rulemaking authority, leave little doubt that the Bureau poses an equal if not greater risk than the FTC of misusing its rulemaking power in such a manner. Yet, once again, the CFPB faces weaker constraints than a sister regulator with similar powers.²¹

SBREFA Panels. Defenders of the status quo also have identified the need for the Bureau to comply with the Small Business Advocacy Review panel process under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) as an important guarantor of its accountability. The Bureau, like the Environmental Protection Agency and the Occupation Safety and Health Administration, is statutorily required to convene such panels to assess proposed regulations expected to have a significant impact on a substantial number of small businesses and to recommend less burdensome alternatives.²² This requirement is a very important part of the Bureau’s existing legal framework given the potential harm to small businesses that could result from ill-advised rulemaking in the consumer finance area. But, for several reasons, the panel process is an imperfect accountability mechanism, and one that is unlikely to impose a robust *independent* check on the Bureau’s activities that affect small businesses.

First, the Bureau itself is responsible for the threshold determination that a proposed regulation is expected to significantly impact a substantial number of small entities, and the terms “significant” and “substantial” are not statutorily defined. Thus, it will in large part be up to the Bureau whether or not a panel is even convened. Moreover, case law has established that agencies may only consider *direct* impacts on small businesses in determining whether or not to convene a SBREFA

²¹ The Dodd-Frank Act itself imposes significant procedural requirements—over and above the mandates of the APA—on the Comptroller’s authority to issue rules or orders interpreting the statute’s preemptions standard (*see* Dodd-Frank § 1044(b)(3) & (5), (c) & (d)); again, no such requirements apply to rulemaking by the Bureau.

²² *See Who’s Watching the Watchmen? Oversight of the Consumer Financial Protection Bureau*: Hearing Before the H. Subcomm. on TARP, Financial Services, and Bailouts of Public and Private Programs of the Comm. on Oversight and Government Reform (May 24, 2011) (testimony of Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau); Dodd-Frank § 1100G.

panel, and may not consider indirect “ripple effects”—even those that are reasonably foreseeable.²³

Second, the Bureau does not have to adopt the panel’s recommendations, which are advisory, and need only supply a reasoned explanation for adopting or rejecting them. If the Bureau’s leadership is determined to push ahead with a regulation despite its adverse impact on small businesses, this hurdle will not prove difficult to overcome.

Third, SBREFA covers only the rulemaking process, and those organizing the Bureau have made clear that its preferred method of regulation will be through supervision/examination and enforcement actions. That means that small business considerations need not be taken into account in all, or even most, of the Bureau’s activities.

Indeed, actions speak louder than words, and it is noteworthy that those organizing the Bureau appear to be ignoring SBREFA with respect to the significant rulemaking efforts that they have begun. Thus, there is no indication that the Bureau’s organizers have initiated the SBREFA process with respect to their proposed reforms of mortgage disclosure forms²⁴—even though these changes plainly will affect small businesses. And the same is true with respect to the recently-initiated effort to identify the entities that will be subject to the Bureau’s supervision authority²⁵—again, even though the supervision program, which may include registration and other requirements that would be especially burdensome to small businesses and could adversely affect the availability of the forms of consumer credit on which small businesses rely. Those pointing to the SBREFA process as an important check on the Bureau’s authority should explain why the Bureau’s organizers have failed to follow the SBREFA process thus far.²⁶

²³ See *Mid-Tex Elec. Coop., Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985).

²⁴ See CFPB Mortgage Disclosure Team, “Know Before You Owe: We’re Back,” available at <http://www.consumerfinance.gov/know-before-you-owe-were-back/> (soliciting public comment).

²⁵ See 76 Fed. Reg. 38,059 (June 29, 2011).

²⁶ While the SBREFA requirement does not take effect until the transfer date, there is no reason why voluntary compliance with SBREFA could not have been part of the initial rulemaking processes that the Bureau’s organizers have undertaken. That is especially true when—as in the instance of the mortgage disclosure rule—significant decisions have already been made (narrowing the possible approaches to several different disclosure options), decisions that could and should have been illuminated by the information that the SBREFA analysis would provide.

Inspector General Oversight. Defenders of the Bureau’s current structure also point to oversight by the Inspector General of the Federal Reserve Board (and, for now, the Inspector General of the Treasury Department) as contributing to the Bureau’s supposedly high level of accountability. Inspector general review to root out waste, fraud, and abuse is an essential component of good governance, and all major federal agencies are subject to such oversight. But inspector general review does not compensate for the other deficiencies in the Bureau’s structure, particularly because there is no inspector general who is dedicated solely to that task. The Inspector General of the Federal Reserve has many other responsibilities, and may have difficulty marshalling the manpower and resources necessary to give the Bureau’s activities the close attention that they deserve. As a result, there is a real risk that inspector general oversight of the Bureau will be *less* robust than it is for other federal agencies with their own dedicated inspectors general.

Thus, far from constituting a guarantor of accountability, the current mechanism for inspector general oversight of the Bureau—and, in particular, the lack of an inspector general dedicated to that task—is just another of the many factors that render the Bureau less accountable than other federal agencies.

Budget Justification. The budget justification and financial reports that the Bureau must submit to Congress have also been identified as among the important mechanisms for “meaningful oversight and accountability of the CFPB.”²⁷ I will address this issue in greater depth below, but the obvious problem with relying on the budget justification process as an accountability check is that the Bureau is not dependent on annual appropriations, and can obtain its guaranteed funding from the Federal Reserve regardless of how much supporting material it provides to Congress. The Bureau therefore has no incentive to participate seriously in the budget justification process.

Indeed, as discussed below, the “justification” that the Bureau has submitted for its planned expenditure of over \$329 million in FY 2012 was found by the House Appropriations Committee to be wholly inadequate to permit any kind of meaningful congressional review of those expenditures.

Myth #4: The Federal Reserve will control the CFPB’s budget

²⁷ Warren Financial Institutions Subcommittee Testimony, *supra* note 8; Dodd-Frank §§ 1016, 1017.

Some have suggested that the CFPB lacks the same level of control over its budget as the other financial regulators. The statutory text shows that this claim is highly misleading. The Dodd-Frank Act expressly states (in section 1017(a)) that the Federal Reserve “*shall* transfer to the Bureau, from the combined earnings of the Federal Reserve System, the amount determined by the *Director* to be reasonably necessary to carry out” the CFPB’s functions, up to a cap of between 10 and 12 percent of the Federal Reserve’s operating budget. Thus, up to the cap prescribed in the Act, it is clear that the Director—not the Federal Reserve—will decide what the CFPB’s budget will be. And that cap—as noted, over \$550 million—is not much of a limit.

Myth #5: The FSOC will guarantee the CFPB’s accountability

Finally, some have pointed to the ability of a two-thirds majority of the FSOC to overturn CFPB rules that threaten the safety and soundness of the U.S. banking system or the stability of the U.S. financial system as constituting a strong guarantor of the CFPB’s accountability. In fact, there are a number of reasons why this review authority is unlikely to place any meaningful constraint on the CFPB.

First, under current law, the FSOC veto applies only to rules, not enforcement actions. As noted, those responsible for organizing the Bureau have indicated their preference for establishing standards via enforcement actions rather than rulemaking, and indeed plan to dedicate over half the Bureau’s budget to enforcement and supervision activities (with another quarter dedicated to consumer education and complaints, and the final quarter dedicated to all other activities, including rulemaking).

Second, the standard for exercising the veto is very restrictive—a rule must threaten the safety and soundness of the entire U.S. banking system or the stability of the U.S. financial system. Thus, any rules that threaten the safety and soundness of some financial institutions, or even an entire sector of the financial system, but do not arise to the level of posing a systemic risk, would not appear to qualify.

Third, two-thirds of the FSOC must agree to a veto, meaning that even a unanimous vote of the five prudential regulators—the Federal Reserve, FDIC, OCC, NCUA, and the Federal Housing Finance Agency—would not suffice. Yet these are the entities responsible for ensuring the safety and soundness of the U.S. financial system. Finally, it should be remembered that the CFPB’s Director is one of the FSOC’s ten members, rendering it even harder to obtain the necessary two-thirds majority when the CFPB’s own rules are at issue. In fact, assuming that the CFPB

Director will always vote against overturning one of his or her own rules, only two of the nine remaining FSOC members need agree for the rule to come into force.

This essentially illusory FSOC “oversight” process thus is no substitute for the necessary regulatory coordination between the CFPB and other federal and state regulators in order to avoid conflicting rules and guidance.

* * * *

These facts support only one conclusion: the CFPB’s current structure places more unreviewable power in the hands of a single unelected official than any other federal regulatory law. And the unprecedented combination of the CFPB’s unaccountable structure with its vast and unclear powers creates a significant foreseeable risk that, at some point in the future, it will act in a way that does serious harm to the American economy—including the very consumers it is meant to protect. When that time comes, it will be too late for Congress to make the necessary legislative corrections. The time to act is now.

III. THE CFPB’S UNACCOUNTABLE STRUCTURE ALREADY SEEMS TO BE PRODUCING TROUBLING CONSEQUENCES

Although the Bureau has not yet come into existence, the structural problems identified above already have revealed themselves in disturbing ways. Three areas in particular warrant mention: (1) the CFPB’s wholly inadequate effort to justify its FY 2011 and 2012 expenditures to Congress; (2) the CFPB’s apparent plans to establish a consumer complaint database in manner that likely exceeds its statutory authority, and that wastes taxpayer dollars by failing to rely on the FTC’s existing complaint infrastructure; and (3) the CFPB’s failure to provide any meaningful guidance to date regarding how it intends to divide regulatory and enforcement authority with other state and federal regulators, and in particular with the FTC.

A. Inadequate Justification For The CFPB’s FY 2011 and FY 2012 Expenditures

Budget oversight is the critical means by which the Congress ensures that revenues raised by the United States are spent effectively and efficiently, protecting the American taxpayers who supply those funds. The need for such oversight applies to the Bureau just as much as it does to other agencies—perhaps even more so because of the absence of other mechanisms for accountability. And in these times of

extreme budgetary constraints, ensuring that taxpayer funds are spent properly is more important than ever.

As already noted, although the Bureau is exempt from the congressional appropriations process, the Dodd-Frank Act attempts to provide at least some measure of oversight by requiring the Bureau to submit annual financial reports and semi-annual budget justifications to Congress. Those responsible for organizing the Bureau have acknowledged the importance of these accountability mechanisms, yet their compliance efforts to date have been meager at best.

The Bureau has announced plans to expend \$329,045,000 in fiscal year 2012, an increase of more than 130% over the \$142,825,000 that it plans to spend in the current fiscal year. But the Bureau has provided very little justification for this very large expenditure of funds. As the House Appropriations Committee explained in its recent report on the Financial Services and General Government Appropriations Bill for FY 2012:

Unlike other agencies, the BCFP does not describe or explain the relationship between its policy objectives and the budgetary resources, performance measures or goals, significant proposals that effect obligations in the five to ten year period and their relationship to the current year and budget year, or the budgetary effect of workload, strategic planning, capital planning, or investments in information technology. In the absence of this fine print, the Committee cannot discern what the BCFP plans to do, how it will do it, or how much it will cost. The Committee is disappointed that an agency dedicated to transparency and accountability was not more forthcoming about how it plans to spend taxpayer money . . .²⁸

²⁸ H.R. Rep. 112-xx, 112th Cong., 1st Sess. at 7 (2011), *available at* http://appropriations.house.gov/UploadedFiles/FY_2012_FIN-SERVICES_FULL_COMMITTEE_REPORT.pdf.

The CFPB's budget document (*see* <http://www.consumerfinance.gov/wp-content/uploads/2011/02/CFPB-2012-CJ.pdf>) consists primarily of blank space, interspersed with a few paragraphs of text and a couple of tables. To be precise, the entire content of the document consists of a one-sentence "Mission Statement," a one-page description of "Bureau Vision and Priorities," a one-page "Program History and Future Outlook," and two tables—covering a single page—describing "Operating Levels" and

This very significant lack of transparency is possible only because the Bureau is not dependent on congressional appropriations, and therefore may provide Congress with little information without fear of consequence. At the same time, federal taxpayers are of course bearing the full financial burden of the Bureau's expenditures: if those funds were not transferred from the Federal Reserve to the Bureau, they would be transferred from the Federal Reserve to the Treasury, and used to reduce the federal budget deficit.²⁹

The House Appropriations Committee seeks to address this lack of transparency and accountability by capping the Bureau's fiscal year 2012 expenditures at \$200,000,000, directing the Bureau to provide an operating plan within 60 days of the date of enactment of the appropriations act, and requiring the Bureau to obtain an appropriation for expenditures in future years.³⁰

The Appropriations Committee's actions are a step in the right direction, and we support its efforts. But even they would provide no assurance that the Bureau will expend the \$200 million authorized in FY 2012 wisely and efficiently, because the Bureau's operating plan will not be provided until *after* the appropriations act is signed into law.

The approach that CFPB has taken in its budget justification is entirely inconsistent with the oft-repeated claim that the Bureau "is the most constrained and

"Resource Detail[s]." A half-page of text following these tables notes that "CFPB budget estimates are based on the best available information at the time the Budget was prepared"—although the CFPB did not share that information with Congress. Such a high-level description of broad policy objectives and estimated resource needs makes it impossible for Congress to conduct a meaningful review of what the CFPB plans to do, how and why it plans to do it, and how much those activities will cost. For a sample of the budget detail provided to Congress by virtually all other federal agencies, see the Federal Trade Commission's *summary* of the justification provided to Congress, see <http://www.ftc.gov/ftc/oed/fmo/budgetsummary12.pdf>. As the Committee is aware, the full justifications provided to the Appropriations Committees by federal agencies run into the hundreds of pages.

²⁹ See, e.g., Federal Reserve, Annual Report 2010, at Table 4 (reflecting deduction of funds provided to CFPB before distribution to U.S. Treasury), *available at* <http://www.federalreserve.gov/publications/annual-report/2010-federal-reserve-banks.htm#8>.

³⁰ See Sections 101 & 102 of H.R. xxx; H.R. Rep. 112-xxx, at 7-8, *available at* http://appropriations.house.gov/UploadedFiles/FY_2012_FIN-SERVICES_FULL_COMMITTEE_REPORT.pdf.

the most accountable agency in government.”³¹ The Bureau’s approach also vividly demonstrates why the Bureau’s current structure, in particular its insulation from the budget process, renders it almost entirely unaccountable to Congress and, ultimately, to the American people.

B. The Bureau Appears to be Exceeding its Statutory Authority and Wasting Resources in Creating the Consumer Complaint Database

The Dodd-Frank Act requires the Bureau to establish, “or utiliz[e] an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.”³² The Act also appears to require financial institutions subject to the Bureau’s primary enforcement authority to comprehensively respond to regulators regarding complaints submitted to the database, including by providing a description of steps taken to respond to the complaint or inquiry.³³ Little has been revealed about the current plans for implementing these requirements. But what has been disclosed suggests that the Bureau will be following a course that is of dubious legality and that, even if ultimately deemed legal, could have extremely harmful consequences for businesses engaged in perfectly lawful practices.

First, the Bureau apparently will be creating its own dedicated complaint database, even though it has not explained why such an expensive and redundant new infrastructure is needed (or even how much it will cost). The Dodd-Frank Act expressly allows the Bureau to rely on an existing complaint database, and the Act’s legislative history makes clear that Congress expected “the Bureau to work with other federal agencies, such as the [FTC], to make use of the FTC’s existing consumer complaints collection infrastructure where efficient and advantageous in facilitating complaint monitoring, response, and referrals.”³⁴ To my knowledge, the responsible officials have not explained why it would not have been “efficient and advantageous” for the Bureau to share the FTC’s existing, and widely-admired, automated complaint database (which is configured to allow the Bureau to operate a separate, autonomous database using the FTC structure), rather than expending the substantial resources required to create a whole new architecture.

³¹ Warren Financial Institutions Subcommittee Testimony, *supra* note 8, at 16.

³² Dodd-Frank § 1013(b)(3).

³³ *Id.* § 1034(b).

³⁴ S. Rep. No. 111-176, at 162 (2010).

Indeed, the inefficiencies and disadvantages of having two separate databases are obvious. In submitting complaints, consumers are unlikely to be able to distinguish clearly between the CFPB, on the one hand, and the FTC, FDIC, and other agencies that also collect such complaints, on the other. Indeed, given the overlapping jurisdictions of these agencies, it is hard for even knowledgeable observers to draw an intelligible line. Moreover, given the existence of other databases, the Bureau's database is likely to give a skewed perspective of how consumers perceive financial products or services—for example, regarding the extent of relative consumer confusion about a particular product. Negative comments in the Bureau's database may be counterbalanced by potentially contrary information in the databases of the other agencies. Use of the same database structure would allow the agencies to compare submissions more easily and efficiently.

It is unimaginable that CFPB would have chosen to expend its scarce resources in this way if it had to provide to Congress—and to the public—a real justification for its spending, or if the decision was being made by a bipartisan group of five knowledgeable officials rather than a single individual.

Second, although officials have not provided much information about how the complaint database will function, there have been disturbing indications that the Bureau will be accepting—and indeed actively seeking out—unverified third-party complaints of dubious reliability. This approach could unfairly damage the reputations of legitimate businesses that have done nothing illegal.

For example, a Privacy Act notice that the Bureau issued in January could be read to suggest that the Bureau will be collecting complaints originated by third parties claiming to be acting on “behalf” of a consumer (or consumers generally), but that are not in fact acting as the agent, trustee, or authorized representative of a particular consumer. As the Chamber explained in a comment letter responding to the notice, such an approach is at odds with Congress's apparent intent in enacting the relevant provisions of the Dodd-Frank Act, and deviates from the course taken by the FTC and FDIC in implementing their own complaint databases.³⁵

The approach also makes little sense from an information-gathering perspective. It risks duplicating complaints submitted by consumers with actual

³⁵ See Letter for Ms. Claire Stapleton, CFPB Implementation Team, from David Hirschmann, President and Chief Executive Officer, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, and Lisa A. Rickard, President, U.S. Chamber Institute for Legal Reform, *Re: Notice of Proposed Privacy Act System of Records, Treasury DO.315*, at 2-4 (Feb. 9, 2011).

firsthand experience with a financial product. It also likely would diminish the quality and reliability of the information gathered. And it could facilitate misuse of the Bureau's collection function by outside groups to target a particular company or type of product or service based on an unfounded belief that the product or service was inappropriate, or some other improper motivation.

Also troubling is Professor Warren's suggestion that the Bureau will use so-called "crowd-sourcing" techniques to collect information about allegedly deceptive consumer financial practices. As reported by the National Law Journal based on an interview with Ms. Warren, these techniques generally involve the collection of data from "online collaborations like Wikipedia that are built through contributions from thousands or even millions of people."³⁶ The vacuuming up of massive amounts of raw Internet data for inclusion within the database, including possibly information posted on websites such as Wikipedia (or social media such as Facebook or Twitter), and never even submitted to the Bureau, would multiply exponentially the risk of intentional manipulation of the database. In addition, of course, this approach would render it virtually impossible for the Bureau to verify the identity of the person or entity making a particular complaint. We doubt that Congress intended the database to be used in such an indiscriminate fashion.

The harmful effects from these approaches would be exponentially worse if the Bureau makes the complaints public—an option that officials apparently are actively considering. In addition to being bad policy, this approach may well be illegal. The Dodd-Frank Act mentions the sharing of complaints with federal and state regulators,³⁷ but does not expressly authorize the sharing of complaints with the public. This is in sharp contrast with the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), which in section 6A(a)(1) expressly requires the CPSC to establish and maintain a database on the safety of consumer products that is "publicly available," "searchable," and "accessible through the Internet website of the Commission." Particularly given the reference to state and federal authorities in the Dodd-Frank Act, it may be inferred that Congress, by not including the same language regarding public disclosure in the Act as it did in the CPSIA, did not intend to authorize the Bureau to make the complaints public. Even if the Act does not legally foreclose such an approach, the CFPB should not begin implementing any kind of plan to publicize complaints before both implementing robust safeguards to ensure their reliability and establishing a procedure for companies to challenge their veracity.

³⁶ Warren Outlines Sweeping New Approach to Consumer Financial Protection, Nat'l L.J., Oct. 29, 2010.

³⁷ Dodd-Frank Act § 1031.

Third, it appears that those organizing the Bureau intend to have the complaint database up and running, and accepting consumer complaints, by the transfer date of July 21, 2011. Bureau employees also apparently are working with the five largest credit card companies to begin receiving complaint referrals as of that date.³⁸ But assuming that no Director will have been appointed by July 21, it is not at all clear who would have the authority to establish the database and to require companies to respond to complaints submitted to it. The Inspectors General of the Treasury Department and the Federal Reserve have expressed the view that the Bureau itself will continue to be without authority after the transfer date in the absence of a director, and that the only authorities that the Secretary of Treasury will be able to exercise on the Bureau's behalf in that circumstance will be those contained in subtitle F of Title X of the Dodd-Frank Act.³⁹ The authority to establish a complaint database is contained in section 1013 of that Act, and the obligation of companies to respond to complaints submitted to the database is contained in section 1034. Neither of those provisions is in subtitle F.

Fourth, it is troubling that the Bureau's Privacy Act notice solicited comments on the database—and numerous comments were filed in February—but there has been no public response to the comments or explanation of how the Bureau plans to proceed. This lack of transparency reinforces the concerns about the lack of accountability already discussed.

C. The Bureau Has Not Provided Meaningful Guidance Regarding the Division of Regulatory and Enforcement Authority with Other State and Federal Regulators, in Particular the FTC

Multiple regulators and enforcement authorities have power that overlaps with that exercised by the Bureau. For example, the Dodd-Frank Act expressly preserves a significant portion of the FTC's consumer protection power. It also not only preserves the consumer protection authority of state Attorneys General and other state regulators, but also grants them the additional authority to enforce federal law. As a consequence, the Chamber's members are very concerned about the

³⁸ See Carter Dougherty, *Banks Push Consumer Bureau to Keep U.S. Complaint Line Private*, Bloomberg, May 13, 2011.

³⁹ Letter to The Honorable Spencer Bachus, Chairman, Committee on Financial Services, and The Honorable Judy Biggert, Chairman, Committee on Financial Services, Subcommittee on Insurance, Housing and Community Opportunity at 5-6 (Jan. 10, 2011).

possibility—the likelihood, really, given the large number of regulators—of duplicative and inconsistent regulatory actions.

The Act specifically requires a division of authority between the Bureau and the FTC. Yet, in the year since the statute was enacted, neither agency has provided much indication about how they will carry out this division.

Nor has the Bureau provided meaningful guidance regarding how its authority will be divided with that exercised by the state Attorneys General. Although the Bureau and the National Association of State Attorneys General have entered into a memorandum of understanding, that document is nothing more than an agreement to consult with one another, and contains little about the substance of that coordination. It says nothing at all, for example, about the establishment of rules to prevent overlapping and inconsistent enforcement actions. In the past, the problem of regulators with overlapping enforcement responsibilities “piling on” against regulated businesses has done substantial harm by duplicating efforts and generating inefficiencies. The Chamber’s concern is that the problem will be even greater now that there is a new federal agency on the scene, and that so little progress has been made in clearly delineating each regulator’s respective turf.

Turning to the substantive question of how authority should be divided, the Chamber’s view is that the FTC should continue to oversee non-financial businesses, while the Bureau should focus only on businesses that are entirely or principally financial in nature (rather than businesses only tangentially engaged in activities triggering Bureau jurisdiction). We also believe that the States should be encouraged to take action before the Bureau steps in at the federal level.

Regardless whether the Bureau adopts these substantive proposals, it should clearly define its jurisdiction as soon as possible. An *ad hoc* approach serves no one’s interests. It wastes the time of regulators in endless debates about who will take the lead in specific enforcement situations. And it leaves businesses eager to understand their legal obligations with no clarity regarding which agency to approach, necessitating reaching out to all agencies that could possibly have enforcement jurisdiction. At this stage, the Bureau and the FTC should at minimum declare their intention to adopt a presumptive division of authority. Even assuming that presumption could be overridden in a particular case, it would at least give businesses some clarity.

IV. CONCLUSION

Well-regulated, transparent, efficient financial markets are the lifeblood of the

American economy. Both businesses and consumers will benefit from the right reforms, which include making sure that regulators are structured to be accountable to the people's representatives, to function effectively, and to work well together. The CFPB is no exception to this principle. We urge Congress to work on a bipartisan basis to revise the Bureau's structure so that it comports with the basic principles of accountability and checks and balances that have been part of our government for the past 224 years.

Thank you again for the opportunity to testify before the Committee today. I look forward to answering your questions.

APPENDIX A

	Checks and Balances on Leadership Power and Decision Making							Budget Oversight
	Commission/Board Structure	Requirement of Bipartisan Representation on Commission/Board	Outside Officials Serve on Agency's Decisionmaking Body or Appoint Some of Its Top Officials	Head Subject to At-Will Removal by the President	Cabinet Official Statutorily Authorized to Supervise Agency	Dedicated Inspector General	Budget Dependent on Appropriations	
CONSUMER FINANCIAL PROTECTION BUREAU	X	X	X	X	X	X	X	
 Federal Reserve System	✓					✓		
 National Credit Union Administration	✓	✓				✓		
 Office of the Comptroller of the Currency			✓	✓	✓			
 Office of Thrift Supervision			✓	✓	✓			
 Social Security Administration			✓			✓	✓	
 Consumer Product Safety Commission	✓	✓				✓	✓	
 Federal Communications Commission	✓	✓				✓	✓	
 Federal Deposit Insurance Corporation	✓	✓	✓			✓		
 Commodity Futures Trading Commission	✓	✓				✓	✓	
 Securities and Exchange Commission	✓	✓				✓	✓	
 Federal Energy Regulatory Commission	✓	✓				✓	✓	
 Federal Trade Commission	✓					✓	✓	