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MIRING CONSUMERS AND SMALL BUSINESSES IN RED TAPE

EXTREME AGENCY OVERREACH

The Consumer Financial Protection Bureau (CFPB) was created in 2010 by the Dodd-Frank Act, and was empowered to "regulate the offering and provision of consumer financial products or services." Since its inception, the CFPB has frequently acted as its own kingdom, purposefully pushing the regulatory authority granted to it by Congress and operating in an unconstitutional organizational structure.

The CFPB operates outside the realm of Congressional oversight and is anti-democratic, anti-consumer, and anti-business. Consumers deserve a fair chance to access the credit products they need without big government getting in the way. It's time to reform and rein in the CFPB.

From its inception, the CFPB's regulations and actions have far exceeded its purpose. Examples include:

- Requiring lenders to ask borrowers about their weekly bills and other unnecessary questions related to household spending and sharing that information with the federal government.
- Preventing companies from lending to customers who need access to credit because they have less than perfect credit.
- Requiring lenders to ask small businesses about the owner's sexuality before making a loan and sharing that information with the federal government.
- Defining using pop-up windows or drop-down menus on a website as an "abusive business practice" to make it impossible for businesses to keep up with or understand an ever-changing regime of CFPB rules and regulations.
- Announcing by regulatory fiat new policies by press releases and blog posts that financial service companies must follow – even if they conflict with current federal or state laws or policies.
- Avoiding accountability by fighting to keep its budget outside Congressional oversight and the appropriations process, violating the constitutional system of checks and balances.

SEVERAL PATTERNS OF BEHAVIOR AND STRUCTURAL ISSUES CURRENTLY EXIST AT THE CFPB:

The CFPB is unique to any federal law enforcement agency ever created. The CFPB exists outside of the Constitution's three branches of government by acquiring (in perpetuity) up to 12 percent of the Federal Reserve's annual surplus, making it exempt from the traditional Congressional process of oversight by appropriations. The Federal Fifth Circuit Court has ruled that this funding structure is unconstitutional.

The Director rules with unconstitutional authority. The CFPB's structure was unconstitutional from the start; only a Supreme Court ruling in 2020 allowed the President to fire the Director without cause. Director Rohit Chopra has kept that spirit alive, shortcutting the traditional regulatory process by using rhetoric and abusive methods on an enforcement crusade with the goal of fundamentally changing the nature of American financial markets.

The CFPB fails to protect consumers. The lack of oversight of the CFPB has created a federal agency that operates without proper protections for consumer information. For example, an employee forwarded the personal information of more than a quarter-million consumers to a personal email account, an obvious major breach of data privacy.

There is no real notice and comment rulemaking process. The CFPB exercises unparalleled adjudicative and enforcement power over private businesses. Unlike other federal agencies, which typically issue a notice of proposed rulemaking (NPRM) that allows for a comment period before publication, the actions of the CFPB are at the sole discretion of the director. Under Director Chopra, the CFPB has issued informal proclamations via blog posts and speeches on banks and lending, which is a violation of the Administrative Procedure Act.

The CFPB is creeping into areas already covered by other agencies. For decades, abusive behavior was a field of consumer protection covered by the Federal Trade Commission (FTC). Yet the FTC's policy statements on abusive, unfair, and deceptive practices set self-imposed restrictions that developed widely accepted parameters for consumers and businesses alike. Meanwhile, the CFPB's new policy statement on abusive behavior lacks limits and fails to consider costs and benefits.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) OVERSIGHT AND ACCOUNTABILITY

CFPB POLICY FELLOWSHIP PROGRAM

Background: In 2021, the CFPB launched a fellowship program which offered applicants two-year term appointments that could be extended to four years. The CFPB fellowship consisted of two differing tracks: Markets & Policy and Engagement & Policy.

In May 2022, Republicans on the House Financial Services Committee questioned the CFPB's fellowship program on grounds that the Bureau did not identify fellows, and they were paid differently from other federal employees. Subsequently, the U.S. Chamber of Commerce threatened legal action against CFPB in June 2022. The Chamber's litigation letter accuses the Bureau of circumventing civil-service laws and highlighted backdoor favoritism in their hiring processes.

Need for Oversight: CFPB needs to be held accountable for its previous lack of transparency regarding fellowship programs. Questions from the Committee's May 2022 letter remain, and oversight is needed to ensure ethics guidelines are being followed.

CFPB'S TECH COMPANY INQUIRY

Background: One of CFPB Director Chopra's first moves was ordering Apple, Facebook, Google, PayPal, and Square to provide details on payment services in October 2021. Director Chopra's claims rested on (a) suggestions that the speedy growth of the person-to-person payment (P2P) platforms "can present risks to families and businesses;" (b) accusations that tech companies use payment data for "behavioral targeting;" (c) insinuations that "merchants and other partners feel obligated to participate" because payment systems "gain scale;" and (d) comparisons between American tech companies and Chinese companies such as Alipay and WeChatPay.

Need for Oversight: CFPB needs to be held accountable for failing to recognize that government interference tends to empower select companies like Alipay and WeChatPay in China, whose founders previously had ties to the Communist Party. CFPB needs to explain inconsistent statements praising P2P platforms for meeting consumer expectation and speedy growth before claiming they present risks to businesses and families.

CFPB PERSONAL DATA RIGHT RULEMAKING

Background: In October 2022, CFPB announced it would begin rulemaking into personal financial data rights. The proposed rule, announced on January 25, 2023, (a) requires "a defined subset" of Dodd-Frank Act "covered persons that are data providers to make consumer financial information available" to authorities third parties and consumers; (b) limits third parties from collecting, using, and retaining customer information "to what is reasonably necessary" to requested products and services; (c) requires data providers to accurately "transmit consumer information" into "third-party access portals"; and (d) requires data providers to make available periodic statements, deposits, prior transactions, information on prior transactions not typically shown on periodic statements, online banking transactions that have been initiated but not yet occurred, and account identity information.

Need for Oversight: CFPB needs to be held accountable for failing to recognize that consumers have access to their data and can either download it to their computers or get copies sent to their email. CFPB needs to explain why the current market-driven data access that it admits has already started isn't enough and how its framework will protect consumer data from hackers.

CFPB FINTECH SANDBOX INITIATIVE

Background: In November 2012, CFPB announced the launch of Project Catalyst. The project was meant to "encourage consumerfriendly innovation and entrepreneurship" and work with innovators to understand "what works and does not work for consumers." It then released a No-Action Letter policy in 2016 that created a process to "reduce regulatory uncertainty" for certain products or services if it was a major "consumer-friendly innovation." Then CFPB Director Richard Cordray said the policy would help promote a marketplace that improves the lives of others because companies "develop safe, innovating products." Project Catalyst was then transferred to the Office of Innovation in 2018. The Compliance Assistance Sandbox followed in 2019 to give companies a temporary haven "from liability during the testing period." In May 2022, CFPB canceled the sandbox initiative. CFPB said it was "ineffective" and accused some participating firms of "public statement indicating that the Bureau had conferred benefits upon them that the Bureau expressly did not." It was reported that CFPB hadn't approved any applications since Chopra became director.

Need for Oversight: CFPB needs to be held accountable by explaining the sudden change in policy regarding Project Catalyst and the sandbox program. This includes reasoning for calling the previous policy "ineffective" and why Director Chopra did not approve any applications when his predecessors had. CFPB also needs to explain how the new rules encourage competition.