

March 8, 2023

The Honorable Andy Barr
Chairman
Subcommittee on Financial Institutions and
Monetary Policy
House Committee on Financial Services
2430 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bill Foster
Ranking Member
Subcommittee on Financial Institutions and
Monetary Policy
House Committee on Financial Services
2366 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Barr and Ranking Member Foster:

The Consumer Bankers Association (CBA) is pleased to submit this letter for the hearing entitled “Consumer Financial Protection Bureau: Ripe for Reform.” We appreciate the committee’s attention to meaningful CFPB reforms to ensure a safe and well-functioning financial services marketplace. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country’s total depository assets.

Significant reforms to the CFPB are long overdue. Since its inception, the Bureau has been a political lightning rod, instead of a steady and consistent voice for consumer protection regulation and best practices expected from a world class regulator. Recently, creative messaging aimed to sway the court of public opinion— rather than informed regulatory decisions that have received input from all stakeholders— appears to guide the decision making at the Bureau, and its policy proclamations are often based on ideological preferences rather than on data and stakeholder feedback. This often creates confusion for providers of consumer financial services and the customers they serve. Another worrisome trend at the Bureau is its willingness to establish new regulatory requirements for banks outside of the rulemaking process required by the Administrative Procedure Act while seeking minimal input from the industry it is responsible for overseeing. This is in stark contrast to the open dialogue that the banking industry experienced with multiple previous CFPB Directors, regardless of party affiliation. Furthermore, the Director’s nearly constant and public attacks on banks erode consumer confidence in the banking system and undermine efforts to bring more consumers into the highly regulated and time-tested depository intuitions the Bureau oversees.

For these reasons, CBA supports a number of the CFPB reform proposals that are included for discussion in this hearing and urges consideration of additional CFPB reforms.

[Bipartisan CFPB Commission](#)

CBA supports the *Consumer Financial Protection Commission Act*, sponsored by Rep. Blaine Luetkemeyer. Consistent and durable consumer protection is created by ensuring stability between administrations and is based on transparency between regulatory agencies and the industries they regulate. CBA renews our longstanding call to Congress: immediately pass this legislation to establish a bipartisan commission at the Bureau to bring transparency and stability, and to insulate this powerful regulator from political shifts that make it difficult for institutions to innovate new

products and services and to meet consumers' evolving needs.

The lack of long-term consistency in the rules and actions taken by the Bureau adversely affects consumers and the financial services industry. For instance, after the departure of both Directors from the two previous administrations, the CFPB has endured drastic political changes. Additionally, due to the Supreme Court's ruling in *Seila Law v. Consumer Financial Protection Bureau*, the Director of the CFPB is now removeable at will by the President, subjecting the Bureau to even greater shifts based on political ideology. As demonstrated by other financial regulators, a bipartisan commission would create the stability consumers deserve.

CFPB Funding Mechanism

CBA supports the *TABS Act*, sponsored by Rep. Andy Barr. A fundamental reason why the Bureau frequently exceeds the limits on its authority established by Congress is that it is almost completely insulated from Congressional oversight. Absent a requirement to justify its budget and regulatory activities to Congress, the Bureau has little incentive to be responsive to oversight from elected legislators. Subjecting the CFPB to the annual Congressional appropriations process would not only compel the Bureau to begin taking oversight seriously— it would also provide Congress with ongoing opportunities to review and adjust the CFPB's budget as needed so that it can appropriately regulate the products and services offered to consumers by financial service providers.

Aside from this legislative approach, the Supreme Court recently granted cert in *Consumer Financial Protection Bureau v. Community Financial Services Association of America* and is expected to hear the case in October 2023. The CFPB filed this cert petition after the U.S. Court of Appeals for the Fifth Circuit ruled that the CFPB's funding mechanism— 12% of the Federal Reserve's budget— is unconstitutional. If the Supreme Court ultimately finds the CFPB's funding structure to be unconstitutional, Congress may have an opportunity to place the Bureau under the appropriations process and enact other critically important reforms to ensure it is held accountable for the benefit of consumers.

Cost-Benefit Analysis

CBA supports the *Transparency in CFPB Cost-Benefit Analysis Act*, sponsored by Rep. Alex Mooney. Cost-benefit analysis is an important tool for regulators to use to balance the costs of implementing and complying with a regulation for all affected parties. While a number of executive branch agencies must conduct cost-benefit analysis as part of the rulemaking process, independent regulatory agencies like the CFPB do not have a rigorous statutory cost-benefit analysis requirement. Dodd-Frank requires the Bureau to consider the costs associated with rules, but leaves the details largely up to the agency's discretion, often resulting in lopsided rules that may sound positive in concept but have damaging consequences.

The Bureau's recent credit card late fee proposal is a perfect example of why a more thorough cost-benefit analysis is needed. The CFPB's proposed rule to lower the safe harbor dollar amount for credit card late fees to \$8 directly points to the Bureau's lack of data analysis needed to truly understand its consumer impact. In the proposal, the Bureau claims that it could help some credit card customers. However, the Bureau acknowledged in the proposal that cardholders who never pay

late— which the CFPB’s own data indicates is 74 percent of all Americans with credit cards¹ will not benefit from the reduced fees and could experience “...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts,” and that increased costs could completely negate any benefits.² Banks are required by their prudential regulators to manage and offset credit risk, and a reduction of the ability for financial institutions to recoup costs could result in a tightening of credit availability for some consumers. The rigorous review of a detailed cost-benefit analysis would prevent additional burdens from being placed on the consumer.

Independent Inspector General

CBA supports the *CFPB-IG Reform Act*, sponsored by Rep. Blaine Luetkemeyer. In concert with legislative and legal efforts to reform the Bureau’s current funding structure from the Federal Reserve, CBA calls on Congress to establish an independent Inspector General at the CFPB. Most financial services regulators, and more than 30 other federal agencies, have their own dedicated Inspector General, but the Bureau shares one with the Federal Reserve. It is important to ensure the CFPB’s operations are audited by an independent and impartial entity. Having a dedicated third-party auditor would bring more accountability to the Bureau and provide Congress with important information on its internal operations.

Needed Changes to UDAAP

For decades, Congress has never used the statutory concepts of “unfairness” and “discrimination” interchangeably. Rather, they are distinct, and each has a well-established meaning and scope of application. Congress did not authorize or intend for the CFPB to fill gaps between the clearly articulated boundaries of antidiscrimination statutes with its unfair, deceptive, and abusive acts or practices (UDAAP) authority.

In March 2022, the CFPB ignored required rulemaking procedures and sought to conflate the concepts of unfairness and discrimination by announcing that it will begin examining financial institutions for alleged discriminatory conduct that it deems “unfair” under its UDAAP authority. The CFPB also revised its exam manual to reflect its new view that “unfairness” can be applied to allegedly discriminatory practices. The CFPB’s action has created significant uncertainty in the financial services marketplace to the detriment of consumers and banks alike, and it raises profound substantive and procedural legal concerns. The CFPB’s actions have left industry with little choice but to pursue legal correction of the issue. In September 2022, CBA and other trades filed a lawsuit challenging the CFPB’s position on several grounds, including the agency’s lack of statutory authority and failure to follow appropriate rulemaking procedures.³

Given the Bureau’s misuse of its UDAAP authority, reforms are needed. CBA calls on Congress to enact due process protections under UDAAP consistent with those adopted by the CFPB in 2020, which were subsequently reversed by the current CFPB Director.⁴ These include: (1) not challenging conduct as abusive when the benefits to consumers outweigh the alleged harms; (2) not

¹ https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>

³ <https://www.consumerbankers.com/cba-media-center/media-releases/cba-leading-financial-groups-pursue-legal-action-against-cfpb>

⁴ <https://consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

conflating the concept of abusive with unfair or deceptive; (3) providing regulated entities with an opportunity to cure violations; (4) reiterating that discrimination is not part of UDAAP; and (5) seeking monetary relief only when there has been a lack of good faith effort to comply with the law (not to impede the Bureau's ability to seek restitution for consumers who have experienced actual harm).

Conclusion

Thank you for considering our views. While significant reforms to the Bureau are needed, consumer protection remains an essential part of the regulatory process and is a necessary component to ensure productive operations at financial services providers. CBA stands ready to work with Congress to create a CFPB that is transparent, well run, and is equipped to fulfill its mission over the long term, so banks can continue to provide safe and innovative products to their customers.

Sincerely,



Lindsey D. Johnson
President and CEO
Consumer Bankers Association