

April 25, 2023

The Honorable Patrick McHenry  
Chairman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
House Committee on Financial Services  
4340 O'Neill House Office Building  
Washington, D.C. 20515

Dear Chairman McHenry and Ranking Member Waters:

The Consumer Bankers Association (CBA) submits this letter for the committee's April 26, 2023 markup of bills. 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 H.R. 2798, the *CFPB Transparency and Accountability Reform Act*. In particular, we would like to highlight the importance of a bipartisan CFPB commission, reforming the CFPB's funding mechanism, robust cost-benefit analysis, and an independent Inspector General.

### **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 cards<sup>1</sup> will

---

<sup>1</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf)

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.<sup>2</sup> 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.

An independent Inspector General that is solely dedicated to the CFPB full time is particularly important in light of the recent major CFPB data breach. A CFPB employee made an unauthorized transfer of data on approximately 256,000 customers of one financial institution, including personally identifiable information, to the employee’s personal email account. Confidential supervisory information on 45 institutions was also transferred. As of April 19, the employee has not complied with the CFPB’s requests to delete the emails.<sup>3</sup> The matter has been referred to the CFPB’s Inspector General, but unfortunately, the IG’s office cannot dedicate its full attention to the CFPB as it must also review the Federal Reserve’s activities.

### 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

---

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

<sup>3</sup> <https://www.wsj.com/articles/in-major-incident-cfpb-says-staffer-sent-250-000-consumers-data-to-personal-account-fdc0a540>