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## Shrinking Government Bureaucracy

### Rethinking the Consumer Financial Protection Bureau

Free Market Reforms to Improve Financial Choices and Opportunities for all Americans

By Iain Murray\*

The Consumer Financial Protection Bureau (CFPB) should be abolished. In its current form, it undermines the constitutional principle of checks and balances. If Congress wishes to establish an agency to oversee consumer financial issues, it should start again from scratch, acting in a manner that respects fundamental constitutional principles.

In addition, the current CFPB imposes significant costs on the financial system and on American consumers through overregulation. This leads to higher costs for financial services, loss of access to those services for lower income consumers, and a lack of innovation.

As the District of Columbia Circuit Court of Appeals found in *PHH Corp. v CFPB*, Congress gave the agency's director too much power when it created the CFPB as part of the 2010 Dodd-Frank Act, with little attendant accountability (the case is currently being reheard).<sup>1</sup> The CFPB director is not answerable to the president, and Congress holds no power over the Bureau, which is isolated from the appropriations process and instead gets its funding from the Federal Reserve.

If abolishing the CFPB were not to prove politically possible, at the very least the agency should undergo significant structural reform. Its director should be made accountable to the president, as the D.C. Circuit Court urged in its original judgment.

Just as importantly, in order to make the CFPB director accountable to Congress for the agency's use of taxpayer money, the Bureau should be subject to Congress' power of the purse by having its funding come through the normal appropriations process.

To counter the problem of overregulation, Congress should pursue the following reforms:

- Force the CFPB to appreciate the effects of its regulations on financial institutions, by placing it under the supervision of a board consisting of officials from other federal financial regulatory agencies, including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve.

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- Abolish the Bureau’s supervisory role and make it purely a regulatory agency. The CFPB currently has supervisory authority over banks, thrifts, and credit unions with assets over \$10 billion, as well as over non-bank financial institutions such as mortgage lenders and servicers, payday lenders, and private student lenders. Supervisory authority should be returned to the prudential regulators.
- Revise the Bureau’s overly broad power over “unfair, deceptive or abusive acts or practices,” which to date has only been defined through enforcement. This has led to a significant chilling of financial innovation.<sup>2</sup> Ideally, that power should be returned to the Federal Trade Commission (FTC) and placed under the FTC’s Unfair and Deceptive Acts and Practices responsibility. At the very least, the Bureau should be required to define its power through a rulemaking.

Congress or a new, accountable CFPB director should drastically reform the Bureau’s handling of data. The CFPB’s public consumer complaints database collates thousands of complaints leveled against financial institutions but is riddled with errors. According to a former CFPB official, more than a quarter of the complaints registered “didn’t pan out” or were simply incorrect. For instance, a single complaint was counted as 35 different ones and another complaint was registered against a bank when it was actually complaint about a payday lender.<sup>3</sup> The CFPB should make its complaints database more reflective of reality or shut it down.

In addition, the Bureau has undertaken an intrusive data collection exercise involving over 500 million credit card accounts, from which account holders cannot opt out. The Bureau should end or reform this program and be more transparent about how it collects and handles Americans’ sensitive financial data. If it is unwilling to do this, Congress should shut the program down.

Finally, the CFPB should shut down its independent research program and restrain its research to analysis of independent academic examination of the issues it addresses. The Bureau’s research—such as, for example on payday loans—is often out of step with academic research on the same topics but is nevertheless used as justification for rulemakings.<sup>4</sup>

## Notes

<sup>1</sup> *PHH Corp. v. Consumer Financial Protection Bureau*, 839 F.3d 1 (D.C. Cir. 2016), rehearing en banc granted, order vacated, No. 15-1177 (D.C. Cir. Feb. 16, 2017).

<sup>2</sup> “UDAAP,” Investopedia, accessed July 17, 2017, <http://www.investopedia.com/terms/u/udaap.asp>.

<sup>3</sup> Rachel Witkowski, “Errors Abound in CFPB’s Complaint Portal,” *American Banker*, November 17 2015, <https://www.americanbanker.com/news/errors-abound-in-cfpbs-complaint-portal>.

<sup>4</sup> Hilary B. Miller, “Ending Payday Lending Would Harm Consumers,” OnPoint No.220, October 5 2016, Competitive Enterprise Institute <https://cei.org/content/ending-payday-lending-would-harm-consumers>.