Consumer Federation of America
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ACCOUNTABILITY OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Prior to the enactment in 2010 of the Dodd-Frank Act, federal accountability for consumer financial protection did not exist. Seven different agencies had some responsibility for consumer finance, but none made consumer protection a priority. Massive regulatory failures by these agencies led to the proliferation of unfair and unsustainable lending practices, which deeply damaged millions of Americans and the overall economy.

As a result, Congress consolidated all consumer financial authority within a single agency that is fully accountable to the President, Congress, the Judiciary, and the American people. If the Consumer Financial Protection Bureau (CFPB) does not do enough to protect consumers – or if it oversteps its authority – it cannot deflect blame onto other agencies.

Congress took several steps to ensure that the CFPB's independence would not be compromised by overwhelming political pressure from the financial services industry, as happened with several key banking regulators before the economic crisis. At the same time, the Dodd-Frank Act placed a number of unprecedented controls on the CFPB's authority to ensure that the agency pursues its consumer protection mission in a balanced and responsible manner. The CFPB must also comply with existing laws that govern the actions of federal agencies, such as the Administrative Procedures Act. **Overall, the CFPB faces far more oversight of and constraints on its activities than any other banking regulator.** (See chart at end.)

Accountability to the President, Congress, and the Judiciary

- **Director is appointed by the President and can be removed for cause**. The Director of the CFPB serves a five-year term (§1011(c)(1)) and must be nominated by the President and approved by the Senate. (§1011(b)(2)) The President can remove the Director for "inefficiency, neglect of duty, or malfeasance in office." (§1011(c)(3))

- **Director must testify before Congress semi-annually.** The CFPB Director must appear before committees in both houses of Congress twice a year. (§1016(a) For these hearings, the CFPB must submit reports to both the Congressional committees and the President. These reports must include a justification for the CFPB's budget, (§1016(c)(2)) a list of rules the CFPB has adopted, (§1016(c)(3)) and a list of public supervisory and enforcement actions in which the CFPB has been involved. (§1016(c)(5))

- **Annual GAO audit**. The Comptroller General is required to annually audit the finances of the CFPB. The Governmental Accountability Office (GAO) is allowed access to all of the CFPB's personnel, data, records, and papers. (§1017(a)(5)(A)) The Comptroller General must submit a report of this annual audit to both Congress and the President. (§1017(a)(5)(B))

- **Annual reports to Congress on consumer complaints and financial literacy.** The CFPB must submit annual reports to Congress on the consumer complaints it receives, (§1013(b)(3)(C)) and its financial literacy activities. (§1013(d)(4)(A)), (§1013(d)(4)(B) The CFPB must publish at least one report a year on its findings regarding the monitoring it must do of current risks to consumers from financial products and services. (§1022(c)(3)(A))

- **Enforcement measures can be appealed.** In the event that the CFPB carries out an enforcement proceeding against a party, that party may appeal the decision of the proceeding to a United States Court of Appeals, asking that the decision be "modified, terminated, or set aside." (§1053(b)(4))

- **Agency actions subject to judicial review**. The rules implemented by the CFPB are subject to full judicial review.

<u>Accountability to and Coordination with Other Financial Regulators</u>

- **Other regulators have unprecedented veto over CFPB rules.** Even after the CFPB finalizes a regulation, any member agency of the Financial Stability Oversight Council (FSOC) that objects to a regulation can petition the FSOC to get it removed. The FSOC can stay or set aside any regulation passed by the CFPB that it deems to interfere with the "safety and soundness" of the U.S. financial or banking system. (§1023(a) <u>No other agency can have its rules overridden by other federal regulators.</u>

- **Mandatory rule-making consultation with other regulators**. When proposing rules to prohibit unfair, deceptive, or abusive practices, the CFPB must consult with federal banking agencies or other agencies to ensure that the rules are in line with "prudential, market, or systemic objectives administered by such agencies." (§1031(e)) The CFPB is also obligated to consult prudential regulators and other federal agencies when proposing regulations administering federal consumer financial laws. (§1022(b)(2)(B) Not only are regulators permitted to formally object to the rules, their written objections must be included in the rule-making record, along with the Bureau's response to their concerns. (§1022(b)(2)(C))

- **Information sharing on bank supervision.** Any prudential regulator or federal agency that has jurisdiction over a financial institution has the ability to gain access to the CFPB's examination reports on that institution. (§1022(c)(6)(C)(i))

- **Coordination on complaints**. The CFPB is required to work with federal agencies, including the Federal Trade Commission (FTC), in its routing of complaints. (§1013(b)(3)(A) The CFPB may also coordinate efforts with the states by forwarding complaints to them. (§1013(b)(3)(B))

<u>Checks and Balances on the CFPB</u>

- **Capped budget**. Like all Bank regulators, the CFPB's budget is not subject to the appropriations process. Unlike other agencies, its budget is capped. (§1017(a)(2)(A)) <u>No other financial regulator has a budget ceiling written into law</u>.

- **Lengthy rule-making process to evaluate small business impact.** Like all agencies, the CFPB must thoroughly evaluate the potential impact of a rule on small businesses (under the Regulatory Flexibility Act). But the CFPB is one of just three agencies required to give small businesses a preview of new proposals and receive extensive feedback from small businesses before even giving notice to the broader public (under the Small Business Regulatory Enforcement Fairness Act). Furthermore, the CFPB must assess possible increases in the cost of credit for small entities and consider any significant alternatives that could minimize those costs. No other financial regulator must comply with these mandates. These requirements are likely to add at least six months to the rule-making process. (§1100G)

- **Mandatory cost-benefit analysis of rules**. The CFPB is required to conduct a cost-benefit analysis of all proposed rules, "including the potential reduction of access by consumers to consumer financial products or services resulting from such rule." (§1022(b)(2)(A)(i)) The CFPB must take into account the effect of the rules on small banks and credit unions and rural consumers. (§1022(b)(2)(A)(ii))

- **Reducing burdensome regulations is a major agency objective**. As one of only five statutory objectives that it must meet, the CFPB is required to identify and address "unduly burdensome regulations," which is a particular concern of smaller financial institutions. (§1021(b)(3)) The CFPB is also required to consult with prudential regulators and state bank regulators in order to minimize the regulatory burden upon large banks or credit unions. (§1025(b)(2) The CFPB must also assess each rule it issues within five years of implementation -- and seek public input on each analysis -- to make sure the rules are effective and not overly burdensome. (§1022(d))

- **Mandatory public and stakeholder input on proposed rules.** Because it is subject to the Administrative Procedures Act (5 U.S.C. §500) the CFPB must inform the public of proposed rules and offer the opportunity to comment on the proposals.

- **Other federal agencies may enforce laws when the CFPB fails to do so.** Any federal agency that is permitted to implement federal consumer finance laws (apart from the FTC) may recommend that the Bureau initiate an enforcement proceeding against a financial institution. If the CFPB fails to do so after 120 days, the other agency may initiate its own enforcement proceeding and any follow-up actions that are needed. (§1025(c)(3))

SEE CHART ON NEXT PAGE

Comparison of Oversight of Selected Federal Regulatory Agencies

	CFPB	EPA	FDIC	FRB	FTC	OCC	OTS	SEC	SSA
APA Rulemaking	X	X	X	X	X	X	X	X	X
APA Adjudication	X	X	X	X	X	X	X	X	X
Budget Subject to Appropriations		X			X			X	X
Budget Capped	X								
OIRA Review of Economically Significant Regs		X			X	X	X		X
OIRA SBREFA Review	X	X							
FSOC Veto	X								
Annual GAO Audit	X								
Term in Office <5 Years		X							
5-member Commission			X	X	X			X	
Bipartisan Representation Requirement			X		X				
Presidential Removal without Cause		X				?	?		
Congressional Oversight	X	X	X	X	X	X	X	X	X