Sic Semper Tyrranus: Abolish CFPB

By Katherine Baker

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Case Summary: The Consumer Financial Protection Bureau was created by Congress in the wake of the economic meltdown over 10 years ago. It was supposed to protect consumers from predatory or fraudulent behavior by bad actors in the economy. But instead of helping consumers, it only makes things worse by adding regulations and taking away choices. And it doesn’t follow Constitutional safeguards of normal operations of government, leading to abuse of power. This plan abolishes CFPB.

Sic Semper Tyrranus: The Case For Abolishing CFPB 3

Observation 1: Resolutional analysis. One simple observation: 3

The Consumer Finance Protection Bureau creates and enforces federal consumer finance policy 3

Observation 2: INHERENCY, or the structure of the Status Quo 3

Fact 1: The troubled conception of the Consumer Financial Protection Bureau 3

Observation 3: the HARMS 4

HARM 1. Consumers worse off 4

B. Example: Flawed CFPB action increased average car loan by $600 4

HARM 2. Constitutional Violation and Lost Liberty 4

A. CFPB violates the constitution in multiple ways: Management, oversight, power, and funding 4

B. The Impact: Constitutional liberties are lost and tyranny prevails 5

Observation 4: The simple PLAN to be implemented by Congress and the President. 5

Observation 5: ADVANTAGES 5

ADVANTAGE 1. Consumers better protected 5

CFPB hurts consumers and should be abolished 5

ADVANTAGE 2. Constitutional problems resolved 5

CFPB should be abolished to resolve its constitutional violations 5

2A Evidence: Abolish CFPB 6

INHERENCY 6

CFPB has survived multiple constitutional challenges so far, but the Supreme Court could reverse it 6

Constitutional challenge to CFPB is currently at the Supreme Court. Decision expected in June 2020 6

HARMS / SIGNIFICANCE 6

Consumers Worse Off 6

Higher costs, reduced access to services, and lack of innovation 6

CFPB subjects companies to political pressure and noneconomic lending standards 6

Bureaucratic rules face no competitive-market test 7

CFPB is a threat to economic freedom 7

Constitutional Violations 7

DC Circuit Court of Appeals said the management of CFPB was unconstitutional 7

CFPB not accountable 7

No oversight 8

CFPB bypasses Congress and the President for its funding. $663 million in 2018 8

CFPB rulings can outweigh the President and the Federal courts 8

CFPB runs counter to limited government 8

Miscellaneous Other Harms (can be used to modify or extend the Plan) 9

Contentious rules, tortured data, extravagant spending, and employment discrimination 9

Too partisan 9

CFPB gives money based ideological preference 9

Political Discrimination in hiring process 10

SOLVENCY / ADVOCACY 10

CFPB was the wrong solution to the problem 10

Eliminate CFPB 11

CFPB is unnecessary and should be repealed 11

DISADVANTAGE RESPONSES 11

No need for CFPB in the first place 11

CFPB job was already covered by states and federal agencies 12

No analysis of necessity for CFPB conducted 12

Didn’t need a new agency to do what CFPB does 12

A/T “CFPB punished Wells Fargo”: Los Angeles Times, not CFPB, uncovered fraud 13

Duplicative regulations 13

Similar laws already existed – consumers would be protected just fine without CFPB 13

Wells Fargo fraud example proves why CFPB was unnecessary 13

Works Cited 14

Sic Semper Tyrranus: The Case For Abolishing CFPB

Please join us in affirming that: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy.

Observation 1: Resolutional analysis. One simple observation:

The Consumer Finance Protection Bureau creates and enforces federal consumer finance policy

Sam Kazman, Gregory Jacob and 4 other attorneys 2018 (Kazman & Jacob – attorneys for the Competitive Enterprise Institute. Other attorneys were with Boyden Gray & Assoc., a Washington DC law firm) Petition for Certiorari in the case of State National Bank of Big Spring v. Mnuchin, Sept 2018 <https://cei.org/sites/default/files/18-5062%20Cert%20Petition%20%281%29.pdf>

Congress designed the CFPB to consolidate in a single individual, the Director of the CFPB, all of the federal government’s previously disparate statutory authorities governing consumer finance, vesting the Director with sweeping power to singlehandedly create, implement, and enforce the nation’s consumer finance policy.

Observation 2: INHERENCY, or the structure of the Status Quo

Fact 1: The troubled conception of the Consumer Financial Protection Bureau

Ronald L. Rubin, 2016. (was an enforcement attorney at the Consumer Financial Protection Bureau and chief adviser on regulatory policy at the House Financial Services Committee.) “The Tragic Downfall of the Consumer Financial Protection Bureau” December 21, 2016. (brackets added) <https://www.nationalreview.com/2016/12/consumer-financial-protection-bureau-tragic-failures/>

Over the next two years, the economy collapsed, Democrats gained control of Congress and the White House, and [Sen. Elizabeth] Warren grew famous criticizing big banks in congressional hearings. She lobbied Democrats to include her agency in their Wall Street–reform legislation, arguing that effective enforcement of consumer-protection laws required a regulator independent from politicians beholden to the financial industry. The Democrats had a better idea: They would make her agency independent from Republicans. Circumventing the Constitution took two steps. First, Democrats inserted a few clever workarounds into the Dodd-Frank Act, which created the CFPB on July 21, 2010. Commissions such as the one [Sen. Elizabeth] Warren first proposed are ostensibly bipartisan, so a president-appointed director would lead the new agency. Since there might be a Republican president one day, the director would be practically irremovable after Senate confirmation to a five-year term that could extend indefinitely until the next director’s confirmation. To prevent future Republican-led Congresses from cutting the bureau’s budget, funding would be guaranteed through Federal Reserve profits rather than taxpayer dollars.

**Fact 2: CFPB has broad and poorly defined powers**

*Sheldon Richman, 2017. (executive editor of The Libertarian Institute. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017.* [*https://www.aier.org/research/abolish-consumer-financial-protection-bureau*](https://www.aier.org/research/abolish-consumer-financial-protection-bureau) *(Brackets and ellipses in original)*

According to Norbert Michael, “Financial crimes against consumers were regularly prosecuted long before the CFPB was created.” So why a new agency? Here’s why: the CFPB has powers far beyond handling consumer-initiated complaints. It also has the power to write rules. Moreover, Michael writes, “Congress transferred authority for approximately 50 existing rules and orders [writing by regulatory agencies] stemming from almost 20 federal consumer-protection statutes over to the new bureau…. The pre-Dodd-Frank regime focused on protecting consumers against businesses that engaged in deceptive or unfair practices. Dodd-Frank went further, giving the CFPB the authority to develop a new, ill-defined, consumer-protection concept: abusive practices.”

Observation 3: the HARMS

HARM 1. Consumers worse off

**A. Consumers are worse off under CFPB regulations than they would be without them**

*Sheldon Richman, 2017. (executive editor of The Libertarian Institute. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017.* [*https://www.aier.org/research/abolish-consumer-financial-protection-bureau*](https://www.aier.org/research/abolish-consumer-financial-protection-bureau) *(the word “be” is missing in the original between “would” and “objectionable”)*

But a more fundamental objection exists -- for even if the CFPB were constitutionally sound, it would objectionable, namely, economic grounds. A coercive government agency that presumes to protect consumers undermines features of the market economy that ensure the delivery to consumers of highest quality goods and services at the lowest prices. The most effective way to protect consumers, then, is through free and open competition. But government regulation -- not just through the CFPB but also through the panoply of regulatory agencies -- stifles competition.

B. Example: Flawed CFPB action increased average car loan by $600

Dennis Shaul, 2017. (CEO of the Community Financial Services Association of America, the leading trade association for short-term, small-dollar lending.) Nov. 19, 2017. <https://www.wsj.com/articles/what-went-wrong-with-the-cfpb-1511072512>

Even though the Dodd-Frank Act expressly prohibits the CFPB from regulating automotive finance, the agency jumped into the field, alleging discrimination in auto lending. Because federal law prohibits auto lenders from gathering information on race, the agency had to guess at its claim of discrimination based solely on names and ZIP Codes, which the agency itself admitted as flawed and which one observer described as the equivalent of a student guessing on every answer on his SATs. The agency then went ahead with guidance that raised the costs of an average auto loan by an estimated $600.

HARM 2. Constitutional Violation and Lost Liberty

A. CFPB violates the constitution in multiple ways: Management, oversight, power, and funding

Sam Kazman, Gregory Jacob and 4 other attorneys 2018 (Kazman & Jacob – attorneys for the Competitive Enterprise Institute. Other attorneys were with Boyden Gray & Assoc., a Washington DC law firm) Petition for Certiorari in the case of State National Bank of Big Spring v. Mnuchin, Sept 2018 <https://cei.org/sites/default/files/18-5062%20Cert%20Petition%20%281%29.pdf>

Congress designed the CFPB to consolidate in a single individual, the Director of the CFPB, all of the federal government’s previously disparate statutory authorities governing consumer finance, vesting the Director with sweeping power to singlehandedly create, implement, and enforce the nation’s consumer finance policy. Congress simultaneously stripped away all traditional checks on the Director’s exercise of this power: the Director does not report to the President, self-appropriates his budget without the involvement or oversight of Congress, and is unconstrained in the exercise of power by any mitigating feature of agency design, such as a deliberative multi-member commission structure. In the history of the United States, no individual has ever wielded such expansive executive enforcement authority over an entire sector of private economic activity, devoid of the checks and balances the Constitution’s separation of powers requires.

B. The Impact: Constitutional liberties are lost and tyranny prevails

Sam Kazman, Gregory Jacob and 4 other attorneys 2018 (Kazman & Jacob – attorneys for the Competitive Enterprise Institute. Other attorneys were with Boyden Gray & Assoc., a Washington DC law firm) Petition for Certiorari in the case of State National Bank of Big Spring v. Mnuchin, Sept 2018 <https://cei.org/sites/default/files/18-5062%20Cert%20Petition%20%281%29.pdf>

“Indeed, other than the President, the Director of the CFPB is the single most powerful official in the entire U.S. Government, at least when measured in terms of unilateral power.” App. 459. “He is no less than the czar of consumer finance. In that realm he is legislator, enforcer, and judge,” and in this combination of powers over a vital sector of the economy, the Director “meets Madison’s definition of a tyrant.” App. 432 (Henderson, J., dissenting). The Constitution does not permit the creation of such an entity. Rather, to protect individual liberty, the Constitution mandates a separation of powers that imposes checks, balances, and accountability on the exercise of governmental authority.

**END QUOTE. THEY GO ON TO CONCLUDE LATER IN THE SAME CONTEXT QUOTE:**  
The CFPB represents an unprecedented combination of expansive, unchecked, and unaccountable executive authority that uniquely threatens the liberty of the governed.

Observation 4: The simple PLAN to be implemented by Congress and the President.

Repeal CFPB. Congress repeals the section of Title X of the Dodd-Frank Act that created the CFPB and its offices and budget are returned to the Federal Reserve.   
Plan takes effect 30 days after an Affirmative ballot and all Affirmative speeches may clarify.

Observation 5: ADVANTAGES

ADVANTAGE 1. Consumers better protected

CFPB hurts consumers and should be abolished

Sheldon Richman, 2017. (Sheldon Richman is the executive editor of The Libertarian Institute.. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former editor of The Freeman, published by the Foundation for Economic Education, and former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017. <https://www.aier.org/research/abolish-consumer-financial-protection-bureau> (ellipses in original)

Competition and entrepreneurship propelled by the search for profits -- are better positioned to serve consumers than monopolistic regulators are. As Milton and Rose Friedman wrote in Free to Choose, “On the whole, market competition … protects the consumer better than do the alternative government mechanisms that have been increasingly superimposed on the market…. The consumer is protected from being exploited by one seller by the existence of another seller from whom he can buy and who is eager to sell to him.” The CFPB and the existing constellation of financial regulations and corporate guarantees should be abolished.

ADVANTAGE 2. Constitutional problems resolved

CFPB should be abolished to resolve its constitutional violations

Iain Murray, 2017. (Vice President for Strategy at the Competitive Enterprise Institute.) “Rethinking the Consumer Financial Protection Bureau” August 16, 2017. <https://cei.org/sites/default/files/Rethinking_the_Consumer_Financial_Protection_Bureau.pdf>

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.

2A Evidence: Abolish CFPB

INHERENCY

CFPB has survived multiple constitutional challenges so far, but the Supreme Court could reverse it

CNBC 2019 (journalist Tucker Higgins) 18 Oct 2019 “Supreme Court will hear challenge to Consumer Financial Protection Bureau” <https://www.cnbc.com/2019/10/18/supreme-court-cfpb.html>

To date, the CFPB has survived multiple court challenges. The federal appeals court in Washington [upheld the agency](https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/$file/15-1177.pdf) last year on the basis that the Supreme Court, more than 80 years ago, signed off on the Federal Trade Commission, a similarly structured regulator, in the 1935 case Humphrey’s Executor. In May, the CFPB defeated Seila Law before a panel of the 9th U.S. Circuit Court of Appeals. “Seila Law contends that an agency with the CFPB’s broad law-enforcement powers may not be headed by a single Director removable by the President only for cause. That argument is not without force,” Circuit Judge Paul Watford wrote for the court. But, he said, given Humphrey’s Executor and a later case which reaffirmed the ruling, the CFPB is constitutional. “The Supreme Court is of course free to revisit those precedents, but we are not,” he wrote.

Constitutional challenge to CFPB is currently at the Supreme Court. Decision expected in June 2020

CNBC 2019 (journalist Tucker Higgins) 18 Oct 2019 “Supreme Court will hear challenge to Consumer Financial Protection Bureau” <https://www.cnbc.com/2019/10/18/supreme-court-cfpb.html>

The Supreme Court announces that it will hear a case challenging the constitutionality of the Consumer Financial Protection Bureau, a regulatory agency established in the wake of the 2008 financial crisis. A decision in the case is likely by the end of June, meaning that the fate of the regulator will be announced in the middle of the 2020 presidential campaign.

HARMS / SIGNIFICANCE

Consumers Worse Off

Higher costs, reduced access to services, and lack of innovation

Iain Murray, 2017. (Vice President for Strategy at the Competitive Enterprise Institute.) “Rethinking the Consumer Financial Protection Bureau” August 16, 2017. <https://cei.org/sites/default/files/Rethinking_the_Consumer_Financial_Protection_Bureau.pdf>

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.

CFPB subjects companies to political pressure and noneconomic lending standards

Sheldon Richman, 2017. (executive editor of The Libertarian Institute. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017. <https://www.aier.org/research/abolish-consumer-financial-protection-bureau>

When Congress authorizes and pays bureaucrats to write rules, they will write rules. As Michael Calabria of the Cato Institute notes, the CFPB “promises to do for nonbank financial companies what the federal government has done for banks: subject them to political pressure to follow noneconomic lending standards.”

Bureaucratic rules face no competitive-market test

Sheldon Richman, 2017. (executive editor of The Libertarian Institute. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017. <https://www.aier.org/research/abolish-consumer-financial-protection-bureau>

A regulator’s decrees by nature face no competitive-market test since all firms must comply with the decrees. But competition is, as F. A. Hayek taught, is a “discovery procedure.” Thanks to freedom of entry and free pricing, which tend to be (often unwittingly) restricted by regulation, market competition reveals through the price system critical knowledge that we cannot count on otherwise learning. For this reason, even if we assume a regulator’s sincerest commitment to achieving the public interest (Public Choice thinkers give us good reason not to take this for granted), we should be wary of bureaucratic rule-making.

CFPB is a threat to economic freedom

Norbert Michel 2018. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The Consumer Financial Protection Bureau Undermines Economic Freedom” Jan 8th, 2018. <https://www.heritage.org/markets-and-finance/commentary/the-consumer-financial-protection-bureau-undermines-economic-freedom>

The CFPB approach assumes that lenders regularly prey on helpless consumers, tricking them into accepting ruinous financial contracts that they cannot possibly repay. The idea that financial markets generally work in this manner defies logic. The overwhelming majority of financial firms successfully find customers who can pay them back because it is the only way to make customers happy and stay in business. For free enterprise to work, government-imposed rules have to start from this point of view. As constructed, the CFPB poses a danger to Americans’ economic freedom.

Constitutional Violations

DC Circuit Court of Appeals said the management of CFPB was unconstitutional

Norbert Michel, 2017. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The CFPB Is In The Crosshairs, Exactly Where It Belongs” Jan 24, 2017. <https://www.forbes.com/sites/norbertmichel/2017/01/24/the-cfpb-is-in-the-crosshairs-exactly-where-it-belongs/#25b05f7d1a4f>

The CFPB’s funding and structure – a formulaic revenue stream tied to the Federal Reserve, and a sole director rather than a bipartisan commission – were points of conflict before the Bureau was even up and running. In October 2016, the D.C. Circuit Court of Appeals struck down the Bureau’s sole-director structure as unconstitutional and recognized the president’s power “to remove the director at will, and to supervise and direct the director.”

CFPB not accountable

Iain Murray, 2017. (Vice President for Strategy at the Competitive Enterprise Institute.) “Rethinking the Consumer Financial Protection Bureau” August 16, 2017. <https://cei.org/sites/default/files/Rethinking_the_Consumer_Financial_Protection_Bureau.pdf>

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). 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.

No oversight

Sheldon Richman, 2017. (Sheldon Richman is the executive editor of The Libertarian Institute. He is the former senior editor at the Cato Institute and Institute for Humane Studies, former editor of The Freeman, published by the Foundation for Economic Education, and former vice president at the Future of Freedom Foundation.) “Abolish the Consumer Financial Protection Bureau” March 30, 2017. <https://www.aier.org/research/abolish-consumer-financial-protection-bureau>

On May 24 the U.S. Court of Appeals for the District of Columbia Circuit will hear oral arguments on whether the Consumer Financial Protection Bureau (CFPB) is unconstitutional. The CFPB was created under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, which passed in the wake of the 2008 Great Recession. The en banc court review of the CFPB, which follows a previous ruling that the bureau is unconstitutional, is a response to a claim it, unlike other regulatory agencies, is unaccountable to both presidential authority and Congress’s appropriations power. Its single director, who has a five-year term, cannot be removed by the president except “for inefficiency, neglect of duty, or malfeasance in office,” and it is funded not by Congress but by the Federal Reserve, which has no oversight power.

CFPB bypasses Congress and the President for its funding. $663 million in 2018

Sam Kazman, Gregory Jacob and 4 other attorneys 2018 (Kazman & Jacob – attorneys for the Competitive Enterprise Institute. Other attorneys were with Boyden Gray & Assoc., a Washington DC law firm) Petition for Certiorari in the case of State National Bank of Big Spring v. Mnuchin, Sept 2018 <https://cei.org/sites/default/files/18-5062%20Cert%20Petition%20%281%29.pdf>

The CFPB is also made entirely independent from Congress’s power of the purse. Instead of receiving its funding through annual congressional appropriations, the CFPB determines and draws its entire budget out of the Federal Reserve’s, without review by Congress, the President, or the Federal Reserve itself. See 12 U.S.C. § 5497(a)(2)(C). Specifically, the CFPB is entitled to designate up to 12 percent of the Federal Reserve’s operating expenses for its own use. 12 U.S.C. § 5497(a). According to the CFPB, this amounted to $631.7 million in 2016, $646.2 million in 2017, and $663 million in 2018.

CFPB rulings can outweigh the President and the Federal courts

Sam Kazman, Gregory Jacob and 4 other attorneys 2018 (Kazman & Jacob – attorneys for the Competitive Enterprise Institute. Other attorneys were with Boyden Gray & Assoc., a Washington DC law firm) Petition for Certiorari in the case of State National Bank of Big Spring v. Mnuchin, Sept 2018 <https://cei.org/sites/default/files/18-5062%20Cert%20Petition%20%281%29.pdf>

Dodd-Frank mandates that the courts credit the Director’s interpretations of consumer finance statutes over those of the Executive Branch for purposes of assigning Chevron deference. See 12 U.S.C. § 5512(b)(4)(B). Courts thus must defer to the CFPB even when it overrules the President himself.

CFPB runs counter to limited government

Norbert Michel, 2018. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The Consumer Financial Protection Bureau Undermines Economic Freedom” Jan 8th, 2018. <https://www.heritage.org/markets-and-finance/commentary/the-consumer-financial-protection-bureau-undermines-economic-freedom>

These problems are bad enough, but the CFPB runs counter to limited-government principles in other ways. The bureau has independent litigation authority; a single director, removable only for cause; a budget completely immune to the regular appropriations process; broad judicial deference; and an exemption from Office of Management and Budget review of major rules. No other federal regulator has that combination of characteristics, and no federal agency should.

Miscellaneous Other Harms (can be used to modify or extend the Plan)

Contentious rules, tortured data, extravagant spending, and employment discrimination

Norbert Michel, 2017. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The CFPB Is In The Crosshairs, Exactly Where It Belongs” Jan 24, 2017. <https://www.forbes.com/sites/norbertmichel/2017/01/24/the-cfpb-is-in-the-crosshairs-exactly-where-it-belongs/#25b05f7d1a4f>

The Consumer Financial Protection Bureau (CFPB) has been one of the most controversial components of the 2010 Dodd-Frank Act. It has issued contentious rules, tortured data to make other rules, engaged in an extravagant spending spree, and even found itself blasted by the Government Accountability Office (GAO) for employment discrimination.

Too partisan

Dennis Shaul, 2017. (CEO of the Community Financial Services Association of America, the leading trade association for short-term, small-dollar lending.) Nov. 19, 2017. <https://www.wsj.com/articles/what-went-wrong-with-the-cfpb-1511072512>

I had the privilege of working as an aide to then-Rep. Barney Frank, chairman of the House Financial Services Committee when the Dodd-Frank Act of 2010, which created the CFPB, was written. I realized that no bill is ever perfect and the CFPB would have its imperfections. The authors wanted the bureau to be a fair arbiter of protecting consumers, instead of what it has become—a politically biased regulatory dictator and a political steppingstone for its sole director, who is now expected to run for governor of Ohio. An independent federal agency should be nonpartisan. A bipartisan commission on the model of the SEC and FCC would allow for better and more evenhanded decision-making. To show how partisan the CFPB became under Mr. Cordray’s leadership, not one of the agency’s employees made a contribution to Donald Trump’s campaign, while a multitude contributed to Hillary Clinton. The new director will have a partisan staff.

CFPB gives money based ideological preference

Dennis Shaul, 2017. (Mr. Shaul is CEO of the Community Financial Services Association of America, the leading trade association for short-term, small-dollar lending.) Nov. 19, 2017. <https://www.wsj.com/articles/what-went-wrong-with-the-cfpb-1511072512>

The CFPB, like other agencies, collects fines and fees. Astonishingly, Congress does not require them to be transferred to the federal Treasury. Mr. Cordray has boasted of collecting billions of dollars on behalf of consumers, but portions of that money ultimately go to favored consumer groups—a continuing problem of ideological preference.

Political Discrimination in hiring process

Ronald L. Rubin, 2016. (was an enforcement attorney at the Consumer Financial Protection Bureau and chief adviser on regulatory policy at the House Financial Services Committee.) “The Tragic Downfall of the Consumer Financial Protection Bureau” December 21, 2016. <https://www.nationalreview.com/2016/12/consumer-financial-protection-bureau-tragic-failures/>

In March of 2011, I interviewed with Richard Cordray, the pre-operational agency’s new enforcement chief. By May, I had surrendered my prized rent-stabilized apartment and moved to Washington to be the CFPB’s 13th enforcement attorney. I would not have been so lucky two months later. As screening techniques improved, Republicans were more easily identified and rejected. Political discrimination was not necessarily illegal, but attempts to hide it invited prohibited race, gender, religion, and age discrimination. In retrospect, the Office of Enforcement’s hiring process, which was typical for the bureau, violated more laws than a bar-exam hypothetical. Job seekers interviewed with two pairs of attorneys and most senior managers. All Office of Enforcement employees were invited to attend the weekly hiring meetings, where interviewers summarized the applicants. Any attendee could voice an opinion before each candidate’s verdict was rendered; even a single strong objection was usually fatal. Note taking was strictly forbidden, and interviewers destroyed their records after the meetings. I never missed one. Clear verbal and non-verbal signals quickly emerged. The most common, “I don’t think he believes in the mission” was code for “he might not be a Democrat.” At one meeting, Kent Markus, a former Clinton-administration lawyer who had joined the bureau as Cordray’s deputy, remarked that an applicant under consideration “sounds like a good liberal to me.” After a few seconds of nervous laughter and eye contact around the room, Markus recognized his slip. “I didn’t say that,” he awkwardly joked. The episode so unnerved one attorney that he never attended another hiring meeting.

SOLVENCY / ADVOCACY

CFPB was the wrong solution to the problem

Norbert Michel, 2018. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The Consumer Financial Protection Bureau Undermines Economic Freedom” Jan 8th, 2018. <https://www.heritage.org/markets-and-finance/commentary/the-consumer-financial-protection-bureau-undermines-economic-freedom>

One could certainly argue that the pre-Dodd-Frank regulatory framework, which spread financial regulatory responsibilities among many different agencies, was suboptimal. But there is overlapping regulatory authority throughout U.S. financial markets, and it does not follow that creating yet another federal agency is the best solution. And if consolidation in one agency is the answer, why not transfer everything over to the Federal Trade Commission, the agency whose motto is “Protecting America’s consumers”?

Eliminate CFPB

Norbert Michel, 2018. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The Consumer Financial Protection Bureau Undermines Economic Freedom” Jan 8th, 2018. <https://www.heritage.org/markets-and-finance/commentary/the-consumer-financial-protection-bureau-undermines-economic-freedom>

The pre-Dodd-Frank regime focused on protecting consumers from deceptive or unfair business practices. Congress went further by giving the CFPB authority to develop a new, ill-defined, consumer-protection concept: abusive practices. This construct runs counter to the American system of limited government. The term is completely undefined in the U.S. Code. This policy allows the CFPB, an unelected arm of the federal government, to make up laws as it goes along. The CFPB is not alone in this regard. It is yet one more example of a disturbing trend, that of Congress creating regulatory agencies that are unaccountable to the public in any meaningful way, yet empowered to essentially create laws by way of regulatory dictate. To protect the American system of limited government, all such federal agencies should be eliminated. Independent agencies able to create and enforce laws erode the constitutional protections of U.S. citizens’ fundamental liberties. They also shield elected officials — the legislators who are supposed to be responsible for making laws — from accountability.

CFPB is unnecessary and should be repealed

Norbert Michel, 2017. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The CFPB Is In The Crosshairs, Exactly Where It Belongs” Jan 24, 2017. <https://www.forbes.com/sites/norbertmichel/2017/01/24/the-cfpb-is-in-the-crosshairs-exactly-where-it-belongs/#25b05f7d1a4f>

The simple fact is that we never needed new federal agency in the first place, much less the one that Dodd-Frank created. The CFPB has overly broad authority, functions with relatively little accountability, and was purposely staffed with left-wingers to stave off future policy changes. President Trump has said that he wants to dismantle Dodd-Frank. Repealing Title X of Dodd-Frank – the section that created the CFPB – is the perfect place to start.

DISADVANTAGE RESPONSES

No need for CFPB in the first place

Norbert Michel, 2017. (Director of Heritage’s Center for Data Analysis. Norbert J. Michel is a research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The CFPB Is In The Crosshairs, Exactly Where It Belongs” Jan 24, 2017. <https://www.forbes.com/sites/norbertmichel/2017/01/24/the-cfpb-is-in-the-crosshairs-exactly-where-it-belongs/#25b05f7d1a4f>

Politics aside, the case for full repeal of the CFPB is actually quite strong. Nobody has ever made a strong case that the pre-Dodd-Frank framework failed, much less that a new federal agency was necessary to protect consumers. CFPB advocates act as though there would be no consumer protection in financial markets without this government agency, but that’s demonstrably false. Dodd-Frank transferred enforcement of 22 specific consumer financial protection statutes from other agencies to the CFPB.

CFPB job was already covered by states and federal agencies

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Prior to Dodd-Frank, federal rulemaking and enforcement for consumer financial protection laws were divided among seven agencies: the Federal Reserve Board of Governors; the Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the National Credit Union Administration; the Federal Trade Commission, and the Department of Housing and Urban Development. States also had – and still have – their own consumer protection laws. And, the Department of Justice generally enforces anti-discrimination law when financial institutions are alleged to have perpetrated such crimes.

No analysis of necessity for CFPB conducted

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Was this framework insufficient because one of the seven agencies was derelict in its duties? Or, were consumers confused because too many agencies were involved? Was it a combination of too many statutes and too many agencies? The full legislative record of Dodd-Frank and the CFPB offers no objective analysis of these issues. However, pre-Dodd-Frank advocates of stronger consumer protection in financial markets had been clamoring for reforms since the early 2000s. And that record does not suggest we needed a new federal agency. If anything, it supports the notion that Congress should not have created a new agency.

Didn’t need a new agency to do what CFPB does

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But even if these strict new federal rules were a good idea – and that case has never been made – we didn’t need a new government agency to implement them. At their core, the CFPB’s new mortgage rules implement HOEPA-like triggers, and it’s laughable to argue that the Comptroller, the FDIC, the Federal Reserve, the NCUA, or the FTC wouldn’t have been able to enforce the new rules. I’m not sure if anyone even tried to make that case during the Dodd-Frank legislative debates. And how could they? Most of the practices that CFPB supporters want to shut down – deceiving borrowers of the true cost of loan consolidations and refinancing, failing to disclose credit insurance fees, discriminating against certain groups – were already illegal and actively prosecuted by the FTC, the DOJ, and HUD under existing federal statutes.

A/T “CFPB punished Wells Fargo”: Los Angeles Times, not CFPB, uncovered fraud

Dennis Shaul, 2017. (CEO of the Community Financial Services Association of America, the leading trade association for short-term, small-dollar lending.) Nov. 19, 2017. <https://www.wsj.com/articles/what-went-wrong-with-the-cfpb-1511072512>

The bureau took full credit for punishing Wells Fargo for opening false customer accounts. But the Los Angeles Times, not the CFPB, uncovered the malfeasance. More important, the CFPB fined Wells Fargo only $100 million, based on an incomplete investigation that found 2.1 million customers were affected. The actual number turned out to be 3.5 million. Meanwhile, large banks, including Wells Fargo, were fined tens of billions of dollars for toxic mortgages in the financial crisis. A threshold question is whether one person, in this case the director, should have the power to levy such fines.

Duplicative regulations

Dennis Shaul, 2017. (CEO of the Community Financial Services Association of America, the leading trade association for short-term, small-dollar lending.) Nov. 19, 2017. <https://www.wsj.com/articles/what-went-wrong-with-the-cfpb-1511072512>

Immediately after it opened its doors, the bureau began to create a true bureaucracy and quickly attracted staff, often by paying higher salaries than those at other regulatory agencies. Many of its examination procedures are duplicative of other financial regulators, and no thought was given to how that could have been avoided.

Similar laws already existed – consumers would be protected just fine without CFPB

Norbert Michel, 2018. (Director of Heritage’s Center for Data Analysis; research fellow specializing in financial regulation for The Heritage Foundation’s Thomas A. Roe Institute for Economic Policy Studies.) “The Consumer Financial Protection Bureau Undermines Economic Freedom” Jan 8th, 2018. <https://www.heritage.org/markets-and-finance/commentary/the-consumer-financial-protection-bureau-undermines-economic-freedom>

Advocates of the Consumer Financial Protection Bureau (CFPB) give the impression that there would be no consumer protection without the CFPB. Yet Congress established a viable consumer-protection framework, layered on top of similar state laws, long before the 2010 Dodd-Frank Act created the CFPB. In fact, the bureau derived many of its powers from earlier laws. Federal agencies had regularly prosecuted crimes that violated consumer financial protections for years. Dodd-Frank simply took authority from approximately 50 existing rules and orders stemming from almost 20 federal consumer-protection statutes and transferred it to the new bureau.

Wells Fargo fraud example proves why CFPB was unnecessary

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There was really no need to start up a brand-new bureaucracy, and the recent Wells Fargo case demonstrates how completely unnecessary the CFPB remains. The case against the bank had already been made by other regulators; the bureau was late to the party and simply piled on.

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