



March 8, 2023

The Hon. Patrick McHenry
Chairman
U.S. House Comm. on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Hon. Maxine Waters
Ranking Member
U.S. House Comm. on Financial Services
4340 O'Neill House Building
Washington, DC 20515

Re: For the hearing entitled Consumer Financial Protection Bureau: Ripe for Reform, March 9, 2023

Dear Chairman McHenry, Ranking Member Waters, and Members of the House Financial Services Committee:

The National Association of Consumer Advocates (NACA) writes to urge your strong support of the Consumer Financial Protection Bureau, its independent funding and structure, and its mission to protect consumers against harmful financial practices. Our request comes in light of the Fifth Circuit Court of Appeals' decision in *Community Financial Services Association v. CFPB* (*cert. granted*), and any legislation, including the Taking Account of Bureaucrats' Spending Act, which threaten the Bureau's ability to protect hundreds of millions of U.S. consumers who use financial products and services.

The Fifth Circuit's decision struck a major blow against the Bureau when it wrongly held that the Bureau's funding structure violates the appropriations clause of the U.S. Constitution. Consequently, the holding also overturned a critical regulation that would have curbed predatory lending schemes. Meanwhile, the legislation under consideration would alter the CFPB's funding structure and subject it to the congressional appropriations process. Among other things, this change would make the agency more susceptible to political pressure, instead of assuring its existence as an independent financial regulator, as Congress originally intended. As the only federal regulator with the sole mission of protecting consumers in the financial marketplace, these threats to the CFPB also endanger the financial wellbeing of millions of American families and the stability of the economy.

The Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 established the Bureau in the aftermath of the 2007-09 financial crisis. The Dodd-Frank Act instilled in the CFPB specific authorities and responsibilities in pursuit of a mission to foster a fair consumer finance market, free from fraud and deception. Since then, the Bureau has proven itself to be an effective regulator and watchdog. In the past 13 years, the Bureau has returned \$16 billion to 192 million consumers, processed over 3 million consumer complaints, and collected nearly \$4 billion in civil penalties from businesses that have engaged in harmful practices.¹

While the CFPB has continued to actively work on behalf of consumers since the Fifth Circuit's poorly reasoned decision, the ruling casts a shadow on all its actions as it awaits the U.S. Supreme Court's consideration of the

¹ Consumer Financial Protection Bureau, Enforcement by the numbers, available at <https://www.consumerfinance.gov/enforcement/enforcement-by-the-numbers/>.

case. This burden takes time and focus away from its mission. Additionally, bad actors, including several that repeatedly have been found violating the law, are arguing in court that the CFPB does not have legitimate enforcement authority over them in a dishonorable attempt to leverage the Fifth Circuit decision to escape accountability for their misconduct.² Their bid to evade accountability presents a grim preview of what could potentially unfold in the marketplace if the CFPB’s funding structure is not affirmed.

Because Congress recognized the import of the CFPB’s functions for maintaining a fair and transparent marketplace, it established the Bureau with the same funding structure shared by most other financial regulators. Rather than receiving funding through the annual congressional appropriations process, the CFPB and other agencies, such as the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, draw their funding directly from the Federal Reserve. This ensures that the agencies have stable funding that is somewhat insulated from political pressure and manipulation, which in turn allows them to administer safeguards focused on the well-being of the economy and its participants.

Prior to the Fifth Circuit’s decision, no other court has ever ruled that such a funding structure violates separation of powers and is unconstitutional. In fact, other federal courts have explicitly rejected this argument, stating that “the Bureau’s funding structure does not represent an unconstitutional delegation of power from Congress to the Executive Branch.”³ Further, there is no legal reason to single out the CFPB among the many other financial regulators that share the same mode of funding. As a result, questioning the CFPB’s legitimacy also casts doubt on these other agencies that are funded in a similar manner. If consumers and financial institutions alike cannot trust the agencies responsible for setting the rules for the financial system, then the economy cannot operate stably and sustainably.

Financial institutions have also acknowledged the CFPB’s integral role. In an amicus brief submitted to the Supreme Court, the Mortgage Bankers Association wrote that invalidating the CFPB “could destabilize critical segments of the national economy” and that the mortgage market would “very likely all but grind to a halt as lenders would be unable to have any confidence that their transactions comply with law.”⁴

To preserve the CFPB and maintain economic stability, the Bureau’s funding structure must be upheld as constitutional. Attempts to bring the CFPB under the annual congressional appropriations process, as proposed by the Taking Account of Bureaucrats’ Spending Act, would only serve to weaken the agency and by extension the rest of the financial regulatory landscape. We urge you to oppose these and any other proposals that would similarly undermine the CFPB.

Thank you for the opportunity to express our views on the CFPB’s future. Please contact me at *christine @ consumeradvocates.org* with any questions or concerns.

Sincerely,

Christine Hines
Legislative Director

² Michael Gordon & Michael R. Guerrero, Defendants in three CFPB enforcement actions seek dismissal based on Fifth Circuit decision holding CFPB’s funding mechanism is unconstitutional, Oct. 25, 2022, available at <https://www.consumerfinancemonitor.com/2022/10/25/defendants-in-three-cfpb-enforcement-actions-seek-dismissal-based-on-fifth-circuit-decision-holding-cfpbs-funding-mechanism-is-unconstitutional/>.

³ Michael Gordon, Utah federal court rejects constitutional challenge to CFPB’s funding mechanism, Sept. 19, 2022, available at <https://www.consumerfinancemonitor.com/2022/09/19/utah-federal-court-rejects-constitutional-challenge-to-cfpbs-funding-mechanism/>.

⁴ Brief for the Mortgage Bankers Ass’n, et al. as Amicus Curiae, p. 10, *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, available at https://www.supremecourt.gov/DocketPDF/19/19-7/125625/20191216140130784_USSC%2019-7%20Amicus%20Brief%20TheMortgageBankersAssociation.pdf.