

## MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: March 6, 2023

Re: March 9, 2023 Subcommittee Hearing: “Consumer Financial Protection Bureau: Ripe for Reform”

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On Thursday, March 9, 2023, at 10:00 a.m. in Room 2220 of the Rayburn House Office Building, the Financial Services Subcommittee on Financial Institutions and Monetary Policy will hold a hearing titled “Consumer Financial Protection Bureau: Ripe for Reform.” The following witnesses will testify:

- Bill Himpler, CEO, American Financial Services Association
- Brian Johnson, Managing Director, Patomak Global Partners LLC
- Jessica Thompson, Attorney, Pacific Legal Foundation
- Devin Watkins, Attorney, Competitive Enterprise Institute
- The Honorable Keith Ellison, Attorney General, State of Minnesota

### Background

The hearing will examine the leadership structure, funding, budget, and operations of the CFPB and areas in which reforms are needed.

The Dodd-Frank Act established the CFPB as an independent agency.<sup>1</sup> Unlike other federal financial agencies, the CFPB does not have an executive board, does not have an independent Inspector General, and does not allow for meaningful oversight of the director. The CFPB is led by a single director who is appointed by the president and confirmed by the Senate for a term of five years. The Dodd-Frank Act stated the President may only remove the director from office for cause, i.e. “inefficiency, neglect of duty, or malfeasance in office.”<sup>2</sup> On June 29, 2020, the Supreme Court ruled in *Seila Law LLC v. Consumer Financial Protection Bureau* that the CFPB’s leadership structure is unconstitutional as a violation of the separation of powers.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. Chapter 53, Subchapter V.

<sup>2</sup> 12 U.S.C. § 5491(c)(3).

<sup>3</sup> *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020), [https://www.supremecourt.gov/opinions/19pdf/19-7\\_new\\_bq7d.pdf](https://www.supremecourt.gov/opinions/19pdf/19-7_new_bq7d.pdf).

The CFPB operates outside of the annual Congressional appropriations process. Instead, it receives funding through direct transfers from the Federal Reserve (Fed), which is also not subject to the appropriations process.<sup>4</sup> The Fed does not exercise authority over the CFPB or its budget. The CFPB director is required only to submit a letter to the Federal Reserve Board each quarter certifying the amount of funds that are “reasonably necessary” for carrying out the authorities of the Bureau.<sup>5</sup> The Federal Reserve then transfers the requested amount. The CFPB’s funding mechanism differs than that of other financial markets regulators, including the Federal Trade Commission, the Commodity Futures Trading Commission, or the Securities and Exchange Commission, as well as the Federal banking agencies. This process affords very little oversight of the CFPB’s budget.

## **Legislative Proposals**

The bills outlined below will be discussed during hearing:

*H.R. \_\_\_\_\_, the CFPB Dual Mandate and Economic Analysis Act*

This bill would establish the Office of Economic Analysis in the CFPB to review all proposed and existing guidance, orders, rules, and regulations. The bill would require the CFPB to identify in each proposed rulemaking the problem to be solved by the rule or regulation and the metrics the CFPB will use to measure the success of the rule or regulation. These metrics must include a measurement of changes regarding consumer access to, and the cost of, consumer financial products and services. Additionally, the purpose of the CFPB would be revised to include strengthening private sector participation in markets, without government interference or subsidies, to increase competition and enhance consumer choice.

*H.R. \_\_\_\_\_, the Taking Account of Bureaucrats' Spending (TABS) Act*

This bill would eliminate provisions that fund the CFPB using transfers from the earnings of the Federal Reserve System. The transfers under current law permit the CFPB to be funded outside of the annual appropriations process. This bill brings the CFPB into the regular appropriations process allowing for greater oversight. Additionally, this bill would bring the CFPB out from under the Federal Reserve and make it into an independent agency named the Consumer Financial Empowerment Agency.

*H.R. \_\_\_\_\_, the CFPB-IG Reform Act*

This bill would establish a separate Office of Inspector General for the CFPB. Currently, such oversight of the CFPB is combined with the Office of Inspector General for the Board of Governors of the Federal Reserve System.

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<sup>4</sup> 12 U.S.C. § 5497, *See* CFPB, “Funds transfer requests,” <https://www.consumerfinance.gov/about-us/budget-strategy/funds-transfer-requests/>.

<sup>5</sup> *Id.*

*H.R. \_\_\_\_, the Transparency in CFPB Cost-Benefit Analysis Act*

This bill would set forth information required to be included in a rulemaking made by the CFPB. Specifically, the CFPB must publish a justification of the proposed rulemaking; a quantitative and qualitative assessment of all anticipated direct and indirect costs and benefits; alternatives to the proposed rulemaking; impacts on small businesses; and any assumptions, data, or studies used in preparing this information.

*H.R. \_\_\_\_, the CFPB Whistleblower Incentives and Protection Act*

This bill would require the CFPB to provide awards to whistleblowers who report information relating to a violation of consumer financial law resulting in certain monetary sanctions exceeding \$1 million. Specifically, the CFPB would be required to award compensation to whistleblowers (1) not less than the greater of 10% of the collected monetary sanctions, or \$50,000; and (2) not more than 30% of the collected monetary sanctions. The compensation to any single whistleblower would be capped at \$5 million. The bill would also set forth requirements regarding the legal representation of a whistleblower and would provide for confidentiality regarding the whistleblower's identity.

*H.R. \_\_\_\_, the Consumer Financial Protection Commission Act*

This bill would remove the CFPB from the Federal Reserve System, convert the CFPB into an independent commission, and modify its leadership structure. Specifically, the bill eliminates the positions of director and deputy director and establishes a five-person commission appointed by the President and confirmed by the Senate.

*H.R. \_\_\_\_, Encouraging Innovation and Protecting Consumers Act*

This bill would revert the CFPB's Office of Innovation structure and operations to its original purpose.

*H.R. \_\_\_\_, Making the CFPB Accountable to Small Businesses Act*

This bill requires the CFPB to consider the impact of all rulemaking efforts on small entities and to justify its decision to not adopt certain alternatives to regulations applicable to small entities.

*H.R. \_\_\_\_, Federal Reserve Loss Transparency Act*

This bill amends the Consumer Financial Protection Act of 2010 to prohibit the Fed from transferring money to fund the CFPB if the Federal Reserve Banks incur an operating loss, and amends the Federal Reserve Act to require the Fed to follow US GAAP.