



Testimony of David Pommerehn

Senior Vice President, General Counsel, and Head of Regulatory Affairs

Consumer Bankers Association

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Subcommittee on Financial Institutions

Hearing Entitled “A New Era for the CFPB: Balancing Power and Reprioritizing  
Consumer Protections”

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Chairman Barr, Ranking Member Foster, and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss “A New Era for the CFPB: Balancing Power and Reprioritizing Consumer Protections.”

I am David Pommerehn, Senior Vice President, General Counsel, and Head of Regulatory Affairs at the Consumer Bankers Association (“CBA”). CBA is a member-driven trade association, and the only national financial trade group focused exclusively on retail banking–banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members operate in all 50 states. They include the nation’s largest bank holding companies as well as regional and super-community banks. Eighty-three percent of CBA’s members are financial institutions holding more than \$10 billion in assets.

Thank you for holding this hearing to examine recent activities at the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) and the agency’s future. CBA is hopeful the new Congress and new administration will present opportunities to reform the CFPB into credible and durable regulator that American consumers deserve.

CBA and our members support strong consumer protection regulation. We believe, however, that for the consumer financial services marketplace to operate effectively, regulators must heed the law. Under the leadership of former Director Rohit Chopra, the CFPB frequently failed to follow the law and exceeded its statutory authority. This has resulted in an unprecedented number of lawsuits filed against the Bureau by entities that it regulates.<sup>1</sup>

Under the prior administration, the Bureau frequently sought to score political points by penalizing businesses in the press, rather than prioritizing true consumer protection. While unfortunate, this outcome is no surprise given that the CFPB is statutorily structured to be immune from oversight from elected legislators. Additionally, unlike most other financial regulators, the CFPB is led by a single Director with unilateral authority, which allows for significant political and policy swings when the Bureau’s leadership changes.

We believe that facts matter and that regulators must represent facts accurately. While policymakers are entitled to their own opinions, they aren’t entitled to their own facts. Under the leadership of former Director Chopra, the CFPB frequently misrepresented its own data about the state of the consumer financial services marketplace in an attempt to justify its policies.<sup>2</sup> The prior administration’s politicization of the CFPB’s policymaking apparatus eroded public confidence in government, damaged the CFPB’s long-term credibility, and led to policy outcomes that were optimized for short-term political wins at the cost of consumers’ long-term financial health.

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<sup>1</sup> See, e.g., <https://consumerbankers.com/press-release/cba-statement-on-u-s-district-court-ruling-challenging-legality-of-cfpbs-udaap-manual-changes/>  
<https://consumerbankers.com/press-release/cba-joins-litigation-seeking-to-halt-cfpbs-illegal-credit-card-rulemaking/>  
<https://consumerbankers.com/press-release/cba-financial-trades-and-banks-file-lawsuit-against-cfpbs-overdraft-final-rule/>

<https://bpi.com/banks-challenge-cfpb-rule-jeopardizing-security-and-privacy-of-consumer-financial-data/>  
<sup>2</sup> <https://cfpbfactcheck.com>

Most importantly, we believe that American consumers deserve regulators that prioritize consideration of the impact of regulation on financial inclusion and consumers' broader access to well-regulated financial services. The Bureau should consider input from all stakeholders so its policies are based on a thorough understanding of how consumers will be impacted by its actions.

The new administration can implement numerous administrative changes— which CBA highlighted in a recent white paper— to mitigate the harm to consumers from many of the rules that were promulgated over the last four years.<sup>3</sup> Many of these changes can and should be unilaterally implemented by new CFPB leadership. However, there continues to be significant risk that a future CFPB, acting under a different administration, will only undo these changes or reproduce the dramatic shifts we saw over the last four years. To create long-term stability and credibility for the CFPB, legislative reforms are needed. Congress should enact the following legislative proposals to ensure the CFPB operates within its authority, and to create greater stability, transparency, and credibility of the Bureau.

1. H.R. 1652, the *Rectifying UDAAP Act*— After more the decade of highly politicized experimentation, the CFPB's unfair, deceptive, or abusive acts or practices (UDAAP) authority remains undefined and needs further guardrails. This is particularly the case for the CFPB's unfairness and abusiveness authorities. Congress should enact this bill to prevent future overreach under UDAAP.
2. H.R. 654, the *TABS Act*— The CFPB is unaccountable to elected legislators and has little incentive to consider the concerns of Members of Congress. Congress should enact this bill to reform the CFPB's funding structure and place appropriate checks and balances on the agency.
3. *Consumer Financial Protection Commission Act*— Unlike most other financial regulators, the CFPB is run by a single Director with unilateral authority. Congress should enact this bill to establish a bipartisan commission leadership structure at the Bureau.
4. *Transparency in CFPB Cost-Benefit Analysis Act*— Many of the CFPB's rulemakings under the previous Director would fail a rigorous cost-benefit analysis. Congress should enact this bill to require the Bureau to show its work and demonstrate that it is putting consumers over politics. Appropriate cost-benefit analysis at the “front end” of the regulatory process, particularly when coupled with a robust lookback process for reviewing and reconsidering rulemakings at the “back end” can be among the most important reforms for the CFPB's rulemaking culture.
5. *CFPB-IG Reform Act*— Despite the CFPB being such a consequential regulator with significant power over the consumer financial services marketplace, it currently shares an Inspector General with the Federal Reserve. Congress should enact this bill to ensure the CFPB's operations are reviewed by an independent entity full-time.

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<sup>3</sup> <https://consumerbankers.com/wp-content/uploads/2025/01/CBA-CFPB-White-Paper-1-13-25-updated.pdf>

6. *Additional areas for CFPB reform*— As discussed earlier, we believe that Congress should consider additional ways to improve CFPB regulation and supervision, such as (1) mandatory lookbacks to review major rules, which would require that the CFPB sunset or re-propose problematic rulemakings, and (2) encouraging regulated entities to self-report and remediate compliance issues by weighing such proactive measures in the CFPB’s decision-making process regarding follow-on enforcement activity.

1. **The CFPB’s UDAAP authority is undefined and in need of reform.**

Treating customers fairly and closely following consumer protection laws are core to banks’ business models. However, since the Bureau’s creation by the Dodd-Frank Act, the Bureau’s UDAAP authority has been largely undefined and closed to input from stakeholders. A clear and defined process created by this legislation will provide guardrails, which are needed to ensure that regulated entities know what is or is not permitted and how they can comply.

The Federal Trade Commission Act, which arises under different statutory authorities and is subject to different statutory constraints, similarly prohibits unfair and deceptive acts or practices (UDAP) in commerce. This concept has been developed and refined over many decades by regulation and case law. The prudential bank regulatory agencies— the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and Federal Reserve— have long examined banks for compliance within the confines of the FTC’s concept UDAP authority.<sup>4</sup> Importantly, in 2021, the Supreme Court unanimously held that, for decades, the FTC had overreached its statutory authority by assessing monetary penalties for practices that the FTC had not previously indicated are prohibited.<sup>5</sup> Unfortunately, the CFPB’s UDAAP authority lacks comparable statutory limits and, on a number of occasions, the CFPB has retroactively assessed a civil money penalty for a practice that was not previously identified as being prohibited.<sup>6</sup>

By granting new and undefined UDAAP authority to the Bureau, the Dodd-Frank Act created an anomaly within the existing and well-documented regulatory regime. Beyond that, after more than a decade, it is still unclear whether “abusive” acts and practices are not already “unfair” or deceptive.” This has placed all companies that the Bureau regulates at risk of inadvertent noncompliance because it is still unclear how or when the “abusive” standard will be applied.

A prime example of why the CFPB’s UDAAP authority is in need of reform is the Bureau’s March 2022 update to its UDAAP exam manual, in which it added provisions to reflect its new view that “unfairness” can be applied to alleged discriminatory practices. The CFPB’s action created significant uncertainty in the financial services marketplace to the detriment of consumers and banks alike. Further, it raised profound substantive and procedural legal concerns. In essence, the CFPB went beyond its authority by extending fair lending laws to non-lending products and services, meaning that discriminatory conduct could violate UDAAP even in instances where fair lending laws do not apply.

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<sup>4</sup> After the enactment of the Dodd Frank Act, the prudential regulators’ UDAP examinations were limited to banks with less than \$10 billion in assets.

<sup>5</sup> [https://www.supremecourt.gov/opinions/20pdf/19-508\\_l6gn.pdf](https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf)

<sup>6</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-regions-bank-pay-191-million-for-illegal-surprise-overdraft-fees/>

Congress has been deliberate in applying fair lending principles, specifically disparate impact or treatment analysis (e.g., Fair Housing Act). The Bureau's application of these principles to UDAAP is a clear violation of the authority given to it by Congress. UDAAP should not be used as a 'gap filler' where Congress has clearly defined certain principles. To support this notion, in 2015, the Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), addressed when a statute can support a disparate impact claim. But there, the Supreme Court concluded that "antidiscrimination laws" may be construed to encompass disparate impact claims, but only when certain other conditions were met. Thus, the first prerequisite to imposing disparate impact liability is that the statute must be an antidiscrimination law. The CFPB's UDAAP authority is not an antidiscrimination law.

The CFPB's actions left industry with little choice but to pursue legal correction of this overreach. In September 2022, CBA and other trade associations filed a lawsuit challenging the exam manual update on several grounds, including the agency's lack of statutory authority and failure to follow appropriate rulemaking procedures.<sup>7</sup> In September 2023, a U.S. district court granted CBA and other plaintiffs' motion for summary judgment and denied the CFPB's counter motions. In granting CBA and the other plaintiffs' motion, the court deemed the CFPB's March 2022 update to the UDAAP exam manual beyond the agency's constitutional and statutory authority and vacated the update in its final judgment.<sup>8</sup> The CFPB is appealing the decision to the Fifth Circuit Court of Appeals.

Given the Bureau's misuse of its UDAAP authority, reforms are needed. CBA calls on Congress to enact due process protections under UDAAP consistent with those adopted by the CFPB in 2020, which were subsequently reversed by the current CFPB Director, among other reforms.<sup>9</sup> These include:

- Ensuring the CFPB cannot retroactively seek a civil money penalty for a practice that was not previously identified as being prohibited under UDAAP;
- Requiring the Bureau to conduct a rulemaking to clearly define "abusive act or practice";
- Not conflating the concepts of "abusive," "unfair," and "deceptive" with one another, and reining in the CFPB's use of "unfair" and "abusive," in particular; Providing institutions that self-report UDAAP issues with an opportunity to cure violations before enforcement penalties are sought;
- Reiterating that discrimination is not part of UDAAP;
- Seeking monetary penalties only when there has been a lack of good faith effort to comply with the law (not to impede the Bureau's ability to seek restitution for consumers who were harmed); and
- Not challenging conduct as abusive when the benefits to consumers outweigh the alleged harms.

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<sup>7</sup> <https://www.consumerbankers.com/cba-media-center/media-releases/cba-leading-financial-groups-pursue-legal-action-against-cfpb>

<sup>8</sup> [https://www.consumerbankers.com/sites/default/files/CBA-Chamber-of-Commerce-CFPB\\_Final-Judgment.pdf](https://www.consumerbankers.com/sites/default/files/CBA-Chamber-of-Commerce-CFPB_Final-Judgment.pdf)

<sup>9</sup> <https://consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

CBA appreciates that the *Rectifying UDAAP Act* would make these important reforms and urges Congress to enact the bill.

2. **The CFPB's funding structure should be reformed to provide proper checks and balances and enable the legislative branch to conduct rigorous oversight.**

The Bureau frequently exceeds the limits on its authority established by Congress because it is almost completely insulated from Congressional oversight. Absent a requirement to justify its budget and regulatory activities to Congress, the Bureau has little incentive to be responsive to oversight from elected legislators. Subjecting the CFPB to the annual Congressional appropriations process would not only compel the Bureau to begin taking oversight seriously— it would also provide Congress with ongoing opportunities to review and adjust the CFPB's budget as needed so that it can appropriately regulate the products and services offered to consumers by financial service providers.

CBA urges Congress to enact the *TABS Act* and to address the CFPB's funding in reconciliation legislation.

3. **The CFPB's leadership structure should be changed to reduce radical pendulum shifts between administrations and bring long-term stability to the Bureau.**

The CFPB's single-Director structure has made the Bureau a political lightning rod instead of a steady and consistent voice for consumer protection regulation and best practices expected from a world class regulator. The lack of long-term consistency in the rules and actions taken by the Bureau adversely affects consumers and the financial services industry by making it difficult for institutions to innovate new products and services and to meet consumers' evolving needs.

If enacted into law, this bill would create a bipartisan commission to lead the CFPB— consistent with the leadership structure of many other financial regulatory agencies— rather than a single agency head. Consistent and durable consumer protection is created by ensuring stability between administrations and is based on transparency between regulatory agencies and the industries they regulate. Passing this much-needed reform would establish a bipartisan commission at the Bureau and with it bring transparency and stability, and insulate this regulator from political shifts.

Additionally, due to the Supreme Court's ruling in *Seila Law v. Consumer Financial Protection Bureau*, the CFPB Director is now removeable at will by the President. While CBA believes this result is positive in that it places a limit on the exhaustive powers of the CFPB Director, it also unfortunately subjects the Bureau to drastic policy shifts based on political ideology. As demonstrated by other financial regulators, a bipartisan commission would create the stability consumers deserve.

CBA urges Congress to enact the *Consumer Financial Protection Commission Act*.

4. **The CFPB should be required to conduct more robust cost-benefit analysis when**

**issuing policies to ensure it puts consumers over politics.**

Cost-benefit analysis is an important tool for regulators to use to balance the costs of implementing and complying with a regulation for all affected parties. A number of executive branch agencies must conduct cost-benefit analysis as part of the rulemaking process, which is overseen by the Office of Information and Regulatory Affairs (OIRA). However, independent regulatory agencies like the CFPB do not have sufficiently rigorous statutory cost-benefit analysis requirements and are not subject to OIRA review. Section 1022 of the Dodd-Frank Act only requires the Bureau to “consider” the costs associated with rules but leaves the details largely up to the CFPB’s discretion, often resulting in lopsided rules that may sound positive in concept but have damaging consequences. Weighing both the advantages and regulatory compliance burdens of proposed rules will lead to more balanced policies from the CFPB.

Importantly, the *Transparency in CFPB Cost-Benefit Analysis Act* would require the CFPB to (1) publish a justification of the proposed rulemaking, (2) conduct a quantitative and qualitative assessment of all anticipated direct and indirect costs and benefits, (3) identify alternatives to the proposed rulemaking, (4) consult with the Small Business Administration Office of Advocacy if a proposed rule would increase costs for small businesses, (5) ensure the proposed rule is not duplicative, inconsistent, or incompatible with other existing rules, and (6) disclose all assumptions, data, and studies used in preparing the rulemaking.

The Bureau’s credit card late fees rule is a perfect example of why more thorough cost-benefit analysis is needed. The CFPB’s proposed rule to reduce the safe harbor dollar amount for credit card late fees to \$8 noted the Bureau’s lack of data analysis needed to truly understand its consumer impact. In the proposal, the Bureau claimed that it could help some credit card customers. However, the Bureau acknowledged in the proposal that cardholders who never pay late— which the CFPB’s own data indicates is 74 percent of all Americans with credit cards— will not benefit from the reduced fees and could experience “...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts,” and that increased costs could completely negate any benefits.<sup>10</sup> Banks are required by their prudential regulators to manage and offset credit risk, and a reduction of the ability for financial institutions to recoup costs could result in a tightening of credit availability for some consumers. The rigorous review of a detailed cost-benefit analysis would prevent additional burdens from being placed on the consumer.

CBA urges Congress to enact the *Transparency in CFPB Cost-Benefit Analysis Act*.

5. **An agency as important and powerful as the CFPB should be reviewed by an independent entity that is dedicated to the Bureau full-time.**

Most financial services regulators, and more than 30 other federal agencies, have their own dedicated Inspector General (IG), but the Bureau shares one with the Federal Reserve. The *CFPB-IG Reform Act* would ensure the CFPB’s operations are audited by an independent and impartial entity by establishing an independent IG specifically for the agency. Having a dedicated third-party auditor would bring more accountability to the Bureau and provide

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<sup>10</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf)  
<https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>

Congress with important information on its internal operations.

6. **Congress should consider additional ways to improve CFPB regulation and supervision such as lookbacks to review major rules and allowing regulated entities to self-report compliance issues.**

Congress should look to ensure the effectiveness and necessity of CFPB regulations through regular lookbacks. As the number and scope of financial regulations increases, there is a lack of understanding as to how effective they are at meeting their stated objectives. There is currently limited effort on the part of regulators to understand how their rules have improved outcomes for consumers and markets, skewed them, or resulted in little to no changes while increasing the regulatory burden. Congress can help the public better understand how effective financial regulations are by requiring regular lookbacks that examine the effectiveness of regulations after a period of time based on how they have either succeeded or failed to meet their primary objectives.

CBA encourages Congress to work in a bipartisan manner on to determine whether a more rigorous regulatory “lookback” requirement could be implemented that requires the CFPB, or possibly the Federal Reserve Board, to regularly assess the effectiveness of major rulemakings to determine whether the benefits of those rules outweigh the costs. These reviews should consider impacts to access to credit, risk-based pricing, compliance costs, and other factors. We believe that a rigorous lookback process could be tied to equally rigorous consequences, for instance, by defaulting the CFPB to Administrative Procedure Act processes to either sunset or repropose rulemakings whose benefits are not shown to outweigh their costs.

Additionally, the Rectifying UDAAP Act would allow regulated entities to self-report and remediate potential UDAAP compliance problems without the threat of heavy-handed enforcement by the CFPB. Congress should consider expanding this to all areas of CFPB regulation and supervision. This would incentivize consumer financial services providers to correct compliance issues promptly for the benefit of their customers.

**Conclusion**

During the previous administration, the Bureau’s leadership unfortunately prioritized short-term political wins over what is best for consumers. Enacting the legislative changes recommended in this testimony would help protect against the radical pendulum shifts that have taken place in the last three administrations and result in policies that are more measured and durable. CBA is eager to work with Congress and the administration to establish long-term stability and credibility at the CFPB for the benefit of consumers.