

Reforming the CFPB into a Strong and Durable Regulator Americans Deserve

The incoming Administration has a pivotal chance to enact significant, lasting reforms to the CFPB, reshaping it into the trustworthy and resilient regulator that Americans need.

The American financial system is among the most competitive and well-regulated in the world. The nation's leading retail banks provide the tools necessary to help consumers and small businesses thrive, all while adhering to stringent federal oversight and supervisory requirements enforced by a myriad of regulatory agencies.¹

Policymakers must strike the appropriate balance and understand the consequences of more, and often redundant, regulation. While promoting the safety and soundness of our banking system and consumer protections are critical imperatives, it is also essential to examine the consumer impact of each rule as well as how the unconsidered, cumulative impacts of regulation² could threaten to push lending outside of the banking system to less regulated entities, and can add costs³ that are ultimately borne by consumers.⁴ **This balance requires policymakers who are apolitically steadfast in their mission, operate within their statutory authority, and who base their regulation on facts and data.**

Unfortunately, in recent years, financial regulators have often put politics over policy, advancing⁵ ideologically driven rules unsupported by sound facts and data. In many cases, this may ultimately harm the very consumers they are meant to protect.⁵ In doing so, these agencies often exceed Congressional authorization. But, perhaps even more importantly, this overreach has long-term

impacts at the cost of public trust; reduced durability of rules and diminished credibility for government overall.

This has been especially evident at the Consumer Financial Protection Bureau (CFPB), a relatively new agency tasked with enforcing federal consumer protection laws across financial services. While the agency has suffered from dramatic political swings that have resulted in seismic shifts in its approach to regulation and enforcement since its inception, its actions over the last four years extend beyond political swings and should concern all Americans.

In countless instances, the CFPB regularly strained—or flat out disregarded—the clear language of its legal authority to advance blatant political goals.⁶ Using faulty data and facts⁷ to support its rulemakings, it failed to consider the true impact to consumers of its rules. As a result of this government overreach, millions of consumers could be deprived of financial tools and access to credit—escalating their risk of being de-banked.

The incoming Administration has a unique and important opportunity to institute meaningful reforms to the CFPB, in both the immediate and long-term, that can help transform the agency into the credible and durable regulator Americans deserve.

About Consumer Bankers Association

The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—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 include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

Learn more at consumerbankers.com/CFPBReform.

**To learn more about white paper and CBA’s policy agenda,
visit OurVisionForAmerica.com.**

Executive Summary

This document sets out immediate and longer-term actions the incoming Administration could act upon and, separately, legislation for the new Congress to prioritize.

Immediate Regulatory Corrections: The following actions can immediately reverse several of the most egregious regulatory actions taken by the prior Administration:

- ✓ Repeal improperly issued guidance documents.
- ✓ Extend the effective date of the Overdraft Rule. The CFPB should then issue a new proposal, rescinding the rule.
- ✓ Extend the effective date of the Credit Card Late Fee Rule. The CFPB should then settle the litigation by issuing a new proposal, rescinding the rule.
- ✓ Extend the effective date of the Dodd Frank Act Section 1033 Rulemaking. The CFPB should then settle the litigation by issuing a new proposal, rescinding the rule.

Near-Term Administrative Reforms: Implementing changes to current administrative and personnel policies in effect at the CFPB will bolster the agency's ability to deliver on its core functions while simultaneously restoring the American people's confidence that their tax dollars are being spent effectively:

- ✓ Institute standard agency staffing structure.

Long-Term Reforms: New CFPB leadership should also consider the following reforms that should be accomplished over the next four years to strengthen the credibility and durability of a regulator tasked with overseeing an industry that is critical to the nation's economic stability – one which serves millions of Americans:

- ✓ Review supervisory highlights, guidance, and enforcement activity for adherence to the Administrative Procedure Act (APA).
- ✓ Commit to conducting cost-benefit-analysis of all rulemakings on the impact of financial inclusion and risk-based pricing.
- ✓ Commit to aligning the CFPB's use of its Unfair, Deceptive, and Abusive Acts and Practices (UDAAP) authorities with the Supreme Court's clarification of the Federal Trade Commission's Unfair Deceptive Acts and Practices authority.
- ✓ Commit to include counterparty review of press releases when settling enforcement and supervision voluntary commitments.
- ✓ Ensure consistent consumer protections and risk management for consumers across the industry.

The Important Role of Congress: Congress can and should take appropriate action to pass legislation to ensure the CFPB operates within its authority, and to create greater stability, transparency, and credibility of the CFPB. By advancing the following legislative proposals, lawmakers would help to strengthen the credibility of the agency while ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals:

- ✓ Rectifying UDAAP Act
- ✓ Transparency in CFPB Cost-Benefit Analysis Act
- ✓ CFPB Commission Act
- ✓ Ensuring policymakers consider the cumulative impact of proposed regulation
- ✓ Ensuring the effectiveness and necessity of regulations through regular lookbacks
- ✓ Taking Account of Bureaucrats' Spending (TABS) Act
- ✓ CFPB-IG Reform Act
- ✓ Bank Loan Privacy Act

Immediate Regulatory Corrections

Recognizing the impact of the CFPB on the American financial system and the broader economy, CBA recommends the following reforms to immediately reverse several of the most egregious regulatory actions taken by the prior Administration.

★ Repeal improperly issued guidance documents.

Throughout Rohit Chopra's tenure as Director of the CFPB, the agency issued a wide array of "guidance documents" that constituted a radical departure from the actions of prior leadership and expectations for industry.⁸ Specifically, the CFPB frequently publicized new legal obligations as "guidance," contravening important procedural safeguards and the limits of its statutory authority, as set by Congress under federal law, including most recently:

- On Oct. 11, 2023, the Bureau issued an Advisory Opinion on Section 1034(c) of the Dodd-Frank Act, which creates new regulatory requirements and entirely new categories of enforcement liability ("Dodd Frank Act 1034(c) Advisory Opinion").⁹
- On Sept. 17, 2024, the CFPB issued a consumer circular regarding overdraft opt-in practices, creating new requirements that are contrary to long-standing rules and practice concerning record retention requirements for evidence of opt-in to overdraft services.¹⁰
- On January 10, 2025, the CFPB proposed an Interpretive Rule on Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emergent Payment Mechanisms.¹¹ Among other things, the interpretive rule stated credit card rewards points accounts that allow consumers to buy points that can be used to purchase goods from multiple merchants can, based on the specific facts and circumstances, be "accounts" under the Electronic Fund Transfer Act (EFTA).¹²

Recommendation: Announce an intent to reconsider interpretive rules and stating that in the meantime the Bureau does not intend to rely on those interpretations in its supervisory and enforcement work and that private parties should not assumed that those interpretations represent the Bureau's current understanding of the law. The new Trump-appointed CFPB leadership should repeal all improper guidance, including the Dodd Frank Act 1034(c) Advisory Opinion¹³ and Circular 2024-05 re: Improper Overdraft Opt-In Practices.¹⁴

★ **Extend the effective date of the Overdraft Rule. The CFPB should then issue a new proposal, rescinding the rule.**

On Dec. 12, 2024, the CFPB issued a Final Rule¹⁵ restructuring and restricting consumer overdraft services offered by banks that exceed \$10 billion in assets (referred to by the CFPB as Very Large Financial Institutions). Banks with assets of less than or equal to \$10 billion do not have to change their overdraft practices.

- The CFPB largely dismissed concerns raised by industry commenters¹⁶ about the CFPB's lack of authority to issue this rule and most importantly the impact of the rule on consumers.¹⁷ As noted by the Wall Street Journal Editorial Board, "Forcing banks to cut their fees, or to offer overdrafts as standardized loans, could prompt many to limit the service, especially to low-income and low-credit customers. That would drive customers in a pinch toward high-interest credit such as payday loans."¹⁸



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- The Wall Street Journal Editorial Board

- Overdraft fees are transparently disclosed and charged in return for a valuable service that consumers choose to use. By law, consumers can only be charged overdraft fees for one-time purchases with their debit cards at the point of sale or ATMs if they affirmatively opt-in to the service. After opting in, consumers still have the opportunity to opt-out at any time by contacting their bank if they change their minds.
- The CFPB also disregards a wide range of bank-led innovations, which have enhanced consumer benefits¹⁹ and delivered significant savings within the overdraft ecosystem over the past decade.²⁰ Some of these new features include the introduction of remote-deposit capture for depositing checks via mobile phones, real-time payment alerts, low balance alerts, a cushion before a fee is charged, and Next Day Grace to eliminate extended or sustained overdraft fees. In combination, the CFPB's own data shows that banks have reduced overdraft fees by more than 50 percent since the pandemic—all by just competition and innovation.²¹
- In December 2024, leading financial groups, including banks and credit unions of all sizes, jointly filed suit against the CFPB, challenging the agency's authority to implement the final rule and raising concerns that the CFPB failed to adequately account for the impact the rule would have on consumers struggling to make ends meet.

Recommendation: The CFPB should withdraw the final overdraft rule. The CFPB should then issue a new proposal, rescinding the rule.²² Although the CFPB finalized the overdraft rulemaking,²³ the rule will not be effective until October 2025. Accordingly, a new CFPB should extend the effective date for the rulemaking and then re-propose the rule.²⁴

★ **Extend the effective date of the Credit Card Late Fee Rule. The CFPB should then settle the litigation by issuing a new proposal, rescinding the rule.**

On March 5, 2024, the CFPB finalized its proposed rule that would cut the Federal Reserve Board's longstanding safe harbor for credit card late fees from \$30 (\$41 for subsequent late payments) to \$8, without an inflation adjustment.²⁵ Last year, several leading financial groups challenged the legality of this rulemaking through litigation.

- Credit card late fees are authorized under Regulation Z, which implements TILA. By law, these fees are clearly disclosed to the consumer up front and are entirely avoidable.
- While the final rule may provide short-term savings to the consumer, the long-term costs associated with consistently paying late are significantly more damaging. The consumer will likely carry a higher balance, resulting in higher interest charges and smaller principal payments. This may lead to a lower credit score, making it more difficult and expensive for the consumer to obtain other types of credit. Further, this rule will almost certainly push additional consumers into "persistent debt" when they pay more in interest and fees over an 18-month period than their balances.
- The CFPB has openly conceded that the majority of card holders would see their credit card interest rates increase and credit availability decrease. These higher costs not only affect frequent late payers who the rule purports to support, but it also increases costs for the nearly 74 percent of consumers that pay their credit card bills on time and, accordingly, would see no offsetting benefits from the rulemaking. This includes 50 percent of subprime credit card borrowers who currently pay on time, but would have a harder time doing so after the rule.²⁶

Recommendation: Because the CFPB has finalized the Late Fee rulemaking, new CFPB leadership should extend the effective date of the rulemaking. It should then settle the litigation and re-propose the rule.²⁷



Yet as even the CFPB acknowledges, the lower penalty may cause more borrowers to pay late, and as a result incur higher "interest charges, penalty rates, credit reporting, and the loss of a grace period." This would make it harder to qualify for an auto loan or mortgage.

The agency concedes that credit-card issuers may also raise interest rates, reduce rewards, "increase minimum payment amounts or adjust credit limits to reduce credit risk associated with consumers who make late payments." Because some states cap credit-card interest rates, "some consumers' access to credit could fall."²⁸

- The Wall Street Journal Editorial Board

★ **Extend the effective date of the Dodd Frank Act Section 1033 Rulemaking. The CFPB should then settle the litigation by issuing a new proposal, rescinding the rule.**

On Oct. 22, 2024, the CFPB issued a final rule implementing Section 1033 of the Dodd-Frank Act, which addresses consumers' personal financial data rights ("Section 1033 Final Rule").²⁹ The nation's leading banks largely support consumer access to their financial data and a move to a more open banking system. Many have already invested heavily in developing open application programming interfaces (APIs), enabling outside parties to build consumer products that draw from their consumers' financial data. Unfortunately, this rule threatens such innovation. Among the concerns this final rule poses:

- The CFPB continues to rely on inaccurate assertions that this rulemaking is needed to increase competition in the marketplace.³⁰
- The rule goes far beyond a short section of statute by requiring banks to subsidize a vast open banking marketplace.
- Importantly, provisions in the final rule jeopardize consumers' control and security of their data and will increase fraud in a number of ways.

Recommendation: Recognizing this final rule fails to reflect market, technological, and practical realities, new CFPB leadership should extend the effective date of the Dodd Frank Act Section 1033 Rulemaking. The CFPB should then settle the litigation by issuing a new proposal, rescinding the rule. At the very least, the CFPB should reconsider several aspects of the final rule, such as the compliance timeframes and the rule's push into payments.³¹



While industry largely supports the underlying principles of open banking and how it may enhance consumer experiences, the CFPB should avoid relying on inaccurate assertions about competition in the market to support its rulemaking efforts.

The U.S. has one of the largest, most diverse and most competitive financial industries in the world, especially compared to other advanced economies that have highly concentrated and coordinated banking markets, with roughly 4,000 competing daily for consumers' business."³¹

- Law360

Near-Term Administrative Reforms

In addition to these financial regulatory reforms, it is equally important to recognize systemic administrative and personnel policies currently in effect at the CFPB that hinder the agency's ability to deliver on its core functions while simultaneously sowing doubt in the American people's confidence that their tax dollars are being spent effectively.

★ Institute standard agency staffing structure.

In contrast to prior agency leadership, Director Chopra has appointed dozens of fellows and senior advisors that are similar to political appointees tasked with advancing the priorities of the current Administration, but whose unique roles enable them to remain at the agency in perpetuity.

- The CFPB has used 5 CFR 213.3102(r) authority in the past for its term-limited Directors Financial Analyst positions; Technology & Innovation fellowships; and in hiring at least two dozen Markets Fellows, as reported in a 2022 response to a Congressional inquiry. This creates more of an unelected bureaucratic state at the Agency, despite these individuals operating more as political staff that carry over from Administration to Administration.
- In response to Congressional inquiries, the current CFPB has conceded that it has taken the position that its Markets Fellows can receive compensation from outside groups, after receiving permission from a designated agency ethics officer.

Further, CFPB ethics requirements strongly disincentivize the recruitment and retention of personnel with industry expertise relevant to the CFPB's authorities and mandates.³²

- All government regulatory bodies should be guided by staff with a deep knowledge and understanding of the industry they oversee. This is especially important for the consumer finance markets, given the unique nature of how banks operate, the challenges they face, and the complexities of financial markets.

Recommendation: Release or reassign the 40+ politically tapped fellows and senior advisors that Director Chopra has embedded throughout the CFPB using term-limited fellowship positions or Schedule C³³ appointments.³⁴ The CFPB should also adjust its ethics requirements to allow individuals with industry experience to serve in senior positions at the Bureau.

Long-Term Reforms

While new CFPB leadership can quickly take action on the regulatory and administrative reforms above to strengthen the credibility and durability of a regulator tasked with overseeing an industry that is critical to the nation's economic stability – one which serves millions of Americans – the next Administration should also consider the following reforms that can and should be accomplished over the next four years.

★ **Review supervisory highlights, guidance, and enforcement activity for adherence to the APA.**

Recommendation: The new CFPB should rescind any guidance that should have been promulgated for notice and comment under the APA and re-propose any rescinded guidance as a Notice of Proposed Rulemaking, where necessary.

★ **Commit to conducting cost-benefit-analysis of all rulemakings on the impact of financial inclusion and risk-based pricing.**

Recent regulations finalized or proposed by federal banking regulators, including the CFPB, do not consider the effects regulatory proposals have on low- and moderate-income and underserved consumers' access to financial products and services, including bank accounts and credit products.

- Regulatory restrictions could preclude banks from expanding underserved communities' access to products that promote wealth building, small business growth and economic resilience.

Recommendation: The new CFPB should commit to conducting cost-benefit-analysis of all rulemakings on the impact of financial inclusion and risk-based pricing.³⁵

★ Commit to aligning the CFPB’s use of its Unfair, Deceptive, and Abusive Acts and Practices (UDAAP) authorities with the Supreme Court’s clarification of the Federal Trade Commission’s Unfair Deceptive Acts and Practices authority.

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. Many depository institutions are now supervised by the CFPB for UDAAP violations and by their prudential regulator for violations, resulting in an overlapping and often confusing supervisory regime.

Beyond that, Congress did not provide clarity as to why the additional ‘abusive’ prong was created, and it was not adequately defined when these powers were granted to the Bureau. 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 or how it is different from unfair or deceptive.

- In 2020, the Supreme Court clarified that the Federal Trade Commission had incorrectly been using its authority to seek permanent injunctions under Section 13(b) of the FTC Act to seek monetary, rather than injunctive relief.

Recommendation: Although the CFPB’s “UDAAP” authority arises from a different statutory mandate, a new CFPB should similarly commit to using its UDAAP authority to direct market actors to cease and desist new market practices. When articulating new standards for Unfair, Deceptive, or Abusive acts or Practices, the CFPB should limit supervisory and enforcement penalties to injunctive, rather than monetary, relief. The CFPB should consider seeking monetary relief only after it has actually announced and/or clarified this new standard of care to the general public.

★ Commit to include counterparty review of press releases when settling enforcement and supervision voluntary commitments.

Over the past four years, the CFPB has published and promoted press releases with language that lacks important context, intended to garner headlines and incite outrage rather than convey the facts.

- While always egregious, such intentional dishonesty is especially terrible in those instances when the agency is announcing enforcement and voluntary supervision commitments.

Recommendation: The CFPB should stop “gotcha” naming and shaming of covered persons, particularly its longstanding habit of releasing press releases that differ from the legal agreements the agency enters with settling parties.

★ Ensure consistent consumer protections and risk management for consumers across financial services.

The CFPB was created prior to the term “fintechs” and prior to when the majority of different lending activities (e.g. mortgage, personal loans, etc.) had moved to non-banks. Part of the CFPB’s mission is to ensure consumers have the same protections whether they get their financial services at a bank or with a non-bank.

These unlevel regulatory requirements create significant risks for consumers. Many consumers may not even recognize that the retail “banking” products they are using from a non-bank do not offer the same types of controls and protections as those offered by traditional banking organizations.

CBA has long called for the CFPB to ensure that they fulfill this mission so that consumers receive consistent protections in the rapidly evolving financial services marketplace.

- In addition to consumer protection, the CFPB also has a meaningful role in ensuring strong and consistent risk management across the financial services industry. While comprehensive and robust risk management frameworks exist for governing the activities of banking organizations, such frameworks only indirectly and occasionally apply to non-banks. Non-banks lack the same rigorous guidance regarding model risk management.
- Model Risk Management (“MRM”) is a crucial area where non-bank financial institutions fall short. Non-bank financial institutions only encounter MRM risk management expectations when they interact with banks, due to banks’ stringent third-party risk management requirements. However, non-banks are not subject to, nor examined for compliance with these MRM expectations, leaving a significant gap in oversight.

This gap in risk management practices is especially apparent in the use of artificial intelligence (AI). The Federal Reserve Board and the Office of the Comptroller of the Currency (OCC) issued joint Guidance on Model Risk

Management (MRM Guidance) in 2011, which was intended for use by banking organizations as they consider risks related to the use of models in financial services.³⁶ The Federal Deposit Insurance Corporation (FDIC) adopted the same guidance in 2017.

- This guidance is as appropriate for the governance of AI system risk as it is for the governance of traditional model risk. Banks have used AI with supervision from regulators for many years.
- While the existing laws, regulations, and supervisory guidance may not specifically address AI, they do establish the principles for effective risk management, governance, and controls regarding the use of various technologies, including AI. In particular, supervisory guidance on Model Risk Management (“MRM”) provides a key framework for managing the risks from AI.

Recommendation: Given these discrepancies, it is imperative for regulators to take action to harmonize AI-related risk management practices across the industry and issue model risk management-style guidance for public comment (and begin examinations) regarding the use of artificial intelligence by non-banks. Ensuring that non-bank financial institutions adhere to the same rigorous standards as banks will provide consumers with consistent protections and enhance the overall stability of the financial system.

The Important Role of Congress

While the next Administration can implement many of the above changes to mitigate the harm to consumers from many of the rules that were promulgated over the last four years, there continues to be significant risk that a future CFPB, acting under a different Administration, will only undo these changes or produce similar dramatic shifts in approaches to consumer protection regulation.

To create long-term stability and credibility for the CFPB, meaningful reforms are needed. Congress can and should take appropriate action to pass legislation to ensure the CFPB operates within its authority, and to create greater stability, transparency and credibility of the CFPB. By advancing the following legislative proposals, lawmakers would help to strengthen the credibility of the agency while ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals.

★ Rectifying UDAAP Act³⁷

The Rectifying UDAAP Act will provide needed clarity on the CFPB's use of this authority, ensure greater transparency and adherence to clearly defined statutory requirements by the Bureau, and ensure high regulatory standards are maintained. Treating customers fairly and closely abiding by consumer protection laws are core to banks' business models. Specifically, this legislation would:

- Restrict CFPB's authority to deem a financial practice abusive for purposes of enforcement activities, including by additionally requiring the act or practice to intentionally interfere with the ability of a consumer to understand a term or condition. Conduct would need to be not reasonably avoidable by consumers; not outweighed by countervailing benefits to consumers or to competition or otherwise prohibited under federal consumer financial law.
- Eliminate the CFPB's ability to seek monetary relief for unfair, deceptive, or abusive acts or practices if the provider establishes a good faith effort to comply with requirements. The bill also establishes the right for providers to cure violations if they self-report and limits the CFPB's use of alternative claims in court.
- Establish rulemaking requirements, including requiring a cost-benefit analysis for a rule relating to unfair, deceptive, or abusive acts or practices.

Developing and maintaining customer relationships are practices banks take seriously and adhere to daily. A clear and defined process created by this legislation will provide guardrails that are needed to ensure that regulated entities know what is or is not permitted and how they can comply with the law.

★ Transparency in CFPB Cost-Benefit Analysis Act

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. While a number of executive branch agencies must conduct cost-benefit analysis as part of the rulemaking process, independent regulatory agencies like the CFPB do not have a rigorous statutory cost-benefit analysis requirement.

- Dodd-Frank requires the Bureau to consider the costs associated with rules but leaves the details largely up to the agency's discretion. This lack of consistency creates lopsided rules that may sound positive in concept but have damaging consequences.

Importantly, the Transparency in CFPB Cost-Benefit Analysis Act would:

- Require that the CFPB 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.

★ CFPB Commission Act³⁸

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, 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.

★ Ensuring policymakers consider the cumulative impact of proposed regulation.

Regardless of their intention, new rules and regulations in the financial services marketplace can pose unintended consequences for consumers, small businesses, banks, and the economy. As Federal Reserve Governor Michelle Bowman said this year, “Additional regulation and heightened supervisory expectations are not cost-free, particularly for community banks that may have limited resources, especially when we consider the cumulative impact of existing and proposed regulations.”³⁸

There are numerous examples of the harmful effects of the cumulative impact of different rules and regulations and the additional costs that often result for consumers. For example:

- Recent analysis examines the combined impact of the CFPB’s overdraft rule and the Federal Reserve’s proposed debit interchange rule. While each one of these rules on their own would increase costs and reduce access to important liquidity, the cumulative impact of the two rules is even greater. Analysis found that if a typical large, regional bank were to pass through just 50 percent of its lost revenue to break even, the annual cost for each mass market consumer would increase substantially with an estimated 29 to 42 percent increase in annual checking account fees.⁴⁰

Developing and passing into law a legislative proposal that would provide necessary requirements for policymakers to examine potential impacts on key stakeholders would bolster the credibility of the nation’s regulatory agencies, including the CFPB, while also yielding more durable laws that deliver on their intent in the market. Congress has the opportunity and responsibility to work in a bipartisan manner on a legislative proposal intended to:

- Ensure new regulations do not unintentionally restrict access to essential financial products and services, particularly for underserved communities, low-income consumers, and those with limited credit history.
- Balance the need for stringent consumer protection with the flexibility for lenders to price products based on individual risk profiles to promote responsible lending while protecting those consumers who may rely on risk-based pricing for access to credit.
- Mitigate the potential for overregulation, which could stifle innovation in financial services and make it harder for consumers to access affordable products.

★ Ensuring the effectiveness and necessity of 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.

Congress has the opportunity and responsibility to work in a bipartisan manner on a legislative proposal intended to:

- Require an independent research agency (GAO or CRS) to examine the effectiveness of major financial regulations policies after a period of five to 10 years.

If there is sufficient evidence suggesting the rule has not been effective in meeting its objectives, the regulation would sunset after a period of time unless the regulatory agency repropose it with changes to improve its effectiveness moving forward.

★ Taking Account of Bureaucrats' Spending (TABS) Act⁴¹

Absent a requirement to justify its budget and regulatory activities to Congress, the CFPB currently has little incentive to be responsive to oversight from elected legislators. By passing the TABS Act into law, lawmakers can help mend this flawed structure by subjecting the CFPB to the annual Congressional appropriations process. This would provide Congress with ongoing opportunities to review and adjust the CFPB's budget as needed.

- The TABS Act would restructure and rename the CFPB as the Consumer Financial Empowerment Agency and establish it as an independent agency outside of the Federal Reserve System.
- The bill would also change the funding structure of the agency by prohibiting the transfer of funds to the agency from the Federal Reserve System and by authorizing appropriations for FY2024-2025.

★ CFPB-IG Reform Act

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 Congress with important information on its internal operations.

★ Bank Loan Privacy Act

The CFPB's proposed rule to implement Section 1071 of the Dodd-Frank Act dramatically expands data collection requirements for financial institutions in the small business lending market. While the CFPB did request comments on a balancing test as part of issuing the proposed rule, stakeholders were unable to provide complete comments as the content of the balancing test had not yet been proposed.

- Passing the Bank Loan Privacy Act would fix this omission by requiring the CFPB to issue a rule prior to deleting or modifying publicly available small business loan data due to privacy concerns.
- Specifically, the Bureau must describe the intended modifications and deletions and explain how such modifications and deletions will advance a privacy interest.

This is especially important given the sensitivities of collecting and publicly disclosing the personal data of millions of Americans. Absent this legislation, the Dodd Frank Act Section 1071 rule provides that the CFPB will merely issue a policy statement on the balancing test a year after the compliance deadline without accepting public comment.

Endnotes

- 1 <https://crsreports.congress.gov/product/pdf/R/R44918>
- 2 <https://www.federalreserve.gov/newsevents/speech/bowman20240510a.htm>
- 3 <https://www.jpmorganchase.com/ir/annual-report/2023/ar-ceo-letters>
- 4 <https://www.federalreserve.gov/newsevents/speech/bowman20240212a.htm>
- 5 <https://consumerbankers.com/blog/facts-matter-cfpb-misrepresents-data-showing-dramatic-shift-in-the-overdraft-market/>
- 6 <https://www.politico.com/newsletters/west-wing-playbook/2024/04/24/bidens-growing-junk-fee-movement-00154186>
- 7 <https://cfpbfactcheck.com/>
- 8 See e.g., About Consumer Financial Protection Circulars, <https://www.consumerfinance.gov/compliance/circulars/about/>, “They do not restrict the Bureau’s exercise of its authorities, impose any legal requirements on external parties”
- 9 Consumer Financial Protection Bureau Advisory Opinion, Consumer Information Requests to Large Banks and Credit Unions (released October 11, 2023), https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf
- 10 Ibid.
- 11 Consumer Financial Protection Bureau, Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms, https://files.consumerfinance.gov/f/documents/cfpb_efta-proposed-interpretive-rule_2025-01.pdf
- 12 The CFPB asserts that “[w]hile not required under the [APA], the CFPB is soliciting comments on the proposal and may make revisions when it issues a final interpretive rule as appropriate in light of feedback received.” While it is appropriate for the CFPB to solicit comments, given the substantive nature of the new obligations regulated entities would face under this rule, such solicitation is not optional under the APA.
- 13 Joint Trades Letter to CFPB, August 22, 2022, Consumer Financial Protection Bureau Request for Information Regarding Relationship Banking and Customer Service (released June 14, 2022), https://consumerbankers.com/wp-content/uploads/2024/03/Joint_Comment_CFPB_CustServRFI_8.22.22.pdf
- 14 Consumer Financial Protection Bureau Circular 2024-05, Improper Overdraft Opt-In Practices (released September 17, 2024), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-05/>
- 15 Text- Overdraft Lending: Very Large Financial Institutions Final Rule. https://files.consumerfinance.gov/f/documents/cfpb_overdraft-regulatory-text-and-commentary_2024-12.pdf
- 16 <https://consumerbankers.com/press-release/myths-vs-facts-fact-checking-the-cfpbs-overdraft-rule/>
- 17 <https://consumerbankers.com/wp-content/uploads/2024/11/OD-Impact-Survey-Results.pdf>
- 18 <https://www.wsj.com/opinion/consumer-financial-protection-bureau-overdraft-fee-rule-banks-rohit-chopra-a2e6dc89>
- 19 <https://consumerbankers.com/press-release/cba-releases-national-empiricals-survey-results-showing-consumer/>
- 20 <https://consumerbankers.com/press-release/myths-vs-facts-fact-checking-the-cfpbs-overdraft-rule/>
- 21 <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/>
- 22 Very Large Financial Institutions (Docket No. CFPB-2024-0002). More information is available at <https://consumerbankers.com/wp-content/uploads/2024/04/CBA-Comment-on-CFPB-Docket-2024%E2%80%930002.pdf>.
- 23 Under the Administrative Procedure Act, the new CFPB could effectively pause the rulemaking without notice and comment by (a) suspending the rule or (b) if applicable, issuing a postponement of the rule pending judicial review. The CFPB could also change the effective date of the rule, but that would require notice and comment.

- 24 5 U.S.C. § 553(b). The agency must review relevant comments and (in most cases) allow for at least a 30 day effective date. 5 U.S.C. § 553(d).
- 25 Credit Card Penalty Fees (Regulation Z) (released Mar. 5, 2024), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf
- 26 <https://consumerbankers.com/wp-content/uploads/2024/03/CBA20HFSC20Testimony203.7.24.pdf>
- 27 Chamber of Commerce of the United States of America et al. v. Consumer Financial Protection Bureau, 24-cv-00213-Y, (N.D. Tex. Mar. 12, 2024), <https://consumerbankers.com/wp-content/uploads/2024/03/120Complaint.pdf><https://consumerbankers.com/press-release/cba-statement-on-consumer-harm-caused-by-the-cfpbs-misguided-credit-card-late-fee-rule/>
- 28 https://www.wsj.com/articles/credit-card-late-payment-fees-consumer-financial-protection-bureau-rule-rohit-chopra-joe-biden-108d41a3?mod=hp_opin_pos_1
- 29 Consumer Financial Protection Bureau, Required Rulemaking on Personal Financial Data Rights final rule, November 18, 2024, <https://www.consumerfinance.gov/rules-policy/final-rules/required-rulemaking-on-personal-financial-data-rights/>
- 30 12 U.S.C. § 5533(a) ("Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers." (emphasis added))
- 31 <https://www.law360.com/articles/1828283/cfpb-could-and-should-revise-open-banking-rulemaking>
- 32 § 9401.106 Prohibited financial interests <https://www.ecfr.gov/current/title-5/chapter-LXXXIV/part-9401>
- 33 Proposal for a Regulation of the European Parliament and of the Council on the Framework for Access to Financial Data (June 28, 2023), <https://www.opm.gov/about-us/open-government/plum-reporting/plum-data/>.
- 34 The CFPB has used 5 C.F.R. 213.3102(r) authority in the past for its term-limited Directors Financial Analyst positions; Technology & Innovation fellowships; and in hiring at least two-dozen Markets Fellows, as reported in a 2022 response to a Congressional inquiry. The current CFPB has taken the position that its Markets Fellows can receive compensation from outside groups, after receiving permission from a designated agency ethics officer.
- 35 Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 502, 123 Stat. 1755.
- 36 Federal Reserve Board, "SR 11-7: Guidance on Model Risk Management" (April 2011), available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1107.htm>.
- 37 H.R.6789 - 118th Congress (2023-2024): Rectifying UDAAP Act, H.R.6789, 118th Cong. (2023).
- 38 Text- H.R. 1410 Consumer Financial Protection Commission Act. <https://www.congress.gov/bill/118th-congress/house-bill/1410>
- 39 Michelle Bowman, Federal Reserve Governor speech. Defining a Bank. February 12, 2024. <https://www.federalreserve.gov/newsevents/speech/bowman20240212a.htm>
- 40 Consumer Bankers Association, Data Desk—Cumulative Impact: What do Reg II and Overdraft Proposals Mean for Consumers and Consumer Banking? December 2, 2024. <https://consumerbankers.com/blog/the-data-desk-cumulative-impact-what-do-reg-ii-and-overdraft-proposals-mean-for-consumers-and-consumer-banking/>
- 42 H.R.1382 - 118th Congress (2023-2024): TABS Act of 2023, H.R.1382, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/house-bill/1382>.