

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

March 29, 2012

Mr. Richard Cordray
Consumer Financial Protection Bureau
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Cordray:

I am writing to better understand how the Consumer Financial Protection Bureau ("CFPB") will draft rules using its authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203). On March 29, 2012, you testified to the Committee about the CFPB's semi-annual report to the President and Congress, and on February 15, 2012, you testified about the budgetary costs of the CFPB's operations. Less certain than the CFPB's budgetary costs are the economic and compliance costs that the American people will bear as the result of the CFPB's rulemaking, and whether these costs will be offset by quantifiable benefits. I would like your assurance that the CFPB will conduct rigorous, transparent cost-benefit analysis whenever it drafts a new rule. To this end, please respond to the following questions within 21 days from the date of this letter:

- (1) Section 1022 of the Dodd Frank Act establishes rulemaking standards that supplement the basic requirements of the Administrative Procedure Act (Pub. L. No. 79-404). Among other things, Section 1022 requires the CFPB to "consider" the "potential benefits and costs" of a proposed rule. Does Section 1022 of the Dodd Frank Act give rise to a "statutory obligation" for the CFPB "to determine as best it can the economic implications of [any] rule" that it is considering?¹ In other words, in light of Section 1022, would a rule be "arbitrary and capricious" if the CFPB failed to quantify the costs and benefits of a rule, or to state why it could not quantify those costs and benefits?
- (2) Is the CFPB an "independent regulatory agency" for purposes of Executive Order 12866? E.O. 12866 establishes principles of regulation and a framework for the coordination and review of an agency's regulatory activity, but independent regulatory agencies need not comply with certain of its provisions. If the CFPB has concluded that it is an independent regulatory agency, please state the reasons why and please detail the provisions of E.O. 12866 that the CFPB must follow and those that it need not follow. Finally, if the CFPB is not obliged to follow all or some part of E.O. 12866, will the CFPB nevertheless commit to conducting rulemakings that are fully consistent with E.O. 12866?

¹ *Business Roundtable v. Securities and Exchange Comm'n*, 647 F.3d 1144, 1148 (D.C. Cir. 2011) (holding that SEC's organic statute imposed requirement to quantify costs and benefits to the extent possible) (citing *Chamber of Commerce v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005)).

- (3) In a series of Executive Orders, President Obama reaffirmed the regulatory principles enumerated in E.O. 12866 and directed independent regulatory agencies to follow those principles “to the extent permitted by law.”² What does the CFPB understand those principles to be, and which of them, if any, does the CFPB intend to follow? Are there legal impediments to following all or some of the regulatory principles set forth in E.O. 12866?
- (4) Given the requirements imposed, at a minimum, by Section 1022 of the Dodd Frank Act, will the CFPB commit to soliciting, in the notice of proposed rulemaking for any proposed rule, public comments on the adequacy of the data, methodologies, and assumptions used by the CFPB in carrying out any cost-benefit analysis in support of the proposed rule? The weighing of the relative benefits and costs of a new rule is not meaningful if the measures used to make the comparison are not sound. If the CFPB were to explicitly encourage interested parties to examine its cost-benefit analysis, it would be more likely that any deficiencies in that analysis would be brought to light and addressed before a rule becomes final.
- (5) In cases where the CFPB can determine the costs and benefits of a rule, will the CFPB commit to adopting that rule only if it determines that the rule’s economic benefits outweigh its costs?
- (6) What is a “significant rule” for purposes of the Dodd Frank Act? Section 1022(d) of the Act requires the CFPB to evaluate the effectiveness of a “significant rule” five years after the rule’s effective date, but the Dodd Frank Act does not on its face define what rules are “significant” and what are not. Executive Order 12866, however, defines a “significant regulatory action.” Is a “significant rule” for purposes of Section 1022(d) the same thing as a “significant regulatory action” under the E.O. 12866?
- (7) The Congressional Review Act (Pub. L. No. 104-121) requires that agencies submit certain information about a regulation to Congress and establishes a 60-day waiting period before a “major” rule can take effect. What policies and procedures does the CFPB have in place to comply with the Act in general, and to ensure that a regulation is properly reviewed for classification as a “major” rule in particular?

Following your controversial recess appointment, the CFPB launched its non-bank supervision program and it moved to amend a regulation implementing the Electronic Fund Transfer Act. These actions suggest that the CFPB views your appointment as (1) constitutional and (2) as sufficient to activate rulemaking and other authorities pursuant to Section 1066 of the Dodd Frank Act, even though that provision on its face conditions the exercise of those authorities on Senate confirmation of a director.

The actions that the CFPB undertakes now—even though the CFPB may not have the legal authority to take them—will directly affect consumers and businesses across the country. It is therefore critical that Congress, and the American public, be assured that

² See Executive Orders 13579 and 13563.

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the CFPB will carefully consider the costs and benefits of its actions. Thank you in advance for your prompt attention to this important matter.

Sincerely,



RANDY NEUGEBAUER
Chairman,
Subcommittee on Oversight and
Investigations



SHELLEY MOORE CAPITO
Chairman,
Subcommittee on Financial Institutions and
Consumer Credit

Cc: Hon. Spencer Bachus
Hon. Barney Frank
Hon. Michael Capuano