

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

March 8, 2013

The Honorable Ben Bernanke  
Chairman  
Federal Reserve Board of Governors  
20th Street and Constitution Ave, N.W.  
Washington, D.C. 20551

Dear Mr. Chairman:

This is to seek clarification from the Board of Governors of the Federal Reserve System ("Board") regarding the transfer of funds to the Bureau of Consumer Financial Protection ("CFPB")<sup>1</sup> following the recent court decision invalidating certain presidential recess appointments.

In January, the Court of Appeals for the District of Columbia Circuit held that the Senate was not in recess within the meaning of the Recess Appointments Clause of the Constitution when President Obama purported to appoint three members of the National Labor Relations Board ("NLRB") without the Senate's advice and consent.<sup>2</sup> As a result, the court held that the appointments were constitutionally invalid. Although the petitioner in this case challenged only the action of the NLRB, the President putatively appointed Richard Cordray as CFPB Director at the same time and in the same manner as the NLRB members. Accordingly, I anticipate that a federal court will soon reach a similar conclusion with respect to the validity of Mr. Cordray's appointment.

As you know, the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) ("Dodd-Frank") authorizes the Board to transfer funds to carry out the authorities of the CFPB only at the request of its director. Because it appears there is not presently a validly-appointed director of the CFPB, I question the circumstances under which the Board may lawfully fund the CFPB's operations.

I believe that decisions to fund the CFPB must be scrutinized by, and traceable to, a properly appointed officer of the United States, consistent with Dodd-Frank's intent and the constitutional requirement that significant authority of the United States be exercised only by such officers. Thank you for your prompt attention to this matter. I look forward to the Board's response.

Yours Respectfully,



JEB HENSARLING

Chairman

cc: The Honorable Maxine Waters

<sup>1</sup> See Section 1017 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, PUB. L. NO. 111-203 ("Dodd-Frank") (providing for transfers of funds from the Board to the CFPB).

<sup>2</sup> *Noel Canning v. NLRB*, No. 12-1115, slip. op. (D.C. Cir. Jan. 25, 2013).