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FACT SHEET

The CFPB is an Irreplaceable Consumer Protection Agency

Dismantling it or Submerging it in Another Agency Would Cost Everyday Americans Billions of Dollars at the Hands of Unscrupulous Financial Firms

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The Trump Administration is attacking all of the federal regulatory agencies that protect investors, the financial markets, and the broader economy. But none of those assaults is more aggressive than its campaign against consumers as it strives to dismantle the Consumer Financial Protection Bureau (CFPB). The Administration seeks to cut off its funding, fire nearly all of its staff, shut down its operations, and if unsuccessful at gutting the agency, fold it into another financial regulator such as the OCC. As one DOGE staffer has said, the Administration seeks to reduce the consumer watchdog to just "five men and a phone" in a room.

While some of these actions have been challenged and stalled in court, the end result threatens to be the destruction of one of the most effective champions of consumer protection in the history of financial regulation. That means a huge increase in unfair, deceptive, and abusive practices among banks and nonbanks alike, including mortgage companies, student loan companies, and payday lenders. Hard-working Americans who depend on basic financial products and services will lose their head-earned money to shady financial practices, without any realistic prospects for relief.

There is no justification for this assault, given the lessons of the financial crisis that gave rise to the CFPB, the CFPB's unique legal authority to implement and enforce consumer protection law, and its proven track record of success:

- **The clear need for the CFPB** – The financial crisis of 2008 revealed the dire need for an agency that could fill the void in consumer protection created by the failings of the industry-captured banking regulators.
- **Its unique authority** – Congress responded in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Wall Street Reform Act) by creating the CFPB and giving it the unique authority to enforce the federal consumer protection laws, while leaving the "prudential" (or safety and soundness) supervision of banks to the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC).
- **Its extraordinary record of success** – Since its creation in 2011, the CFPB has unquestionably proven its worth through rulemaking and enforcement, establishing

essential new guardrails against predatory conduct and putting $21 billion back in the pockets of consumers victimized by all manner of financial institution, from the brand name banks to the payday lenders.

1. The 2008 financial crisis revealed enormous gaps in consumer protection that the CFPB was designed to fill.

The CFPB's unique regulatory powers did not emerge from a vacuum—they were the direct result of failures by the prudential regulators to adequately police the lending markets and to prevent patterns of consumer abuse in the years leading up to the 2008 financial crisis. Prior to the crisis, the primary concern of U.S. banking regulators such as the OCC, the Federal Reserve, and the FDIC was maintaining the safety and soundness of financial institutions. This regulatory philosophy meant that agencies prioritized bank profitability to the exclusion of consumer protection.[1] Their approach proved to be doubly flawed, since they not only failed to preserve the stability of the banking system but also allowed widespread abuses of consumers to spiral into an enormous systemic risk.

For example, in the years leading up to the 2008 crisis, traditional banking regulators failed to address the explosion in subprime mortgage lending, even as predatory and deceptive lending practices became widespread.[2] The OCC and other regulators were primarily concerned with ensuring that banks remained profitable and—at least in theory—that the banks had sufficient capital reserves; they were not scrutinizing the fairness of lending practices.[3] As a result, they did not take sufficient action to prevent the proliferation of risky mortgage products, such as adjustable-rate mortgages (ARMs) with steep rate hikes, no-documentation loans, and excessive fees that trapped borrowers in unaffordable debt.

Similarly, the Federal Reserve, which had the authority to regulate mortgage lending under the Home Ownership and Equity Protection Act (HOEPA), failed to prevent the widespread abuses in mortgage lending. Instead, it largely relied on the assumption that market discipline would prevent

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[1] Congressional Research Service, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis* 2 (2014), https://tinyurl.com/23l5njmv ("Safety and soundness regulation, also referred to as prudential regulation, consists of ensuring that institutions are managed in a safe and sound manner so as to maintain profitability and avoid failure.").

[2] *See generally* THE FINANCIAL CRISIS INQUIRY COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES (2011), https://tinyurl.com/y2e8lxqe.

[3] CRS, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, *supra* note 1 at 5 ("[B]anking regulators tended to place greater emphasis on their safety and soundness duties, at the expense of their consumer compliance responsibilities."); *see also* Adam J. Levitan, *The Consumer Financial Protection Agency*, The PEW Financial Reform Project Briefing Paper #3, 4 (2009), https://tinyurl.com/22yavdfk; Oren Bar-Gill and Elizabeth Warren, Making Credit Safer, 157 U. PENN. L. REV. 1, 90 (Nov. 2008); Heidi Mandanis Schooner, *The Role of Central Banks in Bank Supervision in the United States and the United Kingdom*, 28 BROOK. J. INT'L L. 411, 427 (2003) ("[T]he Federal Reserve's . . . regulatory role remains focused on safety and soundness and not on other goals of financial regulation, such as consumer protection.").

institutions from engaging in overly risky lending practices. To cap off this laissez-faire approach, the banking regulators fought to prevent state regulators from applying their consumer protection laws to the banks.[4] This misguided regulatory approach proved catastrophically flawed when the housing market collapsed, leading to mass foreclosures[5] and a financial system on the brink of collapse.[6]

The Financial Crisis Inquiry Commission Report, commissioned by Congress as an autopsy of the greatest financial crisis since the Great Depression, clearly and unequivocally found that these regulatory failures—including the decentralization of federal consumer protection efforts—were directly responsible for the crisis. As a result, "some proposed consolidating consumer compliance regulatory authority in a single agency[7] as a means to level the regulatory playing field for depositories and nondepository financial institutions, thus stifling the competitive pressures that fueled the 'race-to-the-bottom' and 'regulatory arbitrage' to the benefit of both consumers and financial institutions."[8]

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[4] *See* THE FINANCIAL CRISIS INQUIRY COMMISSION REPORT, *supra* note 2 at 111–13, 126 (discussing how federal regulators' preemption contributed to the financial crisis); Lei Ding *et al.*, *The Impact of Federal Preemption of State Antipredatory Lending Laws on the Foreclosure Crisis*, J. POL. AN. & MAN. 367 (2012) (finding that "preemption led both to a deterioration in the quality of and an increase in default risk for mortgages originated by OCC-regulated (or OCC-preempted) lenders in states with anti-predatory lending laws.")

[5] BETTER MARKETS, COST OF THE CRISIS: $20 TRILLION AND COUNTING 20 (2018), https://bettermarkets.org/wp-content/uploads/2021/07/Better-Markets-Cost-of-the-Crisis_1.pdf ("Between January 2007 and December 2011, there were more than four million completed foreclosures and over 8.2 million foreclosure starts.").

[6] THE FINANCIAL CRISIS INQUIRY COMMISSION REPORT, *supra* note 2 at 126 ("Not only did the federal banking supervisors fail to rein in risky mortgage-lending practices, but the Office of the Comptroller of the Currency and the Office of Thrift Supervision preempted the applicability of state laws and regulatory efforts to national banks and thrifts, thus preventing adequate protection for borrowers and weakening constraints on this segment of the mortgage market.").

[7] Heidi Mandanis Schooner, *Consuming Debt: Structuring the Federal Response to Abuses in Consumer Credit*, 18 LOY. CONSUMER L. REV. 43, 82 (2005) ("The most sensible approach to correcting the structural defect in the current regime would be to eliminate entirely the federal banking regulators' role in consumer protection. This approach has the potential to enhance both the fairness and the efficiency of the current system. This proposal would create a more fair system because banks and non-banks would be treated alike. This would level the playing field among providers of similar financial services. In addition, this proposal provides many potential efficiencies that derive from the recognition of consumer protection as a distinct regulatory goal from prudential regulation."); Oren Bar-Gill and Elizabeth Warren, Making Credit Safer, 157 U. PENN. L. REV. 1, 98-100 (Nov. 2008).

[8] Congressional Research Service, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, *supra* note 1 at 6-7 (citing *Regulatory Restructuring- Safeguarding Consumer Protection and the Role of the Federal Reserve: Hearing Before the Subcomm. on Domestic Monetary Policy & Tech. of the H. Comm. on Fin. Servs.*, 111th Cong. (2009) (written testimony of Patricia A. McCoy, Director of the Insurance Law Center and George J. & Helen M. England Professor of Law at the University of Connecticut School of Law); Adam J. Levitan, *The Consumer Financial Protection Agency*, The PEW Financial Reform Project Briefing Paper # 3, 7-8 (2009), https://tinyurl.com/22yavdfk; Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. Penn. L. Rev. 1, 98-100 (Nov. 2008)).

Thus, when policymakers today call for the CFPB to be abolished or marginalized through consolidation with another agency, they are ignoring these lessons from the 2008 financial crisis. And they are flouting Congress's chosen solution: an independent agency specifically tasked with protecting all consumers in the credit markets from unfair, deceptive, and abusive practices. This collective amnesia promises disastrous consequences for Main Street Americans, whose financial lives can be degraded if not ruined by predatory practices. It also threatens to set the stage for another financial crisis.

2. The CFPB has unique authority to oversee banks and nonbanks for the benefit of financial consumers.

The CFPB derives its legal authority from the Wall Street Reform Act. This legislation, passed in response to the financial crisis, created the CFPB as an independent agency with the authority to enforce a wide range of federal consumer protection laws. For example, the Wall Street Reform Act gave the CFPB broad authority to supervise "nondepository" or nonbank entities such as mortgage lenders, student loan companies, payday lenders, and other large companies offering consumer products or services. 12 U.S.C. § 5514. That authority includes exclusive rulemaking, examination, and enforcement powers, subject only to certain coordination obligations as to the Federal Trade Commission. *Id.* Among the CFPB's authorities is the power to require some nondepository companies to register with the agency, to submit to examinations, to undergo background checks, and to adhere to other measures designed "to ensure that such persons are legitimate entities and are able to perform their obligations to consumers." *Id.* With the rise of many nonbank digital payment applications such as Venmo, CashApp, and PayPal, strong regulatory oversight over such nonbank "fintech" companies is crucial.

The Wall Street Reform Act also gave the CFPB exclusive supervisory authority and primary enforcement authority over the large banks (defined as those with over $10 billion in assets) with respect to their compliance with federal consumer financial protection law. 12 U.S.C. § 5515. The statute expressly provided for the transfer of these carefully defined powers to the CFPB from the three primary banking regulators. 12 U.S.C §§ 5581-87. The CFPB's overarching legal mandate is to protect consumers in the financial marketplace from unfair, deceptive, or abusive financial practices. No other regulator has such a broad and clear mandate.

While some argue that the Federal Trade Commission is equipped to do the CFPB's job, that's not true. The FTC simply does not have the legal authority, rulemaking power, or resources to replace the CFPB. For example, the FTC has long lacked jurisdiction over banks, savings and loans, and federal credit unions. FTC Act § 6(a), 15 U.S.C. § 46(a). Even as to nonbanks, the FTC lacks supervision and examination authority, an important tool in the CFPB's arsenal that can often put a stop to predatory behavior before it inflicts widespread consumer harm.[9] Moreover, unlike the

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[9] Congressional Research Service, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, at 2 ("[T]he FTC's powers generally are limited to enforcement. Unlike the federal depository regulators, the FTC has little up front supervisory authority over

CFPB, the FTC Act does not explicitly bar "abusive" acts or practices, an important legal standard that captures some misconduct that evades the definitions of "unfair or deceptive" acts or practices. Additionally, unlike typical agency rulemaking under the Administrative Procedure Act, the FTC's general rulemaking process is subject to the restrictive provisions in the Magnusson-Moss Act—imposing a mandatory advance notice and comment requirement, extensive public hearings, a heightened evidentiary standard, opportunities for cross-examination, and other procedural requirements.[10] That limits the FTC's ability to tackle the rapidly emerging threats facing consumers in the financial marketplace.

Finally, the FTC clearly lacks the resources to assume the CFPB's vast responsibilities in policing the consumer financial markets.[11] At the end of Fiscal Year 2023, the FTC had approximately 1,217 full-time employees, whose attentions are divided among the FTC's Competition (antitrust), Consumer Protection, and Economics Bureaus. By contrast, the CFPB had approximately 1,677 full-time employees in Fiscal Year 2023, all dedicated to protecting financial consumers. In short, while the FTC is a supremely important agency, it could not replace the CFPB.

3. The CFPB has a proven track record of preventing abuses and helping victimized consumers recover their losses.

Since its founding in 2011, the CFPB has achieved enormous success in protecting consumers. Through its rules, the CFPB has established guardrails that prohibit and prevent unfair, deceptive, and predatory practices that take a huge toll on consumers. And for the millions of consumers who have suffered harm from those selling financial products and services, the CFPB has helped make them whole. The CFPB has *returned more than $21 billion to almost 200 million* Americans ripped off by the financial industry. The CFPB has also shed light on financial industry abuses and helped consumers avoid bad actors by creating and maintaining databases that compile consumer complaints against firms and disclose firms with disciplinary histories. As a vigilant, effective, and powerful cop on the financial consumer beat, the CFPB has undoubtedly

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non-depository financial institutions. Thus, the FTC does not regularly examine businesses or impose reporting requirements on them.").

[10] Jeffrey Lubbers, *It's Time to Remove the 'Mossified' Procedures for FTC Rulemaking*, 83 G. WASH. L. REV. 1979 (2015) (comparing the burdensome rulemaking requirements of FTC rulemaking under Magnusson-Moss with typical APA rulemaking).

[11] Financial Crisis Inquiry Report at 76 ("One sticking point was the supervision of nonbank subsidiaries such as subprime lenders. The Fed had the legal mandate to supervise bank holding companies, including the authority to supervise their nonbank subsidiaries. The Federal Trade Commission was given explicit authority by Congress to enforce the consumer protections embodied in the Truth in Lending Act with respect to these nonbank lenders. Although the FTC brought some enforcement actions against mortgage companies, Henry Cisneros, a former secretary of the Department of Housing and Urban Development (HUD), worried that its budget and staff were not commensurate with its mandate to supervise these lenders. 'We could have had the FTC oversee mortgage contracts,' Cisneros told the Commission. 'But the FTC is up to their neck in work today with what they've got. They don't have the staff to go out and search out mortgage problems.'").

also deterred many more rip-offs, saving countless Americans billions of additional dollars in losses.

For example, the CFPB's rules have addressed a wide variety of abuses in different sectors of finance:

- **Cracking down on abusive mortgage lending** – The CFPB has issued rules requiring lenders to verify a borrower's ability to repay a loan, reducing the risk of another subprime lending crisis.
- **Regulating payday lenders and debt collectors** – The CFPB has imposed stricter regulations on high-cost lending and debt collection practices that exploit vulnerable consumers.
- **Enforcing and promoting fair lending laws** – The CFPB adopted a Small Business Lending Rule, which will increase transparency and fairness in small business lending by requiring lenders to collect and report certain demographic data on credit applications. This includes information on loan terms, approval rates, and demographic details like the race, gender, and ethnicity of applicants.
- **Providing transparency in financial products** – The CFPB has worked to simplify credit card agreements, student loan disclosures, and other financial documents to ensure that consumers understand their obligations.
- **Eliminating abusive "junk fees"** – And one of the CFPB's hallmark achievements in recent years has been cracking down on "junk fees," the hidden charges tacked onto everything from bank accounts to credit cards. The CFPB has addressed these abuses through rules to limit such fees, which often target lower-income and vulnerable consumers. For example, banks are now prohibited from charging excessive overdraft and "non-sufficient funds" fees, a practice that disproportionately impacts communities living paycheck to paycheck. And the CFPB has also finalized a rule capping credit card late fees at $8, a significant reduction from the previous maximum of $30 or more (although this rule continues to face litigation). By reining in these unnecessary fees, the CFPB estimates consumers will save billions of dollars every year.

The CFPB has also used its enforcement authority to punish and deter predatory behavior by a wide range of firms, from Wall Street banks to payday lenders operating largely outside the mainstream of finance. Some of those actions focused on mortgage lending abuses of the type that incubated the 2008 financial crisis. Since its founding 14 years ago, the CFPB has brought dozens of cases against unscrupulous actors for fair lending violations related to mortgage products, and it has brought even more cases for violations of other federal mortgage laws.[12] Other important enforcement actions include these:

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[12] By contrast, during the *16 years* from 2000 to 2016, the Federal Reserve referred to the Justice Department only *three* institutions for fair lending violations related to mortgages. The Financial Crisis Inquiry Report found that:

> [T]he Federal Reserve would not use the legal system to rein in predatory lenders. From 2000

- **Protecting student loan borrowers** – In 2024, The CFPB secured a historic settlement against Navient, one of the largest student loan servicers in the country. Navient was accused of steering borrowers into costly forbearance plans rather than income-driven repayment options, costing borrowers billions in unnecessary interest. Under the settlement, Navient was required to cancel $1.7 billion in private student loans and pay $95 million in restitution to borrowers. This action not only provided direct relief but also signaled to the student loan industry that deceptive practices would not be tolerated.
- **Protecting bank customers** – In late 2022, the CFPB imposed its largest-ever fine — $3.7 billion — against Wells Fargo for widespread consumer abuses, including wrongful foreclosure of homes, improper vehicle repossessions, and illegal overdraft and other surprise fees. This enforcement action included $2 billion in consumer redress and $1.7 billion in civil penalties, serving as a stark warning to financial institutions about prioritizing profits over consumer rights.
- **Protecting seniors** – In December 2024, the CFPB sued Comerica Bank for systematically failing its 3.4 million disabled and elderly cardholders—primarily unbanked seniors receiving federal benefits such as social security. The bank deliberately disconnected 24 million customer service calls, impeding cardholders from exercising their rights under the law, charged illegal ATM fees to over 1 million cardholders, and mishandled fraud complaints. The CFPB's enforcement action seeks to stop the company's unlawful conduct, impose a monetary civil penalty, and provide redress for harmed borrowers.

Conclusion

The CFPB was born out of the wholesale failure of the banking agencies to protect our financial system and economy from the ravages of the 2008 financial crisis and the ensuing economic devastation that harmed millions of American families. The CFPB's unique mandate and legal authority distinguish it from all other regulators. Congress established the agency not only to protect consumers but also to mitigate the risk of financial crises fueled by widespread consumer abuses. There is no substitute for the CFPB. The banking regulators such as the OCC, FDIC, and Federal Reserve focus primarily on the safety and soundness of financial institutions rather than consumer protection. And the FTC cannot take over the CFPB's role given its limited authority, tools, and resources. Removing any doubt about the need to preserve and sustain the CFPB is its track record: It has made consumer finance a much safer marketplace and it has helped millions of Americans recover the losses they have suffered at the hands of unscrupulous actors.

> to the end of Greenspan's tenure in 2016, the Fed referred to the Justice Department only three institutions for fair lending violations related to mortgages: First American Bank, in Carpentersville, Illinois; Desert Community Bank, in Victorville, California; and the New York branch of Société Générale, a large French bank.

THE FINANCIAL CRISIS INQUIRY REPORT, *supra* note 2 at 94.

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Better Markets is a public interest 501(c)(3) non-profit based in Washington, DC that advocates for greater transparency, accountability, and oversight in the domestic and global capital and commodity markets, to protect the American Dream of homes, jobs, savings, education, a secure retirement, and a rising standard of living.

Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

By being a counterweight to Wall Street's biggest financial firms through the policymaking and rulemaking process, Better Markets is supporting pragmatic rules and a strong banking and financial system that enables stability, growth, and broad-based prosperity. Better Markets also fights to refocus finance on the real economy, empower the buyside and protect investors and consumers.

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