# NEED TO KNOW

AMERICANS FOR PROSPERITY FOUNDATION

## THE CONSUMER FINANCIAL PROTECTION BUREAU

### *WHAT IS THE CONSUMER FINANCIAL PROTECTION BUREAU?*

The Consumer Financial Protection bureau ("CFPB" or "the Bureau") was created as part of the Dodd-Frank financial regulatory overhaul enacted in July 2010. The brainchild of former Harvard Law professor Elizabeth Warren, the Bureau has the power to enforce all existing consumer financial protection regulations, consolidating jurisdiction over a total of 49 rules derived from 14 different consumer laws that were previously enforced by an array of financial regulatory agencies (2). The Bureau also has sweeping authority to create new rules and regulations to punish a wide array of

### *THE FLAWED PHILOSOPHY BEHIND THE BUREAU*

Proponents argue that the Bureau is needed to address what they (incorrectly) see as one of the main causes of the recent financial crisis: predatory lending and financial "tricks and traps" hidden in financial products (3). Protecting consumers from outright fraud is indeed an important goal, but banning legitimate financial products that consumers want and regularly use just because they are "complex" or sometimes misused goes much too far. As law professors David Evans and Joshua Wright explain:

> The [CFPB is] predicated on the view that consumers frequently make irrational decisions especially when it comes to financial products and that the government would make better decisions for consumers and should establish a 'supernanny' to protect consumers from themselves. These advocates have not made an adequate case for this radical approach to government intervention in the market (4).

In other words, the Bureau is a vast new bureaucracy responsible for protecting American citizens from the possibility of making bad decisions with financial products, all while limiting consumer choice and their freedom to engage in voluntary transactions in the open marketplace.

### QUICK FACTS

- Two law professors estimated in early 2010 that creating the CFPB would cause consumer interest rates to rise by at least 1.6 percent, reduce consumer borrowing by at least 2.1 percent, and reduce job creation in the American economy by roughly 4.3 percent (1).

### NOTABLE & QUOTABLE

"It is fair to say that the Bureau's current structure places more unreviewable power in the hands of a single unelected than any other federal regulatory law. The combination of the Bureau's unprecedented lack of accountability with its vast powers creates a foreseeable risk that, at some point in the future, it will take action that harms the American economy—including the very consumers it is meant to protect."

- **Jess Sharp**, U.S. Chamber of Commerce

### *PROBLEMS WITH THE BUREAU'S STRUCTURE MEAN A LACK OF ACCOUNTABILITY*

In addition, the Bureau comes with a flawed structure that allows for little accountability or oversight by Congress or even in the White House (5). First, the Bureau was given far-reaching authority over a big chunk of the American economy: they can regulate and even outright ban any financial product that they deem inappropriate under the vague and undefined standard of "unfair, deceptive, and abusive" practices. The CFPB's jurisdiction is not limited to banks either; mortgage servicers, credit counselors and payday lenders (among others) will be covered as well. This massive expansion of the federal government's regulatory reach is unprecedented.

Second, unlike other financial regulators, the Bureau is headed by a single director instead of a bipartisan commission or board. The President's appointee serves a five-year term with almost complete independence; she

can only be removed for “cause” (i.e. malfeasance in office). A CFPB rule can be overturned by a council of ten financial regulators, but only with a supermajority of seven votes (with one vote coming from the CFPB Director herself), and only if the rule threatens to destabilize the entire financial system (with “systemic risk” a vague and undefined concept in itself). This is simply too much power to be concentrated in one person’s hands.

> *The net result of these new regulations will be a less vibrant and less innovative financial sector to support the American economy, depressing economic growth and job creation.*

Finally, because the Bureau is housed in the Federal Reserve, its budget is not subject to the normal congressional appropriations process. The Constitution gives Congress the “power of the purse” for a reason: if Congress doesn’t like what agency bureaucrats are doing, they can explicitly deny them funding. Instead, the CFPB gets an unprecedented exemption from Congress’ traditional check on agency authority.

## *IMPOSING HEFTY COSTS ON THE ECONOMY*

The net result of these new regulations will be a less vibrant financial sector to support the American economy, depressing economic growth and job creation. As standards become stricter, consumers and businesses will have less access to the credit products they use to make purchases or expand their operations. For those who can still access credit, the additional legal risks for financial providers will raise the cost of credit for everyone else – taking money out of Americans’ pockets and potentially pricing some out of the credit markets all together.

Financial institutions will be less inclined to bring new types of credit products to financial markets given the uncertainty surrounding the CFPB’s enforcement authority – stalling or even rolling back the financial innovations that have been the key factor in the “democratization” of credit (making financial products available to more segments of American society). This also means less choice for consumers and businesses in credit markets.

## *CONCLUSION*

The problem here is that the CFPB imposes an additional layer of costly new regulations on the financial sector, when in reality predatory practices stemmed not from too little regulation, but from lack of clarity, cohesion, and consistent enforcement of regulations that were already on the books (6). This unchecked new regulatory authority could cost the American economy dearly and end up hurting the very consumers it is intended to protect.

Endnotes:

1. David S. Evans and Joshua D. Wright, The Effect of the Consumer Financial Protection Agency Act of 2009 on Consumer Credit, LOYOLA CONSUMER LAW REVIEW, Vol. 22, No. 3 (March 2010) (online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1483906) (hereinafter "Evans and Wright")
2. CONSUMER FINANCIAL PROTECTION BUREAU, , Federal Register, Vol. 76, No. 140 (July 21, 2011) (online at http://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18426.pdf).
3. Mark Calabria, Why More Consumer Protection When Too Much Led to Crisis?, THE CATO INSTITUTE (March 3, 2010) (online at http://www.cato.org/pub_display.php?pub_id=11415).
4. Evans and Wright, at 32.
5. Written Testimony of Jess Sharp, executive director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, before the House Subcommittee on Financial Institutions and Consumer Credit (April 6, 2011) (online at http://financialservices.house.gov/media/pdf/040611sharp.pdf). See also Letter from 44 U.S. Senators to President Barrack Obama (May 2, 2011) (online at http://shelby.senate.gov/public/index.cfm/newsreleases?ID=893bc8b0-2e73-4555-8441-d51e0ccd1d17); Mark Calabria, Ditch the Double Standard for New Consumer Agency, THE CATO INSTITUTE (May 15, 2011) (online at http://www.cato.org/pub_display.php?pub_id=13200).
6. Written Testimony of Leslie R. Anderson, President and CEO, Bank of Bennington, on behalf of the American Bankers Association, before the House Subcommittee on Financial Institutions and Consumer Credit (April 6, 2011) (online at http://financialservices.house.gov/media/pdf/040611anderson.pdf).

Americans for Prosperity Foundation's "Need to Know" informational series explores current events and recent scholarship on public policy isues from a free-market economics perspective. A full list of "Need to Know" briefings is available at www.AmericansForProsperityFoundation.org/NeetToKnow.
©2012 Americans for Prosperity Foundation. All Rights Reserved.