

Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
December 15, 2022 at 10:00 AM

Today's hearing is about the CFPB.

The last time Director Chopra testified, I raised concerns about the CFPB's overreach in pursuit of a far-left agenda. Unfortunately, this lawless behavior is nothing new for the CFPB, and under Director Chopra, it's more out of control than ever before. Today, I'm disappointed—but not surprised—to note, yet again, that the CFPB has continued this pattern of overreach.

In our constitutional system of checks and balances, only Congress has the power to appropriate money. James Madison called this: “the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.”

But, the Dodd-Frank Act exempted the CFPB from appropriations. It empowers the CFPB to simply take funds from the Fed, which is itself also not subject to appropriations, thereby doubly insulating the CFPB from any congressional control.

I acknowledge there are other financial regulators not on appropriations—and we can disagree about whether they should be. But, it's indisputable that Congress has precisely zero leverage over the CFPB. It's hard for me to imagine our Founders intended an agency to have the power of the legislative branch, and precisely zero accountability to the legislative branch. And, in any case, clearly the CFPB is overreaching and doesn't care.

That's why the Fifth Circuit recently found the CFPB's funding structure is unconstitutional. The court noted: “The Bureau's perpetual insulation from Congress's appropriations power . . . renders the Bureau 'no longer dependent and, as a result, no longer accountable' to Congress and, ultimately, to the people.”

What can we expect from an agency designed to be unaccountable to Congress, if not overreach and hubris? For example, under Director Chopra, the CFPB unilaterally decided that Dodd-Frank's grant of authority

to prevent unfair, deceptive, or abusive acts or practices—known as UDAAP—now includes controversial disparate impact liability. It announced this change by fiat, without rulemaking. It ignored not only the text of Dodd-Frank, but also the fact that Congress never contemplated that UDAAP would encompass disparate impact. Congress took the UDAAP language from the FTC Act. For nearly a century, the FTC never interpreted that language to include discrimination or disparate impact. Finally, the CFPB willfully ignored the fact that Congress overturned the CFPB's disparate impact guidance for auto lending in 2018.

It's extremely implausible to think that an agency that was dependent on Congress for appropriations would engage in activity so clearly contrary to Congress' intent.

In addition, the CFPB has publicly targeted businesses for taking lawful actions, like its smear campaign against bank fees for overdraft services. This campaign does nothing for consumers, it just causes banks to shift fees to less transparent means of recouping the costs of providing overdraft services.

This week, the CFPB doubled down on its use of name-and-shame tactics with a new proposed rule. It would create a public database of enforcement orders, judgments, and settlements, against nonbank financial institutions, obtained by federal and state regulators and attorneys general, including under state consumer laws that are not applicable nationwide. While maintaining such a list may well make sense, making it public is different, and would create the false impression that the orders of the most activist states are the nationwide standard.

What's more, the proposal would require a senior official of certain nonbanks to attest to the CFPB that they're complying with these orders. This would effectively give the CFPB enforcement power over other agencies' orders for violations of state and federal laws that the CFPB has no jurisdiction to enforce. There's no limiting principle to stop the CFPB from extending this rule to all financial institutions.

These examples are just some of the symptoms of an agency that's out of control and knows Congress can't use the power of the purse to rein in its overreach. That's why I'm introducing legislation—along with Senator

Hagerty—to place the CFPB on appropriations. The best way to make the CFPB accountable to Congress is through appropriations.

Through its rulemaking, the CFPB can exercise legislative power. What's ambiguous about the first line in Article I of the Constitution: "All Legislative powers herein granted shall be vested in a Congress of the United States"? At the very least, Congress should carry out the responsibility that the Constitution assigns to us, and exercise control over agencies like the CFPB that exercise legislative power.

But that's not all this legislation will do. It will also replace the agency's single director with a five-member, bipartisan commission, like the SEC and FDIC. This structure will ensure that the CFPB considers a diversity of voices when it forms policy. And it's not a new idea. Bipartisan legislation to convert the CFPB into a commission has been repeatedly introduced.

These accountability measures will help make the agency more responsible, balanced, and measured. And Congress will have to accept some responsibility for what the CFPB does.

What's more, if Congress does not put the CFPB on appropriations, the Supreme Court will likely force us to. The Court is expected to consider and uphold the Fifth Circuit's decision that the CFPB's funding structure is unconstitutional. If it does, I have no doubt Congress will act swiftly to provide the CFPB with appropriate funding. After all, Congress is experienced at the appropriations process.

But, by acting now, through legislation, Congress can ensure the smoothest possible transition. This is in the best interest not only of the CFPB and Congress, but also consumers and the economy. That's why I call on all of my colleagues, Democrats and Republicans, to join me in supporting this sensible legislation.