

# United States Senate

WASHINGTON, DC 20510

February 1, 2013

Hon. Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Director Cordray:

President Obama's resubmission of your nomination to lead the Consumer Financial Protection Bureau has renewed public interest in the unaccountable structure of this powerful new agency. The recent D.C. Circuit decision striking down the President's attempted recess appointments to another agency — made on the same day as your recess appointment — also casts a shadow over the CFPB and your nomination.<sup>1</sup> I write today to ask for your commitment to work toward some basic accountability reforms of the Bureau, the merits of which you and I have discussed on several occasions.

The CFPB has vast power to limit consumer choices on everything from buying a first home to paying for a college education. As you noted in testimony before Congress, the Bureau's broad regulatory mandate is "a little bit of a puzzle" because it is in some areas wholly undefined and, in other areas, unlimited by past standards adopted by other financial regulators.<sup>2</sup> Rather than clarify its mandate by developing clear rules of the road, the Bureau has largely taken a "facts and circumstances" approach over the past year. This know-it-when-we-see-it approach to regulation gives little notice or certainty to businesses and consumers about what is permitted or prohibited. In effect, it gives the Bureau almost unchanneled discretion to initiate enforcement actions on a case-by-case basis.

That kind of authority would be troubling in any hands. But the CFPB is no ordinary regulator. By law, the CFPB writes its own budget without congressional approval, is controlled by a single person, and cannot be restrained by other regulators unless its actions threaten the stability of the entire banking system. No other federal regulator has so much power over everyday economic decisions, with so little responsibility to answer to the American people and their elected representatives.

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<sup>1</sup> *Noel Canning v. Nat'l Labor Relations Bd.*, No. 12-1115 (D.C. Cir. Jan. 25, 2013).

<sup>2</sup> *How Will the CFPB Function Under Richard Cordray*: Hearing Before the Subcomm. on TARP, Financial Services, and Bailouts of Public and Private Programs of the H. Comm. on Oversight & Gov't Reform, 112th Cong. (2012) (testimony of Richard Cordray); see also Dodd-Frank Act, Pub. L. No. 111-203, tit. X, sec. 1022(b)(4)(B).

As you and I have discussed, there are some commonsense reforms that would bring the CFPB's structure in line with other agencies of similar importance.

First, the CFPB should be funded through the normal, transparent appropriations process. Under current law, the CFPB has access to an annual blank check worth more than \$400 million. The Dodd-Frank Act actually bars congressional appropriators from even attempting to "review" the CFPB's self-funded budget.<sup>3</sup> Instead, the law authorizes the CFPB Director to unilaterally claim up to 12% of the Federal Reserve Board's \$3.7 billion in annual operating expenses, with no congressional approval.<sup>4</sup> Meanwhile, the Bureau is free to pay out large salaries, with a reported 60% of its employees making more than \$100,000 per year by last account. To ensure accountability and fiscal responsibility, I believe the Bureau should be subject to the same appropriations process that applies to other independent agencies including the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Consumer Product Safety Commission.

Second, the Bureau's powers should not be lodged in the hands of a single director but instead should be entrusted to a multi-member board — much like the Federal Reserve Board, the SEC, the CFTC, and other independent agencies with comparable authority. As you noted when we discussed this issue, leadership by a bipartisan board provides some stability and continuity in regulation over time. Concentration of power in a single director who cannot be removed by the President and need not answer to congressional appropriators creates an obvious opportunity for abuse.

The Obama Administration's refusal to even engage on these and other proposed reforms has resulted in an impasse on your nomination, as evidenced by a letter issued today by 42 Senators.

As a nominee to lead an independent agency, you have an opportunity to stake out a reasonable position on these proposals independent of the White House. Now is the time to exercise that independence and lend your support to these commonsense reforms to make the Bureau more effective and accountable to the American people, so that the Senate can find a path forward on your nomination.

Sincerely,



Rob Portman

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<sup>3</sup> Dodd-Frank Act, tit. X, sec. 1017(a)(2)(C).

<sup>4</sup> *Id.*, sec. 1017(a)(1)-(2).