U.S. SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

# MEMORANDUM

**TO:** Interested Parties
**FROM**: Sean Oblack, Senate Banking Committee Communications Director
**DATE:** December 7, 2011
**RE:** Accountability at the Consumer Financial Protection Bureau

Even before the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law, opponents of consumer protection have been fighting the creation of the Consumer Financial Protection Bureau (CFPB). One of the latest efforts is to hold the position of Director hostage by claiming that the new agency lacks accountability.

In May, 44 Republican Senators signed a letter to President Obama threatening to block the nomination of <u>any</u> CFPB Director "absent structural changes that will make the Bureau accountable to the American people." Senator Heller, who was not sworn in at the time, later said that he would have signed the letter.

The truth is that every regulatory agency is structured with different features that make it accountable to the American people. Each agency has a unique combination that fits its mission and independence. Last year, a bipartisan Congress after much discussion and debate decided on a structure for the CFPB which borrows some accountability features from other regulators, but also includes several new features unique to the consumer agency.

Clearly, there is accountability at the CFPB. <u>Efforts to change the structure of the Bureau should be recognized for what they truly are: an attempt to destroy the CFPB's ability to do its job of protecting American consumers, including servicemembers and older Americans</u>. Any changes would also undermine the CFPB's ability to level the playing field between community banks and credit unions and their nonbank competitors.

Below is a list of many of the CFPB's accountability features:

- The CFPB Director is subject to confirmation by the Senate.
- The President can remove any CFPB Director "for inefficiency, neglect of duty, or malfeasance in office" – similar to the heads of the Federal Reserve, SEC and FTC.
- The Director of the CFPB is required to consult with the prudential and other federal regulators during rulemaking regarding prudential, market, and systemic objectives.
- The CFPB's budget has a statutory cap – this limit is unique to the Bureau.
- The Financial Stability Oversight Council has the power to review and overturn any CFPB regulation. The CFPB is the only regulator subject to this veto authority. No similar requirement was imposed on the Federal Reserve when it had the authority to write consumer financial protection rules.
- The CFPB is required to consider the impact of proposed rules on banks and credit unions with $10 billion or less in assets, as well as the impact on consumers in rural areas – this requirement is unique to the CFPB.

- When writing rules, the CFPB is required to balance the costs and benefits to consumers and industry, as well as effects on access to financial products.
- The Director is required to appear before Congress biannually and report on, among other things, the CFPB's budget and all significant rules and orders it has adopted.
- CFPB rules are subject to the Small Business Regulatory Enforcement Flexibility Act small business review panel process, which requires the CFPB to review potential rules with affected small businesses prior to the publication of such proposed rules. No other federal financial regulator or independent agency is subject to this process.
- Similar to all regulatory agencies, the CFPB is subject to the Administrative Procedures Act and its final rules are subject to judicial review.
- The CFPB is required to assess significant rules every five years through a report which the public is invited to comment on.
- The GAO is required to audit financial services regulation, which includes the CFPB.
- The Comptroller General is required to annually audit the financial transactions of the Bureau.
- The requirement imposed by the Fiscal Year 2011 Continuing Budget Resolution of an annual audit by GAO of the CFPB financial statements.
- The CFPB's operations and budget is subject to a private sector, independent audit.
- Finally, the CFPB is also held accountable by the Inspector General of the Federal Reserve Board of Governors.

On July 18th, President Obama nominated Richard Cordray to be the first Director of the CFPB. Cordray is extremely qualified for the position. He clerked for two Supreme Court Justices and worked as an attorney in private practice for many years. Mostly recently he served as Ohio's Attorney General and prior to that as Ohio's Treasurer. He currently serves as the head of the CFPB's enforcement division. Cordray has received many endorsements (document attached above), including from Ohio business leaders and from Republican elected officials from around the country.