The Heritage Foundation

BACKGROUNDER

No. 3214 | MAY 11, 2017

Consumer Protection Predates the Consumer Financial Protection Bureau

Diane Katz and Norbert J. Michel, PhD

Abstract

Congress is considering whether to remedy many of the most punishing regulatory elements of the Dodd–Frank Act, including revamping the structure of the Consumer Financial Protection Bureau. The CFPB was created under the false premise that the mortgage meltdown and 2008 financial crisis resulted from the defrauding of financially illiterate consumers by predatory lenders, but a lack of consumer protection was not a major factor in the crisis. As currently structured, the CFPB unduly restricts access to credit without oversight from either Congress or the executive branch. Congress should eliminate the CFPB and transfer enforcement authority for consumer protection statutes to the Federal Trade Commission, which has a long history of promoting consumer welfare and market competition. Americans would be just as protected against unfair, deceptive, and fraudulent practices as they are today but without the harmful constraints imposed by the CFPB.

Legislation to remedy many of the most punishing regulatory elements of the Dodd–Frank Act is pending in Congress,[1] and debate over revamping Title X of the law, which created the Consumer Financial Protection Bureau (CFPB), is particularly contentious. Critics claim that the proposed reforms would expose Americans to ruinous financial scams without legal recourse.[2] The facts, however, say otherwise. Without the CFPB, longstanding federal and state statutes would fully protect American consumers against unfair, deceptive, and fraudulent practices. Repealing the bureau's onerous constraints would increase consumer access to more affordable financial products and services.

Key Points

- The Consumer Financial Protection Bureau is arguably the most powerful and unaccountable regulatory agency in existence.
- The CFPB constrains access to credit and erodes Americans' financial independence. It is unaccountable to the public and raises serious due process and separation of powers concerns.
- Like much else in the Dodd–Frank Act, the CFPB represents an unnecessary change in the financial sector's regulatory framework. A longstanding body of law protected consumers from unfair and deceptive practices decades before enactment of Dodd–Frank.
- Dodd–Frank transferred enforcement authority for 22 consumer protection statutes to the CFPB along with unparalleled powers over virtually all financial products and services.
- The bureau's paternalistic paradigm constrains access to credit and makes providing financial services more costly.
- If Congress eliminates the CFPB, Americans will be just as protected against unfair, deceptive, and fraudulent practices as they are today.

This paper, in its entirety, can be found at **http://report.heritage.org/bg3214**

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

The CFPB was established in the wake of the 2008 financial crisis to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws."[3] Before its creation, authority for some 50 rules and orders stemming from 22 consumer protection statutes[4] was divided among seven agencies.[5]

More than simply consolidating regulatory authority, the Dodd–Frank Act granted the new agency unparalleled rulemaking, supervisory, and enforcement powers over virtually every consumer financial product and service. In effect, the CFPB was designed to dictate the types of financial products and services available to consumers instead of allowing them to exercise choice. In the words of Oren Bar-Gill and then-Professor Elizabeth Warren, the academic architects of the CFPB, borrowers suffer "cognitive limitations," and their "learning is imperfect."[6] Under this paternalist paradigm,[7] regulatory intervention is necessary to protect consumers from themselves by limiting complex credit options and standardizing "qualified" loans.

Before the financial crisis, there was a need to modernize the federal consumer protection regime, but a lack of consumer protection was not a major factor in the 2008 financial crisis.[8] Now, however, the CFPB's structural flaws are restricting access to credit, eroding Americans' financial independence, and posing due process and separation of powers concerns.[9]

CFPB advocates claim that the agency is vital for protecting consumers against "vulture capitalism."[10] But if Congress reforms the CFPB or even eliminates it altogether, consumers will be just as protected against unfair, deceptive, and fraudulent practices as they are today. No matter the fiery rhetoric of bureau advocates, the fact is that there was no shortage of consumer protection before the Dodd–Frank Act.

In addition to the 22 federal statutes, consumers are protected under state laws and regulations, and local ordinances too numerous to count.[11] For decades, this framework governed the offering of consumer credit, and outlawed deceptive and unfair practices in financial products and services. Even Senator Elizabeth Warren (D-MA), intellectual architect of the

1. H.R. 10, Financial CHOICE Act of 2017, 115th Cong., 1st Sess., April 26, 2017, https://www.congress.gov/115/bills/hr10/BILLS-115hr10ih.pdf (accessed May 3, 2017).
2. According to Lisa Donner, Executive Director of Americans for Financial Reform, for example, "The level of venom directed at the Consumer Financial Protection Bureau, an agency that is successfully carrying out its mission of preventing tricks and traps that harm American families, is astounding." Quoted in Tobie Stranger, "How Consumer Financial Protections Could Be Rolled Back," *Consumer Reports*, April 27, 2017, http://www.consumerreports.org/consumer-protection/how-consumer-financial-protections-could-be-rolled-back/ (accessed May 3, 2017).
3. H.R. 4173, Dodd–Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 111th Cong., July 21, 2010, 124 Stat. 1376, 12 U.S. Code § 5301, Title X, Section 1011(a). Cited hereafter as Dodd–Frank Act.
4. Including the Truth in Lending Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Equal Credit Opportunity Act, and Electronic Funds Transfer Act, among others. For a complete list, see Appendix A.
5. The Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Department of Housing and Urban Development.
6. Oren Bar-Gill and Elizabeth Warren, "Making Credit Safer," *University of Pennsylvania Law Review*, Vol. 157, No. 1 (November 2008), pp. 1–101, esp. pp. 6 and 14, https://www.pennlawreview.com/print/old/Bar_Gill_Warren.pdf (accessed May 3, 2017).
7. President Barack Obama extended this regulatory framework to all agencies in Executive Order 13707, "Using Behavioral Science Insights to Better Serve the American People," September 15, 2015, https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23630.pdf (accessed May 3, 2017).
8. Norbert J. Michel, "The Myth of Financial Market Deregulation," Heritage Foundation *Backgrounder* No. 3094, April 28, 2016, http://www.heritage.org/research/reports/2016/04/the-myth-of-financial-market-deregulation.
9. A three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia recently ruled that the bureau's single-director model is unconstitutional. The decision states that the unilateral power wielded by CFPB Director Richard Corday "represents a gross departure from settled historical practice" and "poses a far greater risk of arbitrary decision making and abuse of power, and a far greater threat to individual liberty, than does a multi-member independent agency." *PHH Corporation, et al. v. Consumer Financial Protection Bureau*, U.S. Court of Appeals, District of Columbia Circuit, October 11, 2016, pp. 8–9, https://assets.documentcloud.org/documents/3131047/Cfpb-Dccircuit-20161011.pdf (accessed March 31, 2017).
10. K. Sabeel Rahman, "The Return of Vulture Capitalism," *The Boston Review*, April 25, 2017, http://bostonreview.net/class-inequality/k-sabeel-rahman-return-vulture-capitalism (accessed May 3, 2017).
11. Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Tod J. Zywicki, *Consumer Credit and the American Economy* (New York: Oxford University Press, 2014), p. 417.

CFPB, has acknowledged that "credit transactions have been regulated by statute or common law since the founding of the Republic."[12] Simply put, there was no need for Congress to create a new federal agency—let alone one with unparalleled rulemaking, supervisory, and enforcement powers over virtually every consumer financial product and service.

As with much else in Dodd–Frank, Congress created the CFPB without a thorough understanding of the housing market collapse, the subsequent failure of major financial firms, or the resulting shock to the economy, but lawmakers and the Trump Administration can remedy these policy missteps by eliminating the bureau. They can also increase enforcement efficiency by consolidating the various consumer protection statutes within the Federal Trade Commission (FTC), which has decades of experience in protecting consumer welfare and market competition.

Traditional Consumer Protection and the CFPB

At the time of the 2008 financial crisis, numerous federal consumer protection laws overlay state regulations. Despite the redundancy, establishment of the CFPB was not intended to remedy regulatory inefficiency. Rather, it was calculated to depart from the principles that had governed consumer protection law for decades.[13]

Not only did Dodd–Frank imbue the bureau with authority over existing consumer protection statutes,[14] but it also radically redefined consumer protection. Deference to consumer autonomy, the guiding regulatory principle for decades, was abandoned in favor of a paternalist paradigm that regards consumers as fundamentally irrational and prone to act against their self-interest.

The CFPB's structural flaws have been fully exposed,[15] but far less attention has been paid to the adequacy of the many and varied consumer protection statutes that predate the bureau—and which would remain in full effect in its absence. While it may seem politically risky for Members of Congress to challenge the need for this consumer protection agency, they can act with confidence that their constituents would be well-protected—indeed, better off—without an unaccountable bureau whose primary mission is to restrict access to financial products and services.

Earliest Consumer Protection Law. At its most elemental, consumer protection equates to rules of trade, and such rules date to the very beginnings of commerce.[16] Among the oldest of trade principles is "Caveat Emptor" ("Let the buyer beware"). The term is actually part of the longer statement: "Caveat emptor, quia ignorare non debuit quod jus alienum emit," or "Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party." From this principle evolved a great body of common law, as well as enactment of modern disclosure requirements for virtually every financial product.

12. Elizabeth Warren, "Unsafe at Any Rate," *Democracy Journal*, No. 5 (Summer 2007), http://democracyjournal.org/magazine/5/unsafe-at-any-rate/ (accessed May 3, 2017).
13. For a more detailed examination of this change, see Joshua D. Wright, "The Antitrust/Consumer Protection Paradox: Two Policies at War with Each Other," George Mason University Law and Economics *Research Paper* No. 12-45, May 31, 2012, http://www.law.gmu.edu/assets/files/publications/working_papers/1245AntitrustConsumerProtectionParadox.pdf (accessed May 3, 2017).
14. In creating the CFPB, Congress transferred consumer financial protections from the Federal Reserve, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, National Credit Union Administration, and Department of Housing and Urban Development. 12 U.S. Code § 5581, delineating the transfer of consumer financial services functions to the CFPB; Federal Trade Commission, "Consumer Finance," explaining that the FTC shares authority with the CFPB to enforce the consumer protection laws with respect to non-bank financial institutions ranging from mortgage brokers to debt collection firms, https://www.ftc.gov/news-events/media-resources/consumer-finance (accessed March 27, 2017).
15. See Diane Katz, "Court Ruling Reins in Unaccountable Financial Regulation Agency," The Daily Signal, October 11, 2016, http://dailysignal.com/2016/10/11/court-ruling-reins-in-unaccountable-financial-regulation-agency/?_ga=1.129240399.234929671.1471295889; Diane Katz, "Title X and the Consumer Financial Protection Bureau: Limiting Americans' Credit Choices," Chapter 11 in *The Case Against Dodd–Frank: How the "Consumer Protection" Law Endangers Americans*, ed. Norbert J. Michel (Washington: The Heritage Foundation, 2016), pp. 157–168, http://www.heritage.org/government-regulation/report/the-case-against-dodd-frank-how-the-consumer-protection-law-endangers; and Todd Zywicki, "The Consumer Financial Protection Bureau: Savior or Menace?" *George Washington Law Review*, April 2013, Vol. 81, No. 3 (April 2013), pp. 856–928, http://www.gwlr.org/wp-content/uploads/2013/04/Zywicki.pdf (accessed March 25, 2017).
16. Walton H. Hamilton, "The Ancient Maxim Caveat Emptor," *Yale Law Journal*, Vol. 40, No. 8 (June 1931), pp. 1133–1187, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5674&context=fss_papers (accessed May 3, 2017).

Yale University scholar Walton H. Hamilton has documented sanctions against vendors as far back as 1256. Hamilton notes that:

> The foundations of the scheme of regulation were the assizes [English and Welsh courts that administered civil and criminal law] of bread and of beer. A host of persons have won such immortality as the dusty annals of justice accord by having it set against their names that they were in mercy because of poor loaves or insufficient gallons.[17]

Consumer protection laws also were written as "responses to crises and emergencies that generate great public outrage"[18]—be the offenses real or exaggerated. Among the most often cited is the 1906 publication of Upton Sinclair's novel *The Jungle*, which prompted swift passage of the Meat Inspection Act,[19] followed by a variety of other health and safety regulations. But as some scholars have pointed out, federal action was not always warranted. For example, economist Lawrence W. Reed, president of the Foundation for Economic Education, refers to Sinclair's expose as "a triumph of myth over reality, of ulterior motives over good intentions."[20] In fact, hundreds of federal, state, and local food inspectors were already employed more than a decade before *The Jungle* was published.

The Progressive Era. Massive industrialization and waves of immigration contributed to enormous wealth creation at the turn of the 20th century, but living conditions in major cities also deteriorated, and factories were dangerous places. Thus was born the Progressive Era, during which reformers sought to remedy a variety of social ills.

In addition to the Upton Sinclair–inspired Meat Inspection Act, Congress in 1906 also passed the Pure Food and Drug Act to prevent "the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors."[21] Trading on populist resentment toward wealthy industrialists, President Theodore Roosevelt aggressively "busted" a variety of corporations, thus earning the moniker "trust-buster." He went on to establish the Department of Commerce and Labor in 1903, which featured the Bureau of Corporations—a precursor to the Federal Trade Commission.[22]

The FTC was created in 1914 to protect consumers, investors, and businesses from anticompetitive practices.[23] Although closely associated with antitrust enforcement, the FTC's first case was one of consumer protection involving the labeling of thread by the manufacturer, Circle Cilk Company.[24] Notwithstanding the company name, the agency determined that "Cilk" floss was actually cotton. The commission concluded that the company intended to "confuse, mislead, and deceive purchasers" and barred it from using "Cilk" for any product not made of silk.

The New Deal. The stock market crash of 1929 and the ensuing Great Depression prompted a slew of federal statutes to regulate banks and securities. Various federal agencies, including the Securities and Exchange Commission, Federal Housing Administration, Federal National Mortgage Association, and Home Owners' Loan Corporation, expand-

17. Ibid., p. 1142
18. Spencer Weber Waller, Jillian G. Brady, R. J. Acosta, and Jennifer Fair, "Consumer Protection in the United States: An Overview," *European Journal of Consumer Law*, May 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1000226 (accessed May 3, 2017).
19. The law prohibited the sale of adulterated or misbranded products derived from livestock and required that livestock must be slaughtered and processed under sanitary conditions. For a copy of the act, see U.S. Department of Agriculture, Food Safety and Inspection Service, "Federal Meat Inspection Act," https://www.fsis.usda.gov/wps/portal/fsis/topics/rulemaking/federal-meat-inspection-act (accessed May 3, 2017).
20. Lawrence W. Reed, "Ideas and Consequences: Of Meat and Myth," Foundation for Economic Education, November 1, 1994, https://fee.org/articles/ideas-and-consequences-of-meat-and-myth/ (accessed March 27, 2017).
21. 34 Stat. 768 (1906).
22. Michael Chapman, "TR: No Friend of the Constitution," Cato Institute *Policy Report*, Vol. 24, No. 6 (November/December 2002), https://object.cato.org/sites/cato.org/files/serials/files/policy-report/2002/11/chapman.pdf (accessed May 3, 2017).
23. The agency's consumer protection authority is largely grounded in Section 5(a) of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S. Code § 45(a)(1).
24. Lesley Fair, "FTC Milestones: Shared Beginnings in the Circle Cilk Case," Federal Trade Commission, November 6, 2014, https://www.ftc.gov/news-events/blogs/competition-matters/2014/11/ftc-milestones-shared-beginnings-circle-cilk-case (accessed May 3, 2017).

ed the federal government's reach into financial markets. Individuals' bank deposits also won protection under the Banking Act of 1933, often referred to as the Glass–Steagall Act,[25] which created the Federal Deposit Insurance Corporation (FDIC).

The Securities Act of 1933, known as the "Truth in Securities Act,"[26] required issuers of securities to disclose all material information that a reasonable shareholder would require in order to make up his or her mind about a potential investment. (Before enactment of this legislation, the sales of securities were governed primarily by state laws.) Research has shown, however, that firms were already disclosing information before these federal requirements and the first federal disclosure laws merely codified common practices.[27]

The Modern Era. A new wave of consumer protection was unleashed in the early 1960s, beginning with President John F. Kennedy's 1962 "Special Message to the Congress on Protecting the Consumer Interest."[28] In his address, Kennedy asserted four foundational consumer rights: the right to safety, the right to be informed, the right to choose, and the right to be heard.

Three years later, Ralph Nader published *Unsafe at Any Speed*,[29] which exposed the design flaws of the Chevrolet Corvair (and its rear engine) and detailed automakers' purported resistance to installing safety features. Attempts by General Motors to smear Nader only elevated his public profile, and the activism he inspired is credited with passage of legislation such as the Clean Water Act, Freedom of Information Act, Consumer Product Safety Act, Foreign Corrupt Practices Act, Whistleblower Protection Act, and National Traffic and Motor Vehicle Safety Act.[30]

The advent of taxpayer-subsidized legal services for the poor vaulted consumer protection into the realm of social justice.[31] As part of President Lyndon Johnson's War on Poverty, Congress created the Office of Economic Opportunity (OEO). The OEO believed that "one of the best ways to cure some of the poor's problems was to provide them with lawyers," so it created the Legal Services Program.[32] According to Mark Budnitz, Professor of Law Emeritus at the Georgia State University College of Law, the Legal Services Program "created the opportunity for substantial numbers of lawyers across the country to launch a large number of consumer law reform efforts."[33]

In the late 1960s, Congress moved further into the longstanding province of states in regulating consumer transactions with passage of the Consumer Credit Protection Act (CCPA).[34] Title I of the CCPA, the Truth in Lending Act (TILA), mandated disclosure of credit charges "clearly and conspicuously" as specified by the Federal Reserve System.[35] As declared by Congress, the TILA's purpose was to "assure a meaningful disclosure of credit terms"[36] rather than dictate the conduct of lenders or the content of loan agreements. The TILA is still a major component of federal consumer protection law[37]—one of many statutes passed since 1968.

25. Public Law 73-66, 73rd Cong., June 16, 1933, 48 Stat. 162, 12 U.S. Code § 227.
26. Public Law 112-106, 73rd Cong., May 27, 1933, 48 Stat. 74, 15 U.S. Code § 77a et. seq.
27. Paul Mahoney, *Wasting a Crisis: Why Securities Regulation Fails* (Chicago: University of Chicago Press, 2015), pp. 77–99.
28. John F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," March 15, 1962, http://www.presidency.ucsb.edu/ws/?pid=9108 (accessed March 25, 2017).
29. Ralph Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile* (New York: Grossman, 1965).
30. See, for example, *An Unreasonable Man*, an Independent Lens film, http://www.pbs.org/independentlens/unreasonableman/activist.html (accessed March 27, 2017).
31. Mark E. Budnitz, "The Development of Consumer Protection Law, the Institutionalization of Consumerism, and Future Prospects and Perils," *Georgia State University Law Review*, Vol. 26, Issue 4 (Summer 2010), pp. 1147–1207, http://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2418&context=gsulr (accessed May 3, 2017).
32. Ibid., p. 1151.
33. Ibid., p. 1147.
34. Consumer Credit Protection Act, Public Law 90-321, 90th Cong., May 29, 1968, 82 Stat. 146.
35. The Federal Reserve's implementing regulation for the TILA is known as Regulation Z. The Dodd–Frank Act transferred authority for enforcing Regulation Z, now found at 12 Code of Federal Regulations Part 226, to the CFPB.
36. 15 U.S. Code § 1601.
37. Budnitz, "The Development of Consumer Protection Law."

The following list describes the major federal consumer financial protection statutes enacted in the 10 years following TILA:[38]

- **The Fair Credit Reporting Act of 1970,**[39] the primary purpose of which was to "require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer."[40]

- **The Real Estate Settlement Procedures Act of 1974,**[41] which was intended to ensure that consumers "are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges."[42]

- **The Equal Credit Opportunity Act of 1974,**[43] which prohibited discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age.

- **The Privacy Act of 1974,**[44] which established a code of practices to govern the collection, maintenance, use, and dissemination of information about individuals that is maintained by federal agencies.

- **The Fair Credit Billing Act of 1974,**[45] which amended the TILA "to protect the consumer against inaccurate and unfair credit billing and credit card practices."[46]

- **The Home Mortgage Disclosure Act of 1975,**[47] a primary goal of which was to "provide the citizens and public officials of the United States with sufficient information to determine whether depository institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located."[48]

- **The Fair Debt Collection Practices Act of 1977,**[49] the stated purpose of which was to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[50]

- **The Electronic Fund Transfer Act of 1978,**[51] which required transparency of service terms and accountability for errors in the provision of electronic fund transfers such as services through automated teller machines, point-of-sale terminals, telephone bill-payment plans, and remote banking programs.[52]

38. For a complete list and explanation of each statute transferred to the CFPB in Title X, Subtitle H, of Dodd–Frank, see Appendix A.
39. The Fair Credit Reporting Act, 15 U.S. Code § 1681, was Title VI of Public Law 91-508, 90th Cong., October 26, 1970. Commonly referred to as the Bank Secrecy Act of 1970, it required, among other things, that "insured banks…maintain certain records" and that "certain transactions in United States currency be reported to the Department of the Treasury."
40. Fair Credit Reporting Act § 602, 15 U.S. Code § 1681(b).
41. Public Law 93-533, 88 Stat. 1724, 12 U.S. Code § 2601.
42. 12 U.S. Code § 2601 et seq.
43. The Equal Credit Opportunity Act (ECOA), 15 U.S. Code § 1691, was Title V of Public Law 93-495, 93rd Cong., October 28, 1974.
44. Public Law 93-579, 93rd Cong., December 31, 1974, 88 Stat. 1896, 5 U.S. Code § 552a.
45. The Fair Credit Billing Act, 15 U.S. Code § 1601, was Title III of Public Law 93-495, 93rd Cong., October 28, 1974.
46. Fair Credit Billing Act § 302, 15 U.S. Code § 1601(a).
47. The Home Mortgage Disclosure Act of 1975, 12 U.S. Code § 2801, was Title III of Public Law 94-200, 94th Cong., December 31, 1975.
48. Home Mortgage Disclosure Act § 302(b).
49. The Fair Debt Collection Practices Act, Public Law 95-109, 95th Cong., September 20, 1977, 91 Stat. 874, 15 U.S. Code § 1692–1692p, amended the 1968 Consumer Credit Protection Act, Public Law 90-321, 90th Cong., May 29, 1968.
50. Fair Debt Collection Practices Act § 802(e).
51. 5 U.S. Code § 1693 et seq.; the Electronic Funds Transfer Act was Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95-630, 95th Cong., November 10, 1978, 92 Stat. 3641.
52. Dodd–Frank transferred rulemaking authority under the EFTA from the Federal Reserve Board of Governors to the CFPB.

As these statutes show, there was no lack of consumer protections before Dodd–Frank. Statutes were designed to equip consumers with the information necessary to act on their own preferences, given market conditions, and to punish fraud and other wrongdoing. The role of government, at least theoretically, was to facilitate choice and competition through disclosure—an approach reflecting the belief that free enterprise, albeit imperfect, yields greater benefits than are yielded by autocratic alternatives.

In the wake of the 2008 crisis, many activists and a large segment of the media improperly blamed the wave of mortgage defaults on deficiencies in consumer protection law, but rather than call for more stringent regulation of financial firms, they demanded government control over the types of credit available to consumers. That is, they insisted that "consumer protection" focus on protecting consumers from themselves. Ultimately, such authority was bestowed on the Consumer Financial Protection Bureau.

Radical Shift in Consumer Protection

For decades before the financial crisis, consumer protection laws prohibited "deceptive" and "unfair" practices, terms that were well-defined in law.[53] Primary responsibility for enforcement resided with the FTC, with the exception of banks, which were overseen by federal banking regulators.[54]

Reflecting the overly broad nature of the powers granted to the CFPB, Congress empowered the agency to supervise any nonbank firm that it views as posing a risk to consumers or engaging in "unfair, deceptive, or abusive" practices.[55] Unlike "unfair" and "deceptive," however, the term "abusive" had not been defined in law and thus granted the CFPB inordinate discretion. As outlined in Title X of Dodd–Frank, the bureau's authority to craft rules and enforce against "abusive" practices is particularly vague:

> The Bureau shall have no authority...to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—
>
> 1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
>
> 2. Takes unreasonable advantage of
>
> a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
>
> b) the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
>
> c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.[56]

The agency has issued neither guidance nor rules to define abusive practices, nor have officials shown much willingness to provide clarity—even when asked explicitly to do so by Congress. During a 2012 hearing of the House Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, for example, when asked by lawmakers to define "abusive," CFPB Director Richard Cordray said that:

> [T]he term abusive in the statute is...a little bit of a puzzle because it is a new term.... We have been looking at it, trying to understand it, and we have determined that that is going to have to be a fact and circumstances issue; it is not something

53. The Federal Trade Commission Act (15 U.S. Code § 41 et seq.) was amended in 1938 to prohibit "unfair or deceptive acts or practices." See generally Federal Trade Commission, "Bureau of Consumer Protection," https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection (accessed November 4, 2016).

54. Federal banking regulators, including the Federal Deposit Insurance Corporation, Federal Reserve Board, Comptroller of the Currency, and National Credit Union Administration, had authority to enforce unfair or deceptive acts or practices in or affecting commerce under their statutes in a manner consistent with carefully crafted FTC limiting principles applicable to unfairness and deception. See 15 U.S. Code § 45(n) (defining "unfairness"); Federal Trade Commission, "FTC Policy Statement on Unfairness," December 17, 1980, https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness (accessed May 4, 2017); and Federal Trade Commission, "FTC Policy Statement on Deception," October 14, 1983, https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception (accessed May 4, 2017). See also, e.g., Federal Deposit Insurance Corporation, *FDIC Compliance Examination Manual*, Chapter 7, "Federal Trade Commission Act, Section 5, Unfair or Deceptive Acts or Practices," November 2015, https://www.fdic.gov/regulations/compliance/manual/7/VII-1.1.pdf (accessed May 4, 2017).

55. Dodd–Frank Act, Section 1021, 12 U.S. Code § 5511. See also Section 1024, 12 U.S. Code § 5514.

56. Dodd–Frank Act, Section 1031, 12 U.S. Code § 5531.

> we are likely to be able to define in the abstract. Probably not useful to try to define a term like that in the abstract; we are going to have to see what kind of situations may arise....[57]

Under this framework, financial firms must operate according to a vague legal standard to which they might never be able to adhere. Aside from the near impossibility of complying with such a fleeting standard for abusive acts or practices, there is no objective way to measure a consumer's ability to understand terms and conditions of financial products and services.[58] Moreover, forcing financial firms into such a role, where they are effectively required to verify consumers' understanding of terms rather than merely disclosing relevant information, goes well beyond the long-established consumer protection framework. Perhaps worse, this change, based on a hostile view of free enterprise, comes dangerously close to absolving one party in a financial contract from any real responsibility.

Paternalistic Regulation Endangers Economic Freedom. The Obama Administration and congressional Democrats blamed the financial crisis on lenders who exploited consumers,[59] but deliberately deceiving borrowers was already illegal under existing law. Therefore, regulatory advocates were left to declare that consumers could not understand that these mortgages were risky. According to the CFPB's academic architects, Oren Bar-Gill and Elizabeth Warren, as noted, borrowers suffer "cognitive limitations," and their "learning is imperfect."[60] This explanation of the financial crisis and this new view of consumer protection are fatally flawed for several reasons.

First, the flood of defaults and foreclosures, regardless of the portion in low-income and moderate-income neighborhoods does not prove that lenders singled out borrowers who could not understand mortgage terms. And whether or not borrowers understood the mortgage terms, not all of them would default on their loans.

Reckless lending did play a role in the 2008 financial crisis, but the reality is that millions of lenders and borrowers were responding rationally to incentives created by an array of deeply flawed government policies, including regulators' failure to accurately predict financial risks, that were designed to increase the supply of credit.[61]

In both design and function, the Consumer Financial Protection Bureau is an affront to the

57. Richard Cordray, testimony in hearing, *How Will the CFPB Function Under Richard Cordray*, Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, Committee on Oversight and Government Reform, U.S. House of Representatives, 112th Cong., 2nd Sess., January 24, 2012, p. 69, http://oversight.house.gov/wp-content/uploads/2012/06/01-24-12-Subcommittee-on-TARP-Financial-Services-and-Bailouts-of-Public-and-Private-Programs-Hearing-Transcript.pdf (accessed May 4, 2017).
58. See Katz, "Title X and the Consumer Financial Protection Bureau: Limiting Americans' Credit Choices"; Zywicki, "The Consumer Financial Protection Bureau: Savior or Menace?"; and Diane Katz, "The CFPB in Action: Consumer Bureau Harms Those It Claims to Protect," Heritage Foundation *Backgrounder* No. 2760, January 22, 2103, http://www.heritage.org/housing/report/the-cfpb-action-consumer-bureau-harms-those-it-claims-protect .
59. See, for example, U.S. Department of the Treasury, *Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation*, June 17, 2009, p. 55, https://www.treasury.gov/initiatives/wsr/Documents/FinalReport_web.pdf (accessed May 4, 2017).
60. Bar-Gill and Warren, "Making Credit Safer, " pp. 6 and 14.
61. Comprehensive analyses of the financial crisis include Christopher L. Foote, Kristopher S. Gerardi, and Paul S. Willen, "Why Did So Many People Make So Many Ex Post Bad Decisions? The Causes of the Foreclosure Crisis," Federal Reserve Bank of Atlanta *Working Paper* No. 2012-7, May 2012, http://www.frbatlanta.org/documents/pubs/wp/wp1207.pdf (accessed May 4, 2017); John A. Allison, *The Financial Crisis and the Free Market Cure: Why Pure Capitalism Is the World Economy's Only Hope* (New York: McGraw-Hill, 2012); and Peter J. Wallison, "Why Large Portions of the Dodd–Frank Act Should Be Repealed or Replaced," Chapter 1 in *The Case Against Dodd–Frank: How the "Consumer Protection" Law Endangers Americans*. See also John L. Ligon and Norbert J. Michel, "Why Is Federal Housing Policy Fixated on 30-Year Fixed Rate Mortgages?" Heritage Foundation *Backgrounder* No. 2917, June 18, 2014, http://www.heritage.org/housing/report/why-federal-housing-policy-fixated-30-year-fixed-rate-mortgages; Norbert J. Michel and John Ligon, "Basel III Capital Standards Do Not Reduce the Too-Big-to-Fail Problem," Heritage Foundation *Backgrounder* No. 2905, April 23, 2014, http://www.heritage.org/markets-and-finance/report/basel-iii-capital-standards-do-not-reduce-the-too-big-fail-problem; Kristopher S. Gerardi, Andreas Lehnert, Shane N. Sherland, and Paul S. Willen, "Making Sense of the Subprime Crisis," Federal Reserve Bank of Atlanta *Working Paper* No. 2009-2, February 2009, p. 6, http://www.frbatlanta.org/documents/pubs/wp/wp0902.pdf (accessed May 4, 2017); Laurie S. Goodman, Roger Ashworth, Brian Landy, and Ke Yin, "Negative Equity Trumps Unemployment in Predicting Defaults," *The Journal of Fixed Income*, Vol. 19, No. 4 (Spring 2010), pp. 67–72; and Andrew Haughwout, Donghoon Lee, Joseph Tracy, and Wilbert van der Klaauw, "'Flip this House': Investor Speculation and the Housing Bubble," Federal Reserve Bank of New York *Liberty Street Economics*, December 5, 2011, http://libertystreeteconomics.newyorkfed.org/2011/12/flip-this-house-investor-speculation-and-the-housing-bubble.html (accessed May 4, 2017).

supremacy of free enterprise as the most beneficial economic system. It is a bureaucratic monument to the notion that businesses are predatory by nature and that consumers are inherently incapable of managing their own interests and, therefore, need the strong arm of government to protect them in all transactions. This concept is deeply flawed. Americans enjoyed the world's highest standard of living long before Dodd–Frank precisely because free enterprise provides widespread benefits from mutually beneficial exchanges.

Conclusion

The Obama Administration and congressional Democrats blamed the 2008 financial crisis on a lack of consumer protection and thus justified creation of the CFPB—arguably the most powerful and unaccountable regulatory agency in existence. In reality, inadequate consumer protection was not a factor in the financial crisis, and Americans would be just as protected against unfair and deceptive fraudulent practices without the CFPB as they have been for decades. Simply put, there was no shortage of consumer protection before Dodd–Frank, and consumers are worse off as a result of the CFPB.

As with much else in Dodd–Frank, Congress created the CFPB without a thorough understanding of the housing market collapse, the subsequent failure of major financial firms and the resulting shock to the economy. Congress and the Trump Administration can reverse these policy missteps by eliminating the CFPB. They can also increase enforcement efficiency by consolidating the various federal consumer protection statutes within the Federal Trade Commission, which has a proven history of promoting consumer welfare and market competition.

*—**Diane Katz** is Senior Research Fellow in Regulatory Policy and **Norbert J. Michel, PhD,** is Senior Research Fellow in Financial Regulations and Monetary Policy in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom, at The Heritage Foundation.*

Appendix A: Consumer Protection Statutes Transferred to the CFPB

The Federal Deposit Insurance Act of 1950 governs the FDIC.[62] Dodd–Frank transferred limited consumer protection law enforcement authority from the FDIC to the CFPB.

The Truth in Lending Act (TILA) of 1968[63] was enacted to provide uniform consumer protection standards in credit markets and focused mainly on disclosure requirements for such items as finance charges and the annual percentage rate (APR). In enacting the TILA, Congress found that "economic stabilization would be enhanced and competition...would be strengthened by the informed use of credit," which "results from an awareness of the cost thereof by consumers."[64] Thus, the purpose of the act was to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices."[65] The act has been amended numerous times and now requires extensive disclosures of calculation methods and explanation of cost-related information.[66] In the absence of a federal requirement, financial firms would still have incentives to provide adequate disclosures to potential customers, and it is difficult to see how they could operate successfully without doing so.

The Fair Credit Reporting Act (FCRA) of 1970[67] was enacted to "require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information."[68] The FCRA was enacted out of concern that "[i]naccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system."[69]

The Real Estate Settlement Procedures Act (RESPA) of 1974[70] was passed largely to ensure that borrowers "are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges."[71] The reference to "unnecessarily high" charges stemmed from complaints that lenders advertised loans at a low rate of interest provided the borrower used a specified title insurance company; the title company would then charge an inflated price and kick back a portion of the fee to the lender. It is unclear how the borrower benefits from prohibiting such a practice if lenders simply can raise the interest rate they charge, and evidence suggests that the RESPA did not achieve its stated purpose of lowering lending rates. Furthermore, the amount of information that lenders are now required to disclose obfuscates rather than informs the typical borrower, and it is unclear whether federal regulation of title and closing costs is even desirable.[72]

62. Public Law 81–797, 81st Cong., September 21, 1950, 64 Stat. 873.
63. Title I of the Consumer Credit Protection Act, Public Law 90-321, 90th Cong., May 29, 1968, 82 Stat. 146, 15 U.S. Code § 1601 et seq.
64. Consumer Credit Protection Act § 102, 15 U.S. Code § 1601(a).
65. Ibid.
66. See Durkin, Elliehausen, Staten, and Yzywicki, *Consumer Credit and the American Economy*, pp. 453–481.
67. The Fair Credit Reporting Act, 15 U.S. Code § 1681, was Title VI of Public Law 91-508, 90th Cong., October 26, 1970. Commonly referred to as the Bank Secrecy Act of 1970, it required, among other things, that "insured banks...maintain certain records" and that "certain transactions in United States currency be reported to the Department of the Treasury."
68. Fair Credit Reporting Act § 602; 15 U.S. Code § 1681(b).
69. Fair Credit Reporting Act § 602; 15 U.S. Code § 1681(a)(1).
70. Public Law 93-533, 93rd Cong., December 22, 1974, 88 Stat. 1724, 12 U.S. Code § 2601.
71. 12 U.S. Code § 2601 et seq.
72. See Kevin Villani and John Simonson, "Real Estate Settlement Pricing: A Theoretical Framework," *Real Estate Economics*, Vol. 10, Issue 3 (September 1982), pp. 249–275, and Mark Shroder, "The Value of the Sunshine Cure: The Efficacy of the Real Estate Settlement Procedures Act Disclosure Strategy," *Cityscape*, Vol. 9, No. 1 (2007), pp. 73–91, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1089448 (accessed May 3, 2017).

The Equal Credit Opportunity Act (ECOA) of 1974[73] was intended to promote adequate disclosure of information to and about credit consumers and also to shield protected classes of consumers from discrimination when applying for credit.[74] The law has been used more broadly since it was enacted and is now part of the framework used to prove disparate impact by employing, among other things, a judicial doctrine known as an effects test. In this broader framework, regulators can "prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face."[75]

The Privacy Act of 1974[76] established a code of information practices to govern the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. Broadly, the act aimed to balance the government's need to maintain information about individuals with the right of those individuals to be protected against unwarranted invasions of their privacy "stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them."[77]

The Fair Credit Billing Act of 1974[78] amended the Truth in Lending Act of 1968[79] to "protect the consumer against inaccurate and unfair credit billing and credit card practices."[80] The Fair Credit Billing Act was part of a disclosure-focused framework, the purpose of which was "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."[81]

The Home Mortgage Disclosure Act (HMDA) of 1975[82] was enacted primarily to "provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located."[83] The HMDA required banks and savings and loan associations to make data about their overall geographic lending patterns publicly available with a broader goal of improving "the private investment environment."[84] Over time, the HMDA's focus has changed, from whether banks were lending in the neighborhoods where their deposit customers lived to whether lenders (even nonbank lenders) were discriminating, and ultimately to whether certain groups were being targeted with unfavorable loan terms.[85]

73. Title V of Public Law 93-495, 93rd Cong., October 28, 1974, 15 U.S. Code § 1691. Among other things, the ECOA established a National Commission on Electronic Fund Transfers.
74. For an overview of policy concerns, see John H. Matheson, "The Equal Credit Opportunity Act: A Functional Failure," *Harvard Journal on Legislation*, Vol. 21 (1984), pp. 371–403, http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1136&context=faculty_articles (accessed May 4, 2017).
75. See 12 Code of Federal Regulations Part 1002 (Regulation B), "Supplement I to § 1002.6—Rules Concerning Evaluation of Applications," December 30, 2011, https://www.consumerfinance.gov/eregulations/1002-Subpart-Interp/2011-31714#1002-6-a-Interp-2 (accessed May 4, 2017). See also Hans A. von Spakovsky, "'Disparate Impact' Isn't Enough," Heritage Foundation *Commentary*, March 22, 2014, http://www.heritage.org/research/commentary/2014/3/disparate-impact-isnt-enough.
76. Public Law 93-579, 88 Stat. 1896, 5 U.S. Code § 552a.
77. U.S. Department of Justice, Office of Privacy and Civil Liberties, *Overview of the Privacy Act of 1974, 2015 Edition*, https://www.justice.gov/opcl/file/793026/download (accessed May 3, 2017).
78. Title III of Public Law 93-495, 93rd Cong., October 28, 1974, 15 U.S. Code § 1601.
79. Title I of the 1968 Consumer Credit Protection Act, Public Law 90-321, 90th Cong., May 29, 1968, 15 U.S. Code § 1601 et seq.
80. Fair Credit Billing Act § 302, 15 U.S. Code § 1601(a).
81. Fair Credit Billing Act § 102, 15 U.S. Code § 1601(a).
82. The Home Mortgage Disclosure Act of 1975, 12 U.S. Code § 2801, was Title III of Public Law 94-200, 94th Cong., December 31, 1975.
83. Home Mortgage Disclosure Act § 302(b).
84. Ibid.
85. See Joseph Kolar and Jonathan Jerison, "The Home Mortgage Disclosure Act: Its History, Evolution, and Limitations," February 2006, http://buckleysandler.com/uploads/36/doc/HistoryofHMDAapr06.pdf (accessed May 4, 2017); published originally in *Consumer Finance Law Quarterly Report*, Vol. 59, No. 3 (Fall 2005). See also Patricia McCoy, "The Home Mortgage Disclosure Act: A Synopsis and Recent Legislative History," *Journal of Real Estate Research*, Vol. 29, No. 4 (2007), pp. 381–397.

The Fair Debt Collection Practices Act of 1977[86] was enacted to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[87] Congress found it necessary to pass this legislation because "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[88] The statute explicitly noted that "[e]ven where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce."[89]

The Electronic Fund Transfer Act (EFTA) of 1978[90] was intended to protect individual consumers engaging in electronic fund transfers, such as transfers through automated teller machines, point-of-sale terminals, telephone bill-payment plans, and remote banking programs.[91] The Federal Reserve Board implements the EFTA through Regulation E. With respect to electronic fund transfer systems, Congress found that "the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries...undefined."[92]

The Federal Financial Institutions Examination Council Act of 1978, Title X of the Financial Institutions Regulatory and Interest Rate Control Act (FIRA) of 1978, created the Federal Financial Institutions Examination Council (FFIEC),[93] a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the examination of financial institutions by federal banking regulators. Section 1091 of Dodd–Frank made the CFPB a member of the FFIEC to help make recommendations that promote uniformity in the supervision of financial institutions.[94]

The Right to Financial Privacy Act of 1978, Title XI of the Financial Institutions Regulatory and Interest Rate Control Act (FIRA) of 1978,[95] required federal authorities to follow specific procedures in order to obtain a customer's financial records from a financial institution. It also imposed various duties and responsibilities on the financial institutions before releasing such information.[96] Previously, "bank customers were not informed that their personal financial records were being turned over to a government authority and could not challenge government access to the records."[97]

The Alternative Mortgage Transaction Parity Act (AMTPA) of 1982,[98] Title VIII of the Garn–St. Germain Depository Institutions Act of 1982,[99] preempted state laws that restrict banks from making any mortgage other than conventional fixed-rate amortizing mortgages. The AMTPA made possible a range of residential loan products previously prohibited in many states, such as adjustable-rate, balloon-payment, and interest-only mortgages. Congress passed the AMTPA because it believed that the "increasingly volatile and dynamic changes in inter-

86. The Fair Debt Collection Practices Act, Public Law 95-109, 95th Cong., September 20, 1977, 91 Stat. 874, 15 U.S. Code § 1692–1692p, amended the 1968 Consumer Credit Protection Act, Public Law 90-321, 90th Cong., May 29, 1968.
87. Fair Debt Collection Practices Act § 802(e).
88. Fair Debt Collection Practices Act § 802(a).
89. Fair Debt Collection Practices Act § 802(d).
90. 15 U.S. Code § 1693 et seq. The EFTA was Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95-630, 95th Cong., November 10, 1978, 92 Stat. 3641.
91. Dodd–Frank transferred rulemaking authority under the EFTA from the Board of Governors of the Federal Reserve System to the CFPB.
92. 15 U.S. Code § 1693(a).
93. Public Law 95-630, Title X, § 1004, 95th Cong., November 10, 1978, 92 Stat. 3694.
94. See 12 U.S. Code § 3303.
95. Public Law 95-630, Title XI, § 1101, 95th Cong., November 10, 1978, 92 Stat. 3697.
96. 12 U.S. Code Chapter 35.
97. Federal Reserve Board of Governors, "Right to Financial Privacy Act," Consumer Compliance Handbook, January 2006, https://www.federalreserve.gov/boarddocs/supmanual/cch/priv.pdf (accessed March 31, 2017).
98. Public Law 97-320, 97th Cong., October 15, 1982, 96 Stat. 1545, 12 U.S. Code § 3801.
99. 12 U.S. Code § 226.

est rates have seriously impaired the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings" and that "alternative mortgage transactions are essential to the provision of an adequate supply of credit."[100] In other words, Congress prohibited states from preventing depository institutions from offering mortgages with features commonly associated with subprime lending because it wanted to increase the volume of loan products available in the market.

The Expedited Funds Availability Act (EFAA) of 1987,[101] Title VI of the Competitive Equality Banking Act of 1987, regulated the manner in which banks could delay the availability of customers' funds. It required banks to make funds deposited in transaction accounts available within specific time frames, to pay interest on interest-bearing transaction accounts in specific time frames, and to disclose their funds-availability policies to their customers.

The Fair and Accurate Credit Transactions Act (FACTA) of 2003[102] amended the Fair Credit Reporting Act to (among other purposes) "prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, [and] make improvements in the use of, and consumer access to, credit information." The FACTA gave consumers the right to one free credit report per year as well as the right to information about how the credit reporting agency calculated their scores. The FACTA also required the provision of notices and credit scores to consumers in connection with denials or less favorable offers of credit.

The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008,[103] Title V of the Housing and Economic Recovery Act of 2008, implemented licensing requirements for mortgage loan originators. It required the establishment of a national mortgage-licensing registry to (among other things) enhance consumer protection and reduce fraud.

The Federal Trade Commission Act of 1914[104] created the Federal Trade Commission with a dual mission to protect consumers and promote competition. It enforces antitrust laws and consumer protection law. The FTC shares authority with the CFPB to enforce consumer protection laws with respect to nonbank financial institutions.

The Gramm–Leach–Bliley Act of 1999[105] requires financial institutions, including lenders and mortgage brokers, to (among other things) create security programs to protect consumer privacy.

The Interstate Land Sales Full Disclosure Act of 1968,[106] Title XIV of the Housing and Urban Development Act of 1968, was intended to protect consumers from fraud and abuse in the sale or lease of land.

The Truth in Savings Act,[107] Subtitle F of Title II of the Federal Deposit Insurance Corporation Improvement Act of 1991, was enacted primarily to require clear and uniform disclosure of interest rates paid on deposit accounts and fees assessed against deposit accounts.

The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994[108] was passed to help the Federal Trade Commission protect consumers against telemarketing fraud.

The Homeowners Protection Act of 1998[109] was passed to protect consumers who were having difficulty cancelling their private mortgage insurance (PMI) after reaching a certain level of equity in their property. The act required automatic cancellation and notice of cancellation rights with respect to PMI.

100. 12 U.S. Code § 3801(a).

101. Public Law 100-86, Title VI, § 602, 100th Cong., August 10, 1987, 101 Stat. 635, 12 U.S. Code Chapter 41.

102. Public Law 108-159, 108th Cong., December 4, 2003, 117 Stat. 1952, 15 U.S. Code §§ 1681–1681x.

103. Public Law 110-289, Division A, Title V, § 1502, 110th Cong., July 30, 2008, 122 Stat. 2810, 12 U.S. Code Chapter 51.

104. September 26, 1914, Chapter 311, § 1, 38 Stat. 717; March 21, 1938, Chapter 49, § 1, 52 Stat. 111; 1950 Reorganization Plan No. 8, § 3, effective May 24, 1950, 15 *Federal Register* 3175, 64 Stat. 1265, 15 U.S. Code § 41.

105. Public Law 106-102, 106th Cong., November 12, 1999, 113 Stat. 1338.

106. Public Law 90-448, Title XIV, § 1402, 90th Cong., August 1, 1968, 82 Stat. 590, 15 U.S. Code Chapter 42.

107. Public Law 102-242, Title II, § 262, 102nd Cong., December 19, 1991, 105 Stat. 2334, 12 U.S. Code Chapter 44.

108. Public Law 103-297, § 2, 103rd Cong., August 16, 1994, 108 Stat. 1545, 15 U.S. Code Chapter 87.

109. Public Law 105-216, § 2, 105th Cong., July 29, 1998, 112 Stat. 897, 12 U.S. Code Chapter 49.

Appendix B: Federal Trade Commission Divisions and Consumer Financial Protection Bureau Offices

Federal Trade Commission

- Division of Privacy and Identity Protection
- Division of Advertising Practices
- Division of Consumer and Business Education
- Division of Enforcement
- Division of Marketing Practices
- Division of Consumer Response and Operations
- Division of Financial Practices
- Division of Litigation Technology and Analysis

Consumer Financial Protection Bureau

- Research Unit
- Community Affairs Unit
- Complaint Collection and Tracking
- Office of Fair Lending and Equal Opportunity
- Office of Financial Education
- Office of Service Member Affairs
- Office of Financial Protection for Older Americans