MITCH McCONNELL
KENTUCKY

United States Senate
OFFICE OF THE REPUBLICAN LEADER

May 2, 2011

The Honorable Barack Obama
The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500-0005

Dear Mr. President:

We write to express our concerns about the lack of accountability in the structure of the Consumer Financial Protection Bureau (CFPB). As presently organized, far too much power will be vested in the CFPB director without any effective checks and balances. Accordingly, we will not support the consideration of any nominee, regardless of party affiliation, to be the CFPB director until the structure of the Consumer Financial Protection Bureau is reformed.

The Dodd-Frank Act grants the CFPB director unprecedented authority over financial institutions and main street businesses. The CFPB director will have vast rulemaking, supervisory, investigative and enforcement powers and the authority to regulate any person or business that offers or sells a "financial product or service." This authority will extend to not just traditional financial institutions, but also potentially thousands of entrepreneurs and small businesses.

This authority will directly affect every American household by limiting their choices when purchasing financial products, restricting the availability of credit to consumers, and increasing the cost of goods or services purchased using credit. Furthermore, these regulations could put small banks and businesses at a competitive disadvantage to big banks and businesses, which can more easily absorb compliance costs. How the CFPB director exercises his or her authority therefore will have a profound influence on the future of our economy and job creation.

Despite this broad mandate the Dodd-Frank Act failed to provide any real checks on the CFPB director's powers. Once confirmed, the director effectively answers to no one. The CFPB director will be appointed for a five year term and can only be removed by the President in cases of "inefficiency, neglect of duty, or malfeasance in office." Thus, the director cannot even be removed for poor performance, including enacting ill-conceived regulations.

Moreover, the Dodd-Frank Act grants the director unfettered authority to set the budget of the CFPB. No agency or institution, including Congress, can review the CFPB budget, and no mechanisms were put in place to ensure that the director is effectively managing public money.

While the Financial Stability Oversight Council (FSOC) could vote to stay or set aside a regulation issued by the director, the circumstances under which the council can take such action are so narrow as to make this check illusory. The council can act only if the regulation puts at risk the safety and soundness of the entire U.S. banking system or the stability of the U.S. financial system. Moreover, the procedural requirements for the FSOC to act are so high that it will be practically impossible for the FSOC to overrule the CFPB director.

To be clear, we support strong and effective consumer protection. The present structure of the Consumer Financial Protection Bureau, however, violates basic principles of accountability and our democratic values. No person should have the unfettered authority presently granted to the director of the Consumer Financial Protection Bureau. Therefore, we believe that the Senate should not consider any nominee to be CFPB director until the CFPB is properly reformed. We urge the adoption of the following reforms:

- **Establish a board of directors to oversee the Consumer Financial Protection Bureau**. To prevent a single individual from dominating the actions of the CFPB it should be governed by a board of directors. Diversifying the leadership of the CFPB would also reduce the potential for the politicization of the CFPB and ensure the consideration of multiple viewpoints in the CFPB's decision-making. This structure is consistent with the organization of the Federal Reserve Board, the Securities and Exchange Commission, and the Federal Deposit Insurance Corporation.

- **Subject the Consumer Financial Protection Bureau to the appropriations process.** To ensure that the CFPB does not engage in wasteful or inappropriate spending and has effective oversight, the CFPB should be subject to the Congressional appropriations process. The Securities and Exchange Commission, Commodity Futures Trading Commission, and the Federal Trade Commission have long been subject to the appropriations process for the same reasons.

- **Establish a safety-and-soundness check for the prudential regulators**. Federal bank regulators should be given meaningful tools to prevent the CFPB's regulations from needlessly causing a bank failure. After all, one of the best consumer protections is a safe and sound bank. Such a check by the prudential regulators will provide a reasonable restraint on the CFPB's authority and ensure that the CFPB's regulations strike the right balance between consumer protection and safety-and-soundness.

We believe these are commonsense reforms that can be promptly adopted by Congress on a bipartisan basis without having to revisit the numerous other flaws with the underlying legislation. We look forward to working with you to adopt these consensus reforms.

Sincerely,

Mitch McConnell

MITCH MCCONNELL
REPUBLICAN LEADER

Richard Shelby

RICHARD SHELBY
UNITED STATES SENATOR

November 2, 2011