

Insight



About The Dodd-Frank Act, George Washington Would Be Turning Over In His Grave

JULY 6, 2012

President Obama counts the Dodd-Frank [Wall Street](#) Reform Act as one of his signature accomplishments. And yet, much like Obamacare, this week it has been challenged in federal court for violating the United States Constitution and threatening what the founders of our Republic risked their lives to protect.

Many small businesses approached about this challenge were afraid to participate, fearing retribution, but a prominent retired seniors organization, a think tank and a small community bank have, like David fighting Goliath, challenged the Obama Administration no matter the cost.

President George [Washington](#) counted the separation of powers principles contained in the Constitution for which he'd fought, bled, and lost comrades among the [Continental](#) Army as core principles.

In his farewell Presidential address, he noted the “love of power and proneness to abuse it which predominates in the human heart” and he suggested the “necessity of reciprocal checks of political power...”

President Washington would turn over in his grave to see the structure that Dodd-Frank sets up for the Consumer Financial Protection Bureau (“CFPB”), which enjoys immunity from oversight by the President, substantial immunity from review by the judicial branch, and complete immunity from budgetary review by Congress.

The CFPB Director is indeed the czar of czars. He or she may only be removed for neglect or malfeasance in office. That is not true of most other financial regulatory agencies, where the President can replace the Chairman at will by designating another Commissioner as Chairman.

Nor is the CFPB accountable to Congress. The Dodd-Frank Act prohibits the House or Senate from reviewing the agency's spending authority. The CFPB's \$500 million budget comes entirely from the Federal Reserve's surplus, out of funds that would otherwise be returned to the Treasury Department and ultimately to the american taxpayer.

The courts are required to defer to the CFPB regarding the meaning or interpretation of any provision of federal consumer financial law. The CFPB has the authority to label a financial term or transaction as “unfair, deceptive, or abusive” and therefore prohibit the practice. But without strict judicial scrutiny of that decision, the agency actually has the power to prohibit terms in credit agreements. The CFPB Director has authority to determine, for example, that credit card frequent flier miles are “abusive practices” that will be prohibited...and a federal judge would have limited ability to stop him.

The CFPB will regulate credit cards and small business lenders that serve as a lifeline for small businesses. Many of America's business icons, like [Google](#) and YouTube, were financed by credit card loans during their

early garage days. The CFPB's paternalistic approach to credit card loans has already begun to slow this vital lifeline for the American small business. An estimate by Professors Wright and Evans anticipates that the CFPB will reduce annual job creation by 4.3% and increase the interest rates paid by consumers by 160 basis points.

The CFPB also threatens the ability of low income and middle income borrowers to obtain credit. Dodd-Frank and the CFPB have coincided with a decrease in free checking services, as banks have added new fees to accounts to make up for revenues lost as a result of Dodd-Frank. Those who can't afford the new fees that the CFPB and Dodd-Frank have caused will find it harder and more expensive to rent a home, deposit their paycheck and purchase food and clothing.

President Roosevelt had a famous sign on his desk that read "The buck stops here." Unfortunately President Obama has passed the buck along to an unaccountable credit czar. In doing so, he shows a fundamental misunderstanding of the way jobs are financed and created.