In its landmark 2007 Commission on the Regulation of U.S. Capital Markets in the 21st Century Report, the Chamber warned that the New Deal era financial regulatory needs were not able to keep pace with the financing needed by a digitally based globally facing economy. Many of those issues have been unaddressed and, in some cases, exacerbated. These issues have created a significant competitive disadvantage for the American capital markets.
**Good public policy is the product of thoughtfully constructed institutions and processes that consider a broad view of stakeholder interests that carefully measures the costs and benefits of proposed solutions to issues identified by the public.**

Good public policy is the product of thoughtfully constructed institutions and processes that consider a broad view of stakeholder interests that carefully measures the costs and benefits of proposed solutions to issues identified by the public. Decisions from policymakers should be designed to stand the test of time in order to provide certainty about the rules of the road. This can be accomplished only if stakeholders believe they can participate in the process and the decisions are grounded in the rule of law.

The financial regulatory structure in the U.S. has contributed to an abundant availability of credit and the deepest, most liquid capital markets in the world. This is a testament to the regulatory structure developed throughout our history, but there are opportunities for improvement.

**FEDERAL FINANCIAL REGULATORS: IMPROVE COST-BENEFIT ANALYSIS TRANSPARENCY**

Because high-impact regulations can have major ripple effects throughout society and the economy, ensuring a robust and transparent public participation process is paramount. Participation in the rulemaking process is equally as important as the cost-benefit analysis used to justify the rules.

High-quality cost-benefit analyses are foundational to balanced and informed regulatory decision-making. Unfortunately, however, many federal regulations are not accompanied by cost-benefit analyses, and those that are often are plagued by inconsistent approaches, problematic or non-transparent assumptions, and a failure to acknowledge and communicate significant sources of uncertainty. Government-wide and individual agency efforts to institute a more open and standardized approach to cost-benefit analyses would enhance public understanding of the data and inputs that drive regulatory decisions, improve the integrity of the rulemaking process, and ultimately lead to better public policy.
**ACTION:** Federal financial regulators should establish a council of chief economists to periodically discuss the costs and benefits of regulation, including those that overlap or are redundant. The council should report annually to Congress about opportunities it identifies to streamline or otherwise make regulations more efficient.

**ACTION:** Federal financial regulators should make publicly available the data and methodology used to conduct cost-benefit analyses on a final regulation, so the public can review it.

**FSOC: COORDINATE REGULATION AMONG FINANCIAL REGULATORS**

The Financial Stability Oversight Council’s (FSOC’s) mandate includes identifying risks to financial stability, promoting market discipline, and responding to emerging threats to the stability of the U.S. financial system. The FSOC is also the only formal mechanism for communication and coordination among the administration, federal financial regulators, and state financial regulators.

Oftentimes, rules from one financial regulator may conflict or be redundant with rules issued by others. A lack of coordination may therefore contribute to unnecessary or cumbersome regulation that impairs the efficient allocation of capital in financial markets. In its 2019 *Annual Report*, members of the FSOC recommended that “federal and state financial regulators continue to work together to evaluate regulatory overlap and duplication, modernize outdated regulations, and, where authority exists, tailor regulations based on the size and complexity of financial institutions.”

**ACTION:** FSOC should prioritize coordination and modernizing financial regulations to promote the efficient allocation of capital in the U.S. economy.

**FEDERAL FINANCIAL REGULATORS: TREAT GUIDANCE AS GUIDANCE, NOT AS LAW**

In October 2019, the president issued Executive Order (EO) 13891 on “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The EO states, “Agencies may clarify existing obligations through non-binding guidance documents, which the Administrative Procedure Act (APA) exempts from notice-and-comment requirements. Yet agencies have sometimes used this authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the [APA].”
The EO further notes that certain guidance may be in violation of the APA—the guidance provides insufficient notice to the public about implied action by an agency, including enforcement proceedings, if it does not provide an opportunity for input.

**ACTION:** Each financial regulatory agency should update its processes and procedures, including regulations, for issuing guidance documents. This update should, at minimum, include a requirement to clearly state a guidance document does not bind the public and a mechanism for the public to petition for withdrawal or modification of a guidance document.

**ACTION:** Each financial regulatory agency should establish or maintain on its website a single database that contains or links to all guidance documents in effect from such agency.

**CONGRESS: ENACT THE COMPREHENSIVE REGULATORY REVIEW ACT**

The Economic Growth and Regulatory Paper Reduction Act of 1996 (EGRPRA) requires the Federal Financial Institutions Examination Council and its member agencies to review their regulations at least once every 10 years to identify any outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burdens on insured depository institutions while, at the same time, ensuring their safety and the stability of the financial system. The EGRPRA process has proved beneficial, but improvements such as more frequent reviews and expanding due diligence will foster better recommendations for decreasing regulatory burden.

The Comprehensive Regulatory Review Act (H.R. 3198–116th) would expand EGRPRA. Importantly, the legislation would expand the review to include the CFPB and National Credit Union Administration NCUA and would make the review more frequent. It would also require agencies to tailor their regulations to limit compliance costs.

**ACTION:** Congress should enact the Comprehensive Regulatory Review Act (H.R. 3198–116th).
U.S. REPRESENTATIVES TO FINANCIAL STABILITY BOARD: IMPROVE TRANSPARENCY

The Financial Stability Board (FSB) promotes global financial stability by coordinating the development of regulatory, supervisory, and other financial sector policies and conducts outreach to non-member countries. All the main players who set financial stability policies across different sectors of the financial system for the world’s largest economies are at one table. The FSB establishes standards that its members agree to implement. The FSB also directs the activity of the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), and the International Organization of Securities Commissions (IOSCO) including the developing of international standards. The U.S. is represented at the FSB by the Treasury Department, the SEC, and the Federal Reserve Board (FRB).

The Chamber believes adequate transparency into the dealings of U.S. representatives to the FSB is critical. Normally, a regulatory mandate comes from the U.S. Congress, but acting under the aegis of an international mandate, U.S. representatives to the FSB, in effect, create their own mandate for new regulation. While FSB members are not bound to adopt/implement FSB policies, the work of this body can influence the direction of jurisdictional supervision and/or regulatory requirements and may not adequately consider specificities and needs of U.S. consumers and markets.

**ACTIONS:** U.S. representatives to the Financial Stability Board—including from the FRB, Securities and Exchange Commission, and U.S. Department of Treasury—should do the following:

- Engage with U.S. stakeholders to formulate positions on matters before the FSB.
- Notify Congress and the public prior to entering international negotiations.
- Report to Congress regarding the formulation of American positions on matters before the FSB.
- Publish the text of any completed FSB, BCBS, IOSCO, or IAIS agreement and provide a notice and public comment period of no less than 60 days before signing it.
- Brief members of Congress in a timely manner, permitting time for review and response, on the substance of their engagement at the FSB and potential effects FSB policies could have on the U.S.
- Make summaries of FSB-related meetings publicly available on their respective websites.
CONGRESS: SUBJECT THE CFPB TO THE APPROPRIATIONS PROCESS

The Chamber recommends that the CFPB be subject to the Congressional appropriations process. This reform would provide additional opportunity for Congress to fulfill its oversight obligation and provide input into the operations and policymaking of the CFPB similar to the oversight of the SEC and the Commodity Futures Trading Commission (CFTC).

**ACTION:** This recommendation can be accomplished by enacting legislation that would subject the bureau to the Congressional appropriations process as proposed by the Taking Accounts of Bureaucrats’ Spending (TABS) Act (H.R. 2553–115th).

CONGRESS: CREATE A BIPARTISAN COMMISSION AT THE CFPB

The Chamber recommends that the CFPB single-director position be replaced with a bipartisan commission. The improved governance will provide the CFPB with the benefit of a diversity of viewpoints in its decision-making and avoid partisan rulemaking that is unable to stand the test of time. Creating a bipartisan commission at the CFPB would align its governance with that of the SEC, CFTC, FRB, FDIC, and NCUA.

**ACTION:** This recommendation can be accomplished by enacting the Financial Product Safety Commission Act of 2020 (S. 3990–116th) or the Consumer Financial Protection Commission Act of 2020 (H.R. 6116–116th).

CFPB: INCREASE ANALYTICAL RIGOR OF RULEMAKING PROCESS

It is well established that compliance with regulations place small businesses at a relative disadvantage to larger participants in the market. Notably, small businesses do not have the economies of scale to comply with regulations. And regulations oftentimes do not properly consider the unique challenges facing small businesses.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 provided new avenues for small businesses to have a strong voice before federal regulators. SBREFA requires the CFPB to convene a Small Business Advocacy Review panel, made up of a chair from the CFPB, the Chief Counsel for Advocacy at the Small Business Administration, and the administration of the Office of Information and Regulatory Affairs, to meet with representatives of directly regulated small entities and recommend regulatory alternatives to minimize the burden on small entities.
The CFPB is required to convene a SBREFA panel for rulemakings that it determines will have a significant economic impact on a substantial number of small entities. This process has proved to be relatively effective but leaves out other rulemakings that the CFPB determines will not have a significant impact on small businesses. Just because the bureau makes such a determination does not mean the regulations are irrelevant for small businesses, however.

**ACTION:** The Dodd-Frank Act should be amended to require the CFPB to use the SBREFA process for rulemakings, especially economic significant rulemakings, even when not strictly required by law.

**CONGRESS: MAKE THE CFPB DEPUTY DIRECTOR A SENATE CONFIRMED POSITION**

The Deputy Director of the CFPB has significant influence regarding all major decisions made within the agency. This is at least partly attributable to the fact that the bureau is run by a single director instead of a bipartisan commission. Furthermore, the Deputy Director would ascend to the role of Acting Director in the event another appointment is not confirmed if the Director vacates the position. Therefore, the position of Deputy Director merits additional review and accountability.

**ACTION:** The Deputy Director of the CFPB should be a position appointed by the President and confirmed by the Senate.

**CFPB: FORMALIZE THE PROCESS FOR CONCLUDING CIVIL INVESTIGATIVE DEMANDS**

The Dodd-Frank Act provides authority to the CFPB to issue Civil Investigative Demands (CIDs) to any person it has reason to believe may be in possession of information relevant to a violation of consumer law. Such requests assist the CFPB in fulfilling its obligations to enforce the law, but also impose significant compliance burdens on firms that are required to produce documentation.

The bureau made important updates to its policies regarding CIDs in April 2019. Namely, they noted CIDs will include more information about the potentially applicable provisions of law that may have been violated and specify the business activities subject to the CFPB’s authority.
The bureau should take steps to ensure that a company that is the target of an investigation is apprised of its status and notified in a timely manner if an investigation is closed. Companies treat CIDswith great importance and will not close out their investigation until the bureau makes clear that its request has concluded.

**ACTION:** The CFPB should institute a formal process for concluding Civil Investigative Demands, including adopting presumptive timeframes (e.g., every six months) at which it will inform firms of the investigation’s status.

**CFPB: CREATE A NEW OFFICE OF ECONOMIC ANALYSIS**

The central tenant of policymaking is that benefits should exceed the costs. In other words, more good than harm should come from pursuing a specific policy, such as a new regulation. Admittedly, this can be a difficult task given that it requires establishing assumptions about the costs and benefits to be measured, and how to measure them, that can be influenced by implicit biases or preconceived notions about the policy objective. For example, a regulation may add new protections for consumers, but it may also limit the availability of products that are crucial to their financial health. Therefore, a cost-benefit analysis, making use of dedicated resources to balance perspectives and produce an independent assessment, is vital for policymaking.

**ACTION:** The CFPB should establish an Office of Economic Analysis to objectively review the costs and benefits of its policies, including regulation and guidance.
CONGRESS: SUBJECT THE OFFICE OF FINANCIAL RESEARCH TO THE APPROPRIATIONS PROCESS

The Office of Financial Research (OFR), an independent office within the Treasury Department, was intended to be an early identifier of possible risks emerging in the financial system. Its independent structure, however, permits extremely broad leeway in determining how to allocate personnel and other resources in its work of attempting to identify systemic risk. Congress should retain the authority to oversee the administration of the OFR through the appropriations process.

**ACTION:** Congress should enact legislation subjecting OFR to the congressional appropriations process.

CONGRESS: SUBJECT FSOC TO THE APPROPRIATIONS PROCESS

The Financial Stability Oversight Council has authority to subject a nonbank financial company to bank-like regulations and supervision by the FRB if it poses a systemic risk to the financial system. FSOC has the authority to single out products and activities for increased oversight due to perceived systemic risk. Suffice to say, FSOC broadly influences the direction of regulatory policy for the financial markets. However, despite the entity’s momentous authority and weight with regard to financial regulation, there is relatively little oversight. Appropriate checks and balances lead to stronger and more effective agencies.

**ACTION:** Congress should enact legislation subjecting FSOC to the congressional appropriations process.