No. 17-56324

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,

Petitioner-Appellee,

v.

SEILA LAW, LLC,

Respondent-Appellant.

On Appeal from the United States District Court
for the Central District of California

Hon. Josephine L. Staton

Case No. 8:17-cv-1081

BRIEF OF APPELLEE CONSUMER FINANCIAL PROTECTION BUREAU

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INTRODUCTION

In February 2017, the Consumer Financial Protection Bureau sent Seila Law, LLC an administrative subpoena, known as a civil investigative demand (CID), seeking information about Seila Law's business operations. The Bureau issued the CID as part of an investigation concerning a long-running consumer debt-relief scheme that has already been the subject of two Bureau enforcement actions in this Circuit against other entities. After Seila Law refused to provide the requested information, the Bureau filed a petition in the Central District of California to enforce the CID. The district court considered the parties' arguments and ordered Seila Law to comply with the CID.

Seila Law's primary argument on appeal is that Congress violated the separation of powers when it restricted the President's ability to remove the Bureau's Director at will. But that argument does not relieve Seila Law of its obligation to respond to the CID, for two reasons.

First, subsequent events have overtaken Seila Law's constitutional objection. Shortly before Seila Law filed its brief in this Court, the Bureau's Director resigned, and the President designated Mick Mulvaney to serve as the Acting Director. As Acting Director, Mr. Mulvaney is removable by the President at will. Acting Director Mulvaney has chosen to ratify the Bureau's earlier decisions to issue, uphold, and petition to enforce the CID. Seila Law has now obtained all of

the relief to which it could possibly be entitled: The head of the Bureau, who is removable by the President at will, has authorized the investigation.

Second, under binding precedent the removal restriction that Seila Law challenges complies with constitutional requirements, as the full D.C. Circuit recently held. That court rejected the contrary panel decision on which Seila Law has long principally relied. It applied controlling Supreme Court precedent to hold that the for-cause protection in the Bureau's statute does not violate the separation of powers. If this Court reaches the issue, it should do the same. And it should reject Seila Law's view that any constitutional defect in the removal provision would require striking down the Bureau's entire organic statute. That request flouts precedent and overlooks the severability clause that applies to the Bureau's statute.

Seila Law also seeks to challenge the CID as outside the Bureau's authority to issue and procedurally flawed. These statutory arguments are without merit. Congress gave the Bureau the authority to send civil investigative demands to persons it has reason to believe are in possession of information relevant to a violation of the consumer financial laws. The Bureau has made that determination with respect to Seila Law under the leadership of both former Director Cordray and Acting Director Mulvaney, and it followed all necessary procedures in issuing the CID. The district court correctly found that the Bureau's demand was proper and ordered Seila Law to comply. This Court should affirm.

STATEMENT OF JURISDICTION

The district court had jurisdiction over the Bureau's petition to enforce its CID under 12 U.S.C. § 5562(h)(1). The district court granted that petition in a final order issued August 25, 2017. ER 1-13. Seila Law filed a timely notice of appeal on September 1. ER 14. This Court has jurisdiction under 12 U.S.C. § 5562(h)(2) and 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Can the Bureau's Acting Director—who is not subject to the removal provision that Seila Law challenges—ratify and thereby cure any alleged defect in actions taken by the Bureau's former Director?

2. Did Congress violate the Constitution by giving the Bureau's Director the same for-cause removal protection that it has given the leaders of other federal financial regulators, including the Federal Trade Commission?

3. Where Congress authorized the Bureau to enforce the Telemarketing Sales Rule—which covers certain conduct by attorneys—does the Bureau plainly lack jurisdiction to investigate whether attorneys violated that Rule?

4. Did the Bureau's administrative subpoena to Seila Law satisfy the statutory requirement that it describe the conduct under investigation and the provisions of law that may have been violated?

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Pertinent constitutional and statutory provisions are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Legislative Background

The 2008 financial crisis forced millions of American families from their homes and wiped out trillions in household wealth. S. Rep. No. 111-176, at 9 (2010). "In Congress's view, the 2008 crash represented a failure of consumer protection." *PHH Corp. v. CFPB*, 881 F.3d 75, 80 (D.C. Cir. 2018) (en banc). Seven different federal regulators—many with the mission of ensuring the safety and soundness of regulated institutions—administered the consumer laws. S. Rep. No. 111-176 at 10.

To end the "fragmentation of the current system" and "thereby ensur[e] accountability," *id.* at 11, Congress enacted the Consumer Financial Protection Act of 2010 (CFPA) as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376. The CFPA consolidated the administration and enforcement of the consumer financial laws in a single agency. S. Rep. No. 111-176 at 11. Congress charged that new agency, the Consumer Financial Protection Bureau, with one mission: "to implement, and where applicable enforce, Federal consumer financial law consistently." 12 U.S.C. § 5511(a). The goal is for "all consumers [to] have access to markets for consumer

financial products and services" and to ensure such markets "are fair, transparent, and competitive." *Id.*

In devising the Bureau's structure, Congress drew from its experience with the existing financial regulators. Like the Office of the Comptroller of the Currency, the Bureau has a single Director with a five-year term. *See* 12 U.S.C. § 2 (OCC); *id.* § 5491(c)(1) (Bureau). And like the leaders of the Federal Trade Commission and the Federal Reserve Board (among many others), the Bureau's Director is removable only for cause. *See* 15 U.S.C. § 41 (FTC); 12 U.S.C. § 242 (FRB); *id.* § 5491(c)(3) (Bureau); *see also PHH Corp.*, 881 F.3d at 91-92 (collecting other examples). Congress likewise built on the examples of regulators including the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency when it chose to fund the Bureau primarily outside of the annual appropriations process. *See* 12 U.S.C. § 243 (FRB); *id.* §§ 1815(d), 1820(e) (FDIC); *id.* § 16 (OCC); *id.* § 5497 (Bureau). Specifically, Congress provided that the Bureau may draw on a statutorily capped amount of funds from the earnings of the Federal Reserve System. *Id.* § 5497(a)(1)-(2).

Like many other financial regulators, the Bureau is authorized to write rules, *id.* § 5512, examine financial institutions, *id.* §§ 5514-5516, and bring enforcement actions, *id.* § 5564. It also conducts research, monitors markets, educates the public, and responds to consumer complaints. *Id.* § 5511(c).

As most relevant here, the Bureau—like the FTC, *see* 15 U.S.C. § 57b-1—has authority to issue CIDs requiring the production of documents, testimony, or other information from "any person" the Bureau believes may have information "relevant to a violation" of the laws the Bureau enforces, 12 U.S.C. §§ 5562(c)(1), 5561(5). Each CID sent by the Bureau must "state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." *Id.* § 5562(c)(2). Under the Bureau's regulations governing investigations, CID recipients can negotiate appropriate modifications to the CID via a meet-and-confer process with Bureau investigators. *See* 12 C.F.R. § 1080.6(c). Failing that, they can petition the Bureau's Director for an order setting aside or modifying the CID. *See* 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e). If a CID recipient ultimately fails to respond, the Bureau may petition a district court for an order enforcing compliance, and "[a]ny final order" entered by the district court is "subject to appeal." 12 U.S.C. § 5562(e)(1), (h)(2).

B. Factual Background

1. *The Bureau's Investigation.* The Bureau issued a CID to Seila Law on February 27, 2017, as part of an investigation into Seila Law's role in a debt-relief scheme that has already been the subject of two Bureau enforcement actions in this Circuit against other entities. *See CFPB v. Morgan Drexen, Inc.*, No. 8:13-cv-1267, 2016 WL 6601650, at *3 (C.D. Cal. Mar. 16, 2016) (awarding more than

$130 million in restitution to affected consumers and assessing $40 million in civil penalties against defendant for its role in the scheme); *CFPB v. Howard*, No. 8:17-cv-161 (C.D. Cal. filed Jan. 30, 2017) (litigation ongoing). As alleged in those actions, numerous attorneys and other persons have violated the Telemarketing Sales Rule, 16 C.F.R. pt. 310, by charging consumers illegal upfront fees for debt-relief services and deceiving consumers that they will not be charged such fees.

The Bureau's CID to Seila Law seeks responses to seven interrogatories and four requests for documents concerning Seila Law's business operations. ER 272-73. As stated in the CID, the purpose of the investigation is to determine whether debt-relief providers, lead generators, or other persons are violating the Telemarketing Sales Rule "in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling." ER 271.

Seila Law initially refused to provide any information in response, and it petitioned the Bureau for an order to set aside or modify the CID. ER 89-97. After the Bureau's Director denied the petition in a written order setting out the reasons for the denial, ER 311-15, Seila Law provided the Bureau with some information in response to the CID, ER 268. After reviewing that production, the Bureau notified Seila Law of a number of significant deficiencies in its response, including Seila Law's unsupported assertions of attorney-client privilege and its withholding

of apparently non-privileged material. ER 317-22. In response, Seila Law informed the Bureau that the CID was not enforceable and that it would not provide any further information. ER 324.

2. *District Court Proceedings*. The Bureau filed a petition in the U.S. District Court for the Central District of California to enforce its CID. ER 260-65. After considering the parties' filings, the district court issued an order on August 25, 2017, granting in part the Bureau's petition and ordering Seila Law to comply with the CID. ER 1-13. To address Seila Law's concern that the CID might be interpreted to require the firm to provide information concerning its "immigration, personal injury, criminal defense, and real estate practices that have nothing to do with the stated purposes of the subpoena," the district court's order clarified that the terms "other services" and "services"—used but not defined in the CID—should be read to refer only to "the areas of inquiry identified in the CID" concerning debt-relief services. ER 11. The district court concluded that, thus narrowed, "the CID seeks only relevant information and is not vague." ER 12.

The district court rejected Seila Law's argument that Congress violated the Constitution by giving the Bureau's Director for-cause protection from removal. ER 4-5. It noted that "the controlling standard enunciated in *Morrison v. Olson* is whether the CFPB Director's for-cause protection from removal interfere[s] with the President's … constitutionally appointed duty to take care that the laws be

faithfully executed." ER 4 (citing *Morrison*, 487 U.S. 654, 690 (1988)). Because "there is no meaningful difference in responsiveness and accountability to the President between an agency headed by a commission and a director," the district court found the Bureau's removal protection constitutional. *Id.*; *see also Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (approving the same for-cause removal protection for FTC commissioners). In the alternative, the district court held that the Bureau could exercise its subpoena power against Seila Law notwithstanding the separation-of-powers argument because the power to conduct investigations and uncover facts is not confined solely to the executive branch. ER 5. Seila Law filed a timely notice of appeal and this Court granted a stay pending resolution of this appeal. Dkt. No. 8 (Sept. 13, 2017).

3. *Ratification.* On November 24, 2017, the Bureau's former Director, Richard Cordray, resigned, and President Trump designated Office of Management and Budget Director Mick Mulvaney to serve as the Bureau's Acting Director pursuant to the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d. *See* The White House, Office of the Press Secretary, *Statement on President Donald J. Trump's Designation of OMB Director Mick Mulvaney as Acting Director of the Consumer Financial Protection Bureau* (Nov. 24, 2017), www.whitehouse.gov/the-press-office/2017/11/24/statement-president-donald-j-trumps-designation-omb-director-mick.

Acting Director Mulvaney reviewed the Bureau's decisions, initially authorized by former Director Cordray, to issue the CID to Seila Law, ER 271-78, to deny Seila Law's request to set aside the CID, ER 311-15, and to petition the district court to enforce the CID, ER 260-65. In his capacity as the Bureau's Acting Director, Mr. Mulvaney ratified these decisions after being briefed by Bureau staff regarding this case. Acting Director Mulvaney has also authorized this filing.

SUMMARY OF ARGUMENT

The district court properly enforced the CID issued by the Bureau as part of an investigation into illegal practices in the market for debt-relief services.

1. Seila Law's primary argument on appeal is that a provision of the Bureau's organic statute is unconstitutional. In its view, Article II of the Constitution prohibits Congress from deciding that an agency that enforces consumer financial laws should be led by a single Director who is removable by the President only for cause. That argument fails for two independent reasons.

First, this Court may affirm the district court's order enforcing the CID without addressing Seila Law's constitutional challenge because the CID has now been ratified by Acting Director Mick Mulvaney. Acting Director Mulvaney is not subject to the for-cause removal provision that Seila Law challenges; he is removable at will. Acting Director Mulvaney's ratification therefore cures any potential defect in the CID stemming from the removal restrictions that formerly

applied to Director Cordray. Seila Law has now received exactly what it asked for: The Bureau, led by an official who can be removed by the President at will, has made the determination to enforce the CID against Seila Law.

Seila Law claims that if the CID suffers from a constitutional defect, it can never be ratified, even by a Director who is removable at will. But this Court held otherwise in *CFPB v. Gordon*, 819 F.3d 1179 (9th Cir. 2016). In that case, this Court held that ratification by a proper appointee cured any initial Article II deficiencies with the Bureau's filing of a lawsuit when it was led by an improper recess appointee. The same rule applies here: Any defect in the Bureau's exercise of its investigative authority while headed by a Director with for-cause protection was cured when the Acting Director—who is removable at will—ratified the CID.

Second, nearly every court to have considered the question, including most recently the en banc D.C. Circuit, agrees: The limited removal restriction that Seila Law challenges is constitutional under controlling Supreme Court precedent because it does not impede the President's ability to take care that the laws are faithfully executed. This restriction is not novel. Congress has imposed similar restrictions on the removal of the heads of most federal financial regulators. And the Supreme Court and this Court have upheld an identical restriction for the Federal Trade Commission.

Finally, if this Court determines that the for-cause removal provision is unconstitutional, it should follow the statute's express severability clause and sever that provision rather than, as Seila Law urges, striking down the Bureau's entire organic statute. As this Court recently reaffirmed, the existence of a statutory severability clause can be overcome only by strong evidence that Congress would have preferred no statute at all to a statute without the offending provision. Seila Law cannot make that showing.

2. Seila Law's two statutory arguments fare no better. It first claims that the Bureau's authority to issue the CID is "plainly lacking" because the CID seeks information that Seila Law says is related to its practice of law. It also argues that the CID was procedurally improper because the CID does not describe the conduct and provisions of law under investigation. The district court correctly rejected these arguments. The Bureau does not plainly lack jurisdiction to send CIDs to persons, including attorneys, who may have information relevant to a violation of the laws the Bureau enforces; Congress expressly authorized the Bureau to do just that. Likewise, the Bureau's CID complied with all applicable procedures, including describing the conduct and provisions of law under investigation.

This Court should thus affirm the district court's order enforcing the CID.

STANDARD OF REVIEW

This court decides questions of law, including questions of constitutional law, de novo. *Nordstrom v. Ryan*, 856 F.3d 1265, 1269 (9th Cir. 2017); *Gordon*, 819 F.3d at 1187. It applies the same standard to "whether the Bureau plainly lacked jurisdiction to issue the [CID]." *CFPB v. Great Plains Lending, LLC*, 846 F.3d 1049, 1051 (9th Cir. 2017).

ARGUMENT

I. The Court Should Enforce the Civil Investigative Demand Because It Has Been Ratified by the Bureau's Acting Director, Who Is Removable at Will

The Bureau, while led by former Director Cordray, sent Seila Law a CID. Seila Law objects to the enforcement of that CID on the ground that, under the Bureau's organic statute, Director Cordray was removable by the President only for cause, rather than at will.[1] Now, Acting Director Mulvaney—who is removable at will—has ratified the CID. This Court therefore need not address the merits of

[1] Seila Law states, in the Summary of Argument section of its brief, that its constitutional challenge is not limited to the for-cause removal provision but also encompasses Congress's decision to fund the Bureau primarily through the Federal Reserve System rather than the annual appropriations process. Br. at 13-14. Seila Law never articulates such a challenge, however, and in fact makes no mention elsewhere in its Argument of the Bureau's method of funding, or why that funding would violate the Constitution. Seila Law has thus waived this argument, which in any event is without merit. *See PHH Corp.*, 881 F.3d at 95-96 (holding that "Congress can, consistent with the Appropriations Clause, create governmental institutions" funded outside of "the ordinary appropriations process," and that the Bureau's funding "has no constitutionally salient effect on the President's power").

Seila Law's constitutional challenge in order to affirm the district court's order and require Seila Law to comply with the CID.

1. In his capacity as Acting Director, Mr. Mulvaney is removable by the President at will. The CFPA's removal provision by its terms applies only to "the Director," not to an Acting Director. 12 U.S.C. § 5491(c)(3). As the Department of Justice's Office of Legal Counsel explained, "Congress does not, by purporting to give tenure protection to a Senate-confirmed officer, afford similar protection to an individual who temporarily performs the functions and duties of that office when it is vacant." *Designating an Acting Director of the Bureau of Consumer Financial Protection*, 41 Op. O.L.C. ___, 2017 WL 6419154, at *7 (Nov. 25, 2017) (citing *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996), which held that an officer removable only for cause becomes removable at will if that officer holds over beyond the officer's designated term). The Federal Vacancies Reform Act, under which Mr. Mulvaney was designated Acting Director, also does not limit the President's ability to designate a different person as Acting Director, and thereby remove Mr. Mulvaney from that role. The Bureau is thus currently headed by an officer who is removable at will by the President.

2. Because the Acting Director is removable at will, his ratification cured any potential Article II defect with the CID under ordinary agency law principles reflected in the Restatement of Agency and this Court's precedent. *See Gordon*,

819 F.3d at 1191-92 (applying principles from Restatement to conclude that ratification cured earlier Article II problem). When an agent lacks authority to act on behalf of a principal, the principal (acting on its own or through a valid agent) may subsequently authorize actions that were taken by the agent who lacked authority. Restatement (Third) of Agency, ch. 4, intro. note; *id.* § 4.01 cmt. b*; see United States v. Heinszen & Co.*, 206 U.S. 370, 382 (1907). Such a ratification has retroactive effect: It "operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally." *Marsh v. Fulton Cnty.*, 77 U.S. 676, 684 (1870); *accord Heinszen*, 206 U.S. at 382 (stating that ratification "retroactively give[s]" an agent's acts "validity").

In *Gordon*, this Court applied these principles to reject a claim that a Bureau enforcement action had to be dismissed because it was initially approved by a Director who was appointed in violation of the Appointments Clause. 819 F.3d at 1190-92. In particular, this Court held that "any initial Article II deficiencies" with the Bureau's filing of a suit when it was led by an improper recess appointee were "cure[d]" by "the subsequent valid appointment [of Director Cordray], coupled with Cordray's August 30, 2013 ratification." *Id.* at 1190-91. This Court should do the same here. The ratification by an Acting Director who is removable at will cured any initial Article II deficiencies that could have been created by the statutory restriction on the President's power to remove Director Cordray.

That *Gordon* concerned the Appointments Clause and this case concerns the President's power to remove appointed officials provides no basis for distinguishing *Gordon*. In this case, just as in *Gordon*, a principal (the Bureau), acting through a valid agent (here, an Acting Director who is removable at will), ratified a prior action taken by an agent who allegedly lacked authority (here, a Director who was removable only for cause). And, just as in *Gordon*, notwithstanding any alleged constitutional issues with the exercise of authority by the Bureau's then-agent Director Cordray, the Bureau has had at all times clear statutory authority to issue, uphold, and petition to enforce the CID. *See id.* at 1192 (noting that under the statute, "the CFPB had the authority to bring the action at the time Gordon was charged"). Under the CFPA, "the Bureau" has the authority to issue CIDs, 12 U.S.C. § 5562(c), modify or set them aside, *id.* § 5562(f), and petition to enforce them, *id.* § 5562(e). Congress conferred that authority on the Bureau more than five years before the Bureau sent the CID here. *See* CFPA, Pub. L. No. 111-203, § 1058 (codified at 12 U.S.C. § 5561 note) (establishing "designated transfer date" as effective date of statute's CID provisions); *id.* § 1062 (codified at 12 U.S.C. § 5582); 75 Fed. Reg. 57252 (Sept. 20, 2010) (establishing July 21, 2011 as "designated transfer date").

Seila Law is mistaken that a purported constitutional defect with the CFPA's for-cause removal provision would prevent the Bureau—even when led by a

Director who is removable at will—from ratifying actions taken under Director Cordray. *See* Appellant's Brief (Br.) at 32. Seila Law's theory is that it was unconstitutional for the Bureau to issue the CID while headed by a Director removable only for cause, and that such unconstitutional conduct cannot be ratified later. That argument is foreclosed by this Court's agreement in *Gordon* with the D.C. Circuit's decision in *FEC v. Legi-Tech, Inc.*, 75 F.3d 704 (D.C. Cir. 1996).

In *Legi-Tech*, the Federal Election Commission, which was then composed of six Presidential-appointees and two non-voting *ex officio* Congressional members, brought an enforcement action. *Id.* at 706. After the D.C. Circuit held the FEC's inclusion of the Congressional members was unconstitutional, a "newly constituted Commission" re-approved the litigation decision. *Gordon*, 819 F.3d at 1191 (citing *Legi-Tech*, 75 F.3d at 708-09). The D.C. Circuit held, and the *Gordon* court "agree[d]," that this ratification "cured" the constitutional problem "[e]ven though the FEC was illegally constituted when it [originally] brought the action." *Gordon*, 819 F.3d at 1191. This was so even though the FEC's constitutional defect meant that it initially "had no authority to bring the enforcement action." *Legi-Tech*, 75 F.3d at 706.

Likewise, even if the application of the for-cause removal provision to Director Cordray previously deprived the Bureau of authority to issue, uphold, and seek to enforce the CID (which it did not), this would be no barrier to ratification

now that the Bureau plainly has that authority. *See* Third Restatement § 4.04 cmt. b ("It is not necessary for ratification that the principal have had capacity as well at the time of the act that the ratification concerns."); *cf. Gordon*, 819 F.3d at 1191 (explaining that under the Third Restatement, "a ratification is valid even if the principal did not have capacity to act at the time, so long as the person ratifying has the capacity to act at the time of ratification").

To be sure, in *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 98 (1994), the Supreme Court referred to the then-prevailing agency law principle (reflected in the Second Restatement) that in order for an agent to ratify an action on behalf of its principal, the principal must have had the authority to do the act at the time it was initially done. The Court, however, did not actually address or apply that principle in *NRA Political Victory Fund*. Indeed, notwithstanding Seila Law's selective quotation, Br. at 32, the Court in that case was concerned with the ratifying party's authority *at the time of ratification*, not with its authority at the time of the original act. 513 U.S. at 98. And more recent agency law authority rejects this requirement altogether. *See* Third Restatement § 4.04 cmt. b ("Contemporary cases do not support" the requirement that "the principal have had capacity at the time of the original act as well as at the time of ratification.").

In *Gordon*, the Court did not need to decide whether to apply the Second or Third Restatement because the relevant principal—the Bureau—had statutory

authority to bring the action at the time it filed suit. 819 F.3d at 1192. This Court can adopt the same approach here because, as explained above, Congress conferred authority on "the Bureau" to issue, uphold, and petition to enforce CIDs starting in July 2011. Nevertheless, to the extent the Court doubts the Bureau's previous authority to issue the CID to Seila Law, it can and should uphold Acting Director Mulvaney's ratification under the more recent agency principles reflected in the Third Restatement.

3. The Acting Director—who is removable at will—has ratified the Bureau's decisions to issue, uphold, and petition to enforce the CID in this case. That ratification gave Seila Law all the relief to which it could be entitled. *See Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 513 (2010) (holding that petitioners were not entitled to be free from all regulation, but rather to be subject to regulation only by an agency that is appropriately "accountable to the Executive"). Under these circumstances, the Court need not address Seila Law's challenge to the CFPA's for-cause removal provision. To the extent Seila Law wishes to present a constitutional objection to any future Bureau enforcement action that might arise out of this investigation, it will have a full opportunity to mount that defense if and when the Bureau brings such an action. Any alleged constitutional defect with the removal provision is, however, no longer relevant to this proceeding to enforce the CID.

II. Under Binding Precedent, Congress Was Not Required to Make the Bureau's Director Removable at Will

If the Court reaches Seila Law's constitutional argument, it should reject that argument as contrary to controlling Supreme Court precedent.[2]

When Congress created the Bureau, it exercised its Article I authority, as previously recognized by the Supreme Court, to impose a limited restriction on the President's ability to remove the Bureau's Director: The President may remove the Bureau's Director only for "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). The Supreme Court has never held unconstitutional this kind of "limited restriction[] on the President's removal power." *Free Enterprise*, 561 U.S. at 495. Instead, "[t]he Court has consistently upheld ordinary for-cause removal restrictions like the one at issue here, while invalidating only provisions that either give Congress some role in the removal decision or otherwise make it abnormally difficult for the President to oversee an executive officer." *PHH Corp. v. CFPB*, 881 F.3d 75, 85 (D.C. Cir. 2018) (en banc). As this Court and the Supreme Court have long held, Congress can establish independent regulators like the Bureau that administer and enforce federal law but whose leaders can be removed by the President only for cause.

[2] The Bureau does not take a position on whether existing Supreme Court precedent was correctly decided, or whether the President has independent authority to determine whether the Bureau's structure is constitutional.

Seila Law nonetheless asks this Court to declare that, contrary to long-established precedent and historical practice, Congress transgressed the separation of powers when it decided that the Bureau should be led by a single Director removable only for cause. This Court should decline the invitation. As the en banc D.C. Circuit recently held, the "familiar" for-cause protection for the Bureau's Director "fully comports with the President's Article II executive authority and duty to take care that the consumer financial protection laws within the CFPB's purview be faithfully executed."[3] *Id.* at 84. While Seila Law may not agree with the decisions Congress made in creating the Bureau, Supreme Court "precedent leaves to the legislative process, not the courts, the choice whether to subject the

[3] All but one of the other courts to have considered this issue agree that the Director's for-cause protection does not offend the separation of powers under existing precedent. *See CFPB v. Future Income Payments, LLC*, 252 F. Supp. 3d 961 (C.D. Cal. 2017), *stayed pending appeal*, No. 17-55721 (9th Cir. June 1, 2017); *CFPB v. Nationwide Biweekly Admin., Inc.*, No. 15-cv-2106, 2017 WL 3948396 (N.D. Cal. Sept. 8, 2017), *appeal docketed*, No. 18-15431 (9th Cir. Mar. 15, 2018); *CFPB v. TCF Nat'l Bank*, No. 17-CV-00166, slip op. (D. Minn. Sept. 8, 2017) (ECF No. 89); *CFPB v. Navient Corp.*, No. 3:17-CV-101, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); *CFPB v. CashCall, Inc.*, No. CV 15-7522, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016); *CFPB v. ITT Educ. Servs., Inc.*, 219 F. Supp. 3d 878 (S.D. Ind. 2015); *CFPB v. Morgan Drexen, Inc.*, 60 F. Supp. 3d 1082 (C.D. Cal. 2014). The sole decision holding the for-cause provision unconstitutional relied exclusively on the reasoning of the now-vacated panel decision in *PHH Corp*. *See CFPB v. D&D Mktg.*, No. 2:15-cv-09692, 2016 WL 8849698 (C.D. Cal. Nov. 17, 2016), *interlocutory appeal granted*, No. 17-55709 (9th Cir. May 17, 2017).

Bureau's leadership to at-will presidential removal." *Id.* at 110. This Court should follow that precedent and affirm the district court's order enforcing the CID.[4]

A. The For-Cause Removal Provision in the Bureau's Organic Statute Does Not Impede the President's Ability to Perform His Constitutional Duties

1. The test for whether a restriction on the President's removal authority violates the constitutional separation of powers is "whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty" to faithfully execute the laws. *Morrison v. Olson*, 487 U.S. 654, 691 (1988); *see also Free Enterprise*, 561 U.S. at 496 (employing this same test); *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 750-51 (9th Cir. 1993) (same). Applying that test requires considering both the nature of the removal protections themselves and the functions performed by the agency or official so protected. *See Morrison*, 487 U.S. at 690-92; *PHH Corp.*, 881 F.3d at 78.

The Supreme Court's cases applying that test establish that Congress does not impede the President's ability to ensure the faithful execution of the laws when it provides ordinary for-cause removal protection for the head of an agency like the

[4] As noted above, the district court provided an alternative constitutional basis for enforcing the CID on the ground that the purely investigative power the Bureau seeks to exercise here is not exclusive to the executive branch. ER 5. Although this alternative holding may present a narrower basis for affirmance, the Bureau respectfully submits that, given the constitutional challenges to the for-cause removal provision pending before this Circuit in multiple cases, *see* note 3, the Court should decide the constitutionality of that provision with respect to all of the Bureau's statutory powers rather than consider the question piecemeal.

Bureau. In *Humphrey's Executor v. United States*, the Court approved for-cause removal protection for FTC commissioners identical to that afforded the Bureau's Director. 295 U.S. 602, 619-20, 623 (1935). As *Morrison* later explained, *Humphrey's Executor* reflected the Court's "judgment" that, in light of the FTC's functions, "it was not essential to the President's proper execution of his Article II powers that [the agency] be headed up by individuals who were removable at will." 487 U.S. at 691. This is because the ability to remove such an official for cause gives the President "ample authority to assure that the [official] is competently performing his or her statutory responsibilities." *Id.* at 692.

2. Congress likewise gave the President the authority required under the Constitution to see that the Director of the Bureau is competently performing his or her statutory responsibilities. The removal restrictions in the Bureau's organic statute, and the Bureau's regulatory functions, are not materially different from those of the FTC and similar independent agencies that, under binding Supreme Court precedent, do not impermissibly interfere with the President's ability to meet his Article II responsibilities.

First, the restrictions on removal of the Bureau's Director are identical to the limits on removal of FTC Commissioners that the Supreme Court upheld in *Humphrey's Executor*. *Compare* 15 U.S.C. § 41 (1934) ("Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in

office.”), *with* 12 U.S.C. § 5491(c)(3) (“The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.”). Accordingly, “[t]his is not a case in which the power to remove an executive official has been completely stripped from the President, thus providing no means for the President to ensure the ‘faithful execution’ of the laws.” *Morrison*, 487 U.S. at 692; *see also Free Enterprise*, 561 U.S. at 496 (observing that the President “*can* oversee” SEC commissioners despite their for-cause protections (emphasis in original)).

Further, unlike the restrictions struck down in *Free Enterprise*, the for-cause provision in the Bureau’s organic statute imposes no additional layer of protections for the Director. *See Free Enterprise*, 561 U.S. at 502-03, 505 (considering a “highly unusual” scheme in which officials charged with regulating the accounting industry could only be removed under “a sharply circumscribed definition of what constitutes ‘good cause’” and only by other officials who were themselves removable by the President under the ordinary for-cause standard). And unlike other removal provisions the Court has found unconstitutional, the Bureau’s for-cause protections give Congress no role to play in the President’s decision to remove the Director. *See Bowsher v. Synar*, 478 U.S. 714, 720 (1986) (removal required joint resolution of Congress); *Myers v. United States*, 272 U.S. 52, 107 (1926) (removal required advice and consent of the Senate). The Bureau’s for-cause protection “is therefore unlike any removal restriction that the Court has ever

invalidated as impermissibly restricting executive authority. In every case reviewing a congressional decision to afford an agency ordinary for-cause protection, the Court has sustained Congress's decision."[5] *PHH Corp.*, 881 F.3d at 93. Any suggestion by Seila Law that this specific means of limiting the President's removal authority over independent agencies is constitutionally suspect is unavailing in this Court.

Second, the Bureau's functions as a financial regulator are akin to those of other agencies—including the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission—that Congress has long chosen to give a degree of independence in pursuing their statutory mandates. In particular, the Bureau performs much the same functions as the FTC, but within a narrower slice of the economy.

Like the FTC, the Bureau is a regulator with a mandate to oversee numerous consumer protection laws. *Compare* 12 U.S.C. §§ 5511, 5481(14) (tasking the Bureau to enforce its organic statute and rules issued thereunder as well as eighteen enumerated consumer laws, some of which the FTC also enforces), *with* 15 U.S.C.

[5] Indeed, in concurring in the judgment that the Bureau's removal protection is constitutional, Judge Griffith observed that "the President retains significant authority under the ['inefficiency, neglect of duty, or malfeasance in office'] standard to remove the CFPB Director. The breadth of the standard—particularly the inefficiency ground—preserves in the President sufficient supervisory power to perform his constitutional duties." 881 F.3d at 134 (Griffith, J., concurring).

§ 45 (authorizing the FTC to prevent unlawful practices in or affecting commerce), *and* FTC.gov, *Statutes Enforced or Administered by the Commission* (listing more than 70 laws the FTC plays a role in enforcing or administering), www.ftc.gov/enforcement/statutes. Like the FTC, the Bureau may define and prevent "unfair" and "deceptive" commercial acts or practices. But the Bureau enforces those provisions—as well as its related authority over "abusive" acts or practices—only against "covered persons" or "service providers" that engage in those practices in connection with consumer financial products and services, while the FTC exercises its broad authority over virtually the entire economy. *Compare* 12 U.S.C. § 5531 (Bureau), *with* 15 U.S.C. § 45 (FTC).

The FTC pursues its statutory mandate by issuing rules, 15 U.S.C. §§ 57a, 57b-3; conducting administrative enforcement proceedings, *id.* § 45(b); filing suit in federal court, *id.* § 53; seeking civil penalties, *id.* § 45(l)-(m); and gathering and publishing information about commercial practices, *id.* § 46(f). So does the Bureau. *See* 12 U.S.C. §§ 5512 (rulemaking), 5563 (administrative proceedings), 5564 (suits in federal court), 5565(c) (civil penalties), 5512(c) (information gathering and publication). Some provisions in the Bureau's organic statute even track the FTC Act verbatim. *Compare* 12 U.S.C. § 5562(c) (authorizing the Bureau to issue administrative subpoenas in aid of its investigations), *with* 15 U.S.C. § 57b-1 (same for FTC). There can be little doubt that "the CFPB's function is

remarkably similar to that of the FTC, a consumer protection agency that has operated for more than a century with the identical for-cause protection, approved by a unanimous Supreme Court." *PHH Corp.*, 881 F.3d at 94.

In short, the Bureau's Director is subject to the same statutory protection that Congress has traditionally granted to the heads of independent agencies and that the Supreme Court approved in *Humphrey's Executor*. And the Bureau's functions as a financial regulator are materially similar to those of the FTC and other agencies that the Supreme Court and this Court have held may be granted limited independence without impermissibly burdening the President's Article II powers. *See Free Enterprise*, 561 U.S. at 496; *Humphrey's Executor*, 295 U.S. at 628-29; *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511 (9th Cir. 1987) (upholding validity of for-cause removal protection for FTC commissioners under *Humphrey's Executor*, even though FTC Act had since been amended to authorize FTC to bring enforcement actions in court). Binding precedent thus compels the conclusion that "it [i]s not essential to the President's proper execution of his Article II powers" that the Bureau's Director be removable at will. *Morrison*, 487 U.S. at 691.

3. Seila Law makes a number of unsuccessful attempts to avoid the Supreme Court precedent permitting Congress to provide for-cause removal protection to the head of an agency with the Bureau's functions. It first asserts that *Humphrey's Executor* is inapplicable to the Bureau because Congress gave the

Bureau authorities that the FTC lacked at the time *Humphrey's Executor* was decided. Br. at 24. But Seila Law's focus on the minutiae of the FTC's authority in 1935—such as the specific procedures by which it enforced cease-and-desist orders in court, Br. at 25—is misplaced. This Court has already rejected the view that *Humphrey's Executor* was limited to the FTC's powers at the time of that decision. In *FTC v. American National Cellular, Inc.*, 810 F.2d 1511 (9th Cir. 1987), the Court held that Congress's delegation of additional powers to the FTC in 1973 did not "render *Humphrey's Executor* inapposite" or otherwise call into question the agency's constitutionality. *Id.* at 1514; *accord FTC v. Am. Nat'l Cellular*, 868 F.2d 315, 317-18 (9th Cir. 1989); *see also PHH Corp.*, 881 F.3d at 94 ("[C]ourts have uniformly understood *Humphrey's Executor* to support the constitutionality of for-cause removal protection for the current FTC and certain other agencies with rulemaking and enforcement powers.").

So too, the Supreme Court has recognized in the years since *Humphrey's Executor* that rulemaking and the recovery of civil penalties—two powers the FTC did not exercise in 1935—are appropriate authorities for an independent agency. *See Morrison*, 487 U.S. at 692 n.31 (emphasizing "that various federal agencies whose officers are covered by 'good cause' removal restrictions exercise civil enforcement powers that are analogous to the prosecutorial powers wielded by an independent counsel" and citing the FTC's authority "to bring civil actions to

recover civil penalties for the violations of rules" that the agency promulgates); *Free Enterprise*, 561 U.S. at 485-86, 508-09 (holding that the Public Company Accounting Oversight Board—even with its "expansive powers to govern an entire industry," including by issuing rules and seeking penalties—did not violate the separation of powers so long as its members were separated from the President "by only a single level of good-cause tenure" protections).

Seila Law also cannot explain why any differences between the FTC's authorities in 1935 and the Bureau's authorities today would render the Bureau so different in function from the FTC that it was unconstitutional under binding precedent for Congress to give the Bureau's Director the same for-cause protection that the Supreme Court upheld for FTC commissioners. *See PHH Corp.*, 881 F.3d at 94 (explaining that at the time of *Humphrey's Executor*, the FTC had "broad powers to interpret and enforce the law"). *Humphrey's Executor*, after all, "turned not on the breadth of the FTC's jurisdiction or on its social and economic impact, but on its character as a financial and commercial regulator," a character the Bureau shares. *PHH Corp.*, 881 F.3d at 102; *see also Morrison*, 487 U.S. at 690-91 (explaining that *Humphrey's Executor* reflected a judgment about the FTC's "functions" and "the relation of the executive to the discharge of [the commissioners'] duties").

Perhaps recognizing that it cannot establish that the removal restrictions here are "of such a nature that they impede the President's ability to perform his constitutional duty," 487 U.S. at 691, Seila Law suggests that *Free Enterprise* established a new and different test from the one set out in *Morrison*: Are the removal restrictions factually different from those the Court approved in *Humphrey's Executor* and *Morrison*? *See* Br. at 18-21. That is not the law as the Supreme Court has established it, however.[6]

Free Enterprise did not narrow or otherwise disapprove of *Humphrey's Executor* and *Morrison*. *PHH Corp.*, 881 F.3d at 90. To the contrary, the Court in *Free Enterprise* began by making clear that it was *not* "reexamin[ing] … these precedents." 561 U.S. at 483. Nor did the Court otherwise alter the controlling legal test established in *Morrison*. Instead, it applied that test, first observing that its previous cases had considered "only one level of protected tenure," not two, before going on to conclude that the Board's "added layer of tenure protection

[6] Seila Law elsewhere implies that *Myers v. United States*, 272 U.S. 52 (1926), somehow limits the application of *Humphrey's Executor* and later cases. Br. at 17. But Seila Law has it backwards: *Humphrey's Executor* limited *Myers*, not the other way around. S*ee Humphrey's Executor*, 295 U.S. at 626; *Morrison*, 487 U.S. at 687 n.24. As cabined, *Myers* establishes certain foundational principles with which Congress fully complied here: "that Article II confers on the President 'the *general* administrative control of those executing the laws'" and that the President therefore "must have *some* 'power of removing those for whom he can not continue to be responsible.'" *Free Enterprise*, 561 U.S. at 492-93 (quoting *Myers*, 272 U.S. at 164, 117) (emphases added).

makes a difference" because it impairs the President's ability to perform his constitutional duty "to execute the laws … by holding his subordinates accountable for their conduct." *Id.* at 495-96. Under Seila Law's mistaken view, the Court could have simply stopped writing after observing that the Board's protections were different from those it had considered before. Instead, the Court posed the same question it had in *Morrison* and determined, on that basis, that the President "*can* oversee" officials he can remove for cause, but he cannot oversee officials who are insulated by two levels of tenure protection. *Id.* at 496. That is why the Court remedied the constitutional problem in *Free Enterprise* by making Board members removable at will by the Commission, thereby "leav[ing] the President separated from the Board members by only a single level of good-cause tenure" (i.e., the for-cause removal protection for SEC commissioners). *Id.* at 509.

At a basic level, Seila Law's argument attempts to graft onto the Supreme Court's cases in this area precisely the sort of bright lines that the Court has rejected. As the Court has explained, in language that *Free Enterprise* did not question, "[t]he analysis contained in our removal cases is designed *not to define rigid categories of those officials who may or may not be removed at will* by the President, but to ensure that Congress does not interfere with the President's … constitutionally appointed duty to 'take care that the laws be faithfully executed.'" *Morrison*, 487 U.S. at 689-90 (emphasis added); *cf. Weiner v. United States*, 357

U.S. 349, 352 (1958) (explaining, in a decision upholding standard for-cause protections for members of the War Claims Commission, that "[t]he versatility of circumstances often mocks a natural desire for definitiveness" concerning such protections). Yet Seila Law asks this Court to take exactly that approach, analyzing removal protections by looking to two rigid categories of officials for whom such protections are allowed, and rejecting all others. *E.g.*, Br. at 23. Controlling precedent establishes a different test.

B. The Bureau's Single-Director Structure Does Not Impede the President's Ability to Perform His Constitutional Duties

Congress's decision that the Bureau be headed by a single person instead of a group does not change the fact that the Bureau's for-cause protection is constitutional under the controlling legal test. If anything, Congress's decision to head the Bureau with a single Director rather than a commission serves to *increase* the President's "ability to execute the laws … by holding his subordinates accountable for their conduct." *Free Enterprise*, 561 U.S. at 496.

"Fundamentally, Congress's choice—whether an agency should be led by an individual or a group—is not constitutionally scripted and has not played any role in the Court's removal-power doctrine." *PHH Corp.*, 881 F.3d at 97. *Morrison*, for example, upheld for-cause protection for the independent counsel, a single official with significant powers to prosecute high-ranking federal officials. Nowhere did the Court—or even the dissent—suggest that the fact that the independent

counsel's office was run by one person instead of a group had any relevance to the constitutional analysis. Nor did *Humphrey's Executor* mention the FTC's multimember structure in assessing the constitutionality of its for-cause removal provision, or suggest that this structure mattered. 295 U.S. at 626-32. If the Court in *Humphrey's Executor*—or any case after it—believed the number of officials who lead an agency makes a difference to the constitutionality of removal limitations, the Court would surely have said so. Indeed, it would have been a natural way for *Humphrey's Executor* to distinguish the Court's earlier decision in *Myers*, which disapproved a removal protection for a (single) postmaster.

Rather than focusing on the number of officials at issue, the Court's removal-power cases have asked whether removal restrictions impede the President's ability to see that the laws are faithfully executed by holding his subordinates accountable. By that measure, the Bureau's single Director is plainly constitutional because the Bureau's structure renders the Director more, not less, accountable to the President. In contrast to a multimember body, where responsibility is more diffuse, "the CFPB Director's line of accountability to the President is clear and direct." *PHH Corp.*, 881 F.3d at 98; *cf.* Br. at 16 (arguing that "dividing executive authority 'tends to conceal faults, and destroy responsibility'" (quoting The Federalist No. 70 (Hamilton))). "[I]f the President finds consumer protection enforcement to be lacking or unlawful, he knows

exactly where to turn," and he need only replace a single official to change the direction of the agency rather than undertake the more difficult task of effectuating multiple for-cause removals. 881 F.3d at 98. "What is more, in choosing a replacement, the President is unhampered by partisan balance or *ex-officio* requirements; the successor replaces the agency's leadership wholesale." *Id.* at 93. Under binding precedent, the Bureau's single-Director structure is thus at least as constitutionally sound as an agency headed by commission.

Seila Law attempts to show that the Bureau's single-Director structure makes a meaningful difference under the controlling legal test, but its efforts fall short. It first argues that because *Humphrey's Executor* noted the FTC was intended to be "non-partisan" and a "body of experts," the Court's constitutional analysis applies only to agencies headed by commission. Br. at 19. But Seila Law fails to note that the Court made that observation only in its *statutory* analysis, which asked whether the removal provision of the FTC Act—a provision that had not previously been interpreted—was intended "to limit the executive power of removal to the causes enumerated [therein]." 295 U.S. at 624, 626. Notably, the Court did not find the FTC's commission structure relevant enough to mention in its constitutional analysis. *Id.* at 626-31; *see also PHH Corp.*, 881 F.3d at 98-99.

Seila Law also suggests that multimember commissions differ from single-headed agencies in a constitutionally meaningful way because the individual

members of a commission can serve as a "check" on one another. Br. at 22-23. That argument is unavailing for the simple reason that, under the controlling test set out in Supreme Court precedent, the question is whether the *President* is able to take care that the laws be faithfully executed. *Cf. Free Enterprise*, 561 U.S. at 496 (emphasizing that "the President cannot delegate ultimate responsibility or the active obligation to supervise that goes with it" (quotation marks omitted)).

This analysis is not altered by the fact that the Director's five-year term limit means that a Director appointed by one president might serve during the term of another. *Contra* Br. at 26-27. "[T]he constitutionality of for-cause protection does not turn on whether the term is five years or four. None of the leaders of independent financial-regulatory agencies serves a term that perfectly coincides with that of the President, and many have longer terms than the CFPB Director." *PHH Corp.*, 881 F.3d at 99. FTC commissioners, for example, serve staggered terms of seven years, 15 U.S.C. § 41, just as they did at the time of *Humphrey's Executor*. As a result, the President is more likely to have an opportunity to appoint the Bureau's Director in a single term than he is to appoint a controlling majority of the FTC. And because the seven members of the Federal Reserve Board serve staggered fourteen-year terms, 12 U.S.C. § 242, the President will *never* have the chance to appoint a majority in a single term if Board members serve their full time in office.

Seila Law's related belief that the Director could stay in office "indefinitely" while being protected by the for-cause removal restriction is not correct. *See, e.g.*, Br. at 2, 26. The CFPA provides that the Director may serve "after the expiration of the term for which appointed, until a successor has been appointed and qualified." 12 U.S.C. § 5491(c)(2). But a holdover Director who is serving past the end of his or her term becomes removable by the President at will and is no longer protected by the for-cause provision. *See Swan v. Clinton*, 100 F.3d 973, 988 (D.C. Cir. 1996) (holdover member of the Board of the National Credit Union Administration was not shielded by removal protection).

Nor is the President's ability to designate a chairperson at many (but not all) commissions constitutionally significant. *Contra* Br. at 26. Although the President now has the power to designate an FTC commissioner to serve as chair, the President did not have this authority until 1950, well after *Humphrey's Executor* was decided. *See* Reorg. Plan No. 8 of 1950, § 3, 64 Stat. 1264, 1265. The President is also restricted, to varying degrees, in his ability to designate the chairs at other agencies, such as the Federal Reserve Board, 12 U.S.C. § 242(c) (chair must be designated with the advice and consent of the Senate), the International Trade Commission, 19 U.S.C. § 1330 (chair must alternate between political parties), and the Federal Election Commission, 52 U.S.C. § 30106(a)(5) (chair rotates among members annually, without formal presidential input). The Supreme

Court has never before suggested that the "existence, strength, or particular term of agency chairs" is "relevant to the constitutionality of an independent agency," *PHH Corp.*, 881 F.3d at 100, and there is no cause for this Court to do so either.

Seila Law next seeks to attack the Bureau's single-Director structure by contending vaguely that it gives the Bureau a "quintessentially executive structure." Br. at 22. But while the Bureau exercises powers that could be characterized as "executive," that fact does not control whether an agency can be independent. *See Morrison*, 487 U.S. at 689-90 & n.28 ("[T]he powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree."); *id.* at 691-93 ("There is no real dispute that the functions performed by the independent counsel are 'executive'…."). Moreover, even assuming that having a single Director gives the Bureau an "executive structure," Seila Law does not explain why the Constitution would prohibit Congress from creating an executive structure within the Executive Branch. *Cf. id.* at 691-93.

Lastly, because Seila Law cannot show under the applicable legal standard that the Bureau's structure offends the separation of powers, it seeks to argue instead that the Bureau is unconstitutional because it is novel. *See* Br. at 21-24. Seila Law notes that the Court in *Free Enterprise* quoted from the dissenting opinion in the court of appeals below, which described the "lack of historical

precedent" for two levels of tenure protection and opined that such novelty may be "the most telling indication of [a] severe constitutional problem." 561 U.S. at 505. Seila Law contends that this language means that novelty alone can render an agency's removal restriction unconstitutional. Seila Law is again mistaken.

The Court quoted the above language only in response to the government's argument that the removal protections at issue in that case were in fact consistent with "the past practice of Congress," 561 U.S. at 505, and only after having applied the legal test set out in *Morrison*. It is that test—and not Seila Law's imagined rule against novelty—that is controlling here. *See Mistretta v. United States*, 488 U.S. 361, 385 (1989) ("Our constitutional principles of separated powers are not violated … by mere anomaly or innovation."); *PHH Corp.*, 881 F.3d at 103 ("Other constitutional principles beyond novelty must establish why a specific regime is problematic."). Seila Law's contrary view is contradicted not only by the express language of Supreme Court precedent but by the fact that *Humphrey's Executor* and *Morrison* each upheld a then-novel form of removal restriction that the Court had not previously considered.

In any event, the Bureau is not nearly so anomalous as Seila Law seeks to portray it. The Bureau's role as a financial regulator "falls squarely within the types of functions granted independence in precedent and history." *PHH Corp.*, 881 F.3d at 79. And with respect to its single-Director structure, there are currently

at least four other federal agencies that are headed by a single person insulated to some degree from at-will removal: the Federal Housing Finance Agency, 12 U.S.C. § 4512; the Social Security Administration, 42 U.S.C. § 902(a); the Office of Special Counsel, 5 U.S.C. § 1211; and the Office of the Comptroller of the Currency, 12 U.S.C. § 2.

Seila Law seeks to minimize these examples as "mere 'anomalies'" that are too new to provide historical precedent for the Bureau. Br. at 23 & n.3. But the OCC was created as an independent regulator in the 1860s, *see* Nat'l Bank Act of 1863, 12 Stat. 665, 665-66 (1863); Nat'l Bank Act of 1864, 13 Stat. 99, 100 (1864), and there may be even earlier precedent for single-headed independent financial regulators dating back to the first years of the Republic, *see PHH Corp.*, 881 F.3d at 91 (citing the example of the Comptroller of the Treasury, an office created in 1795). Seila Law also argues that these agencies do not provide precedent for the Bureau because they cannot bring enforcement actions. *See* Br. at 23 & n.3. Yet the agencies "perform important and far-reaching functions that are ordinarily characterized as executive." 881 F.3d at 104. The Office of Independent Counsel upheld in *Morrison*, for example, had broad authority to bring *criminal* law enforcement actions against high-ranking government officials. And "[t]he Social Security Administration runs one of the largest programs in the federal government … handling millions of claims and trillions of dollars." 881 F.3d at

104-05. Seila Law has thus failed to show that the Bureau is historically exceptional in any meaningful way, even if that were the relevant inquiry.

III. Any Constitutional Defect With the For-Cause Removal Provision Would Be Remedied by Severing It—Not Striking Down the Entire Statute

If this Court reaches the issue and holds that the for-cause removal provision is unconstitutional, it should follow the Supreme Court's approach in *Free Enterprise*, 561 U.S. at 508-10, and invalidate only that provision rather than striking down the entirety of the Bureau's organic statute, as Seila Law incorrectly urges, *see* Br. at 30-32.

As the Supreme Court explained in *Free Enterprise*, "[b]ecause the unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions, the normal rule is that partial, rather than facial, invalidation is the required course." 561 U.S. at 508 (citations, quotation marks, and alterations omitted). This principle applies with even "greater force" in this case, *see Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 862 (9th Cir. 2017), because Congress expressly provided in the Dodd-Frank Wall Street Reform and Consumer Protection Act, of which the CFPA is one part, that "[i]f any provision of this Act … is held to be unconstitutional, the remainder of this Act … shall not be affected thereby," 12 U.S.C. § 5302. Congress's decision to include this severability clause "creates a presumption that Congress did not intend the validity of the statute … to depend on the validity of the constitutionally offensive

provision." *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 686 (1987). To overcome this presumption, Seila Law must provide "strong evidence" that Congress would have preferred no Bureau at all to a Bureau led (as it currently is) by an official who is removable at will. *See Nat'l Mining Ass'n*, 877 F.3d at 862, 865.

Seila Law cannot make that showing, with strong evidence or otherwise. *See PHH Corp.*, 881 F.3d at 198-200 (Kavanaugh, J., dissenting) (agreeing with the United States as *amicus curiae* that severance would be the proper remedy if the for-cause removal provision were held unconstitutional). Instead, overlooking that *it* bears the burden to overcome the presumption of severability created by Congress's express instructions to sever, *see Brock*, 480 U.S. at 686, Seila Law simply asserts that "[t]here is no indication" Congress would have wanted the for-cause provision excised from the rest of the CFPA. Br. at 31. That argument fails to satisfy Seila Law's burden. It is also contradicted by both the severability clause itself and by the legislative record, which makes clear that Congress created the Bureau in order to consolidate the administration and enforcement of the consumer financial laws in a single agency with a dedicated consumer protection mission.

Congress sought to create a single agency charged to oversee the consumer financial laws because it believed that the prior system "suffer[ed] from a number of serious structural flaws …, including a lack of focus resulting from conflicting regulatory missions, fragmentation, and regulatory arbitrage." *See* S. Rep. No. 111-

176 at 10. In Congress's estimation, this dysfunction had catastrophic consequences: "[T]he failure by the prudential regulators to give sufficient consideration to consumer protection … helped bring the financial system down." *Id.* at 166; *accord id.* at 15 (concluding that safety and soundness regulators "routinely sacrificed consumer protection for short-term profitability of banks," leading to the mortgage crisis (quotation marks omitted)). Seila Law's proposed remedy would entirely undo Congress's objective of creating a single agency to act as the primary administrator and enforcer of the federal consumer financial laws.

Seila Law cites a single floor statement from the congressional record to show that the CFPA's supporters believed that shielding the Bureau's Director from at-will removal was a valuable feature of the statute. Br. at 31; *see also PHH Corp.*, 881 F.3d at 162 (Henderson, J., dissenting). But that is a far cry from "strong evidence" that Congress would rather strike the entire statute than have the Bureau's Director be subject to at-will removal. In fact, the floor statement that Seila Law cites, when read in context, was not even principally about the Bureau's independence *from the President* but from other institutional missions besides consumer protection. 156 Cong. Rec. H5239 (daily ed. June 30, 2010) (statement of Rep. Maloney) (stating immediately before the sentence Seila Law quotes that "[f]or the first time, consumer protection authority will be housed in one place").

Seila Law further claims that striking down only an unconstitutional provision rather than the entire statute in which that provision appears is somehow "beyond the Court's proper judicial role." Br. at 31. Seila Law is wrong. For years, this is exactly what the Supreme Court has done when it finds a provision unconstitutional. *See, e.g.*, *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006) (collecting cases back to 1879 and explaining that the Court asks "[w]ould the legislature have preferred what is left of its statute to no statute at all"). Far from impinging on Congress's power, the Court's practice of "try[ing] not to nullify more of a legislature's work than is necessary" is based on its recognition "that a ruling of unconstitutionality frustrates the intent of the elected representatives of the people." *Id.* at 329 (quotation marks and alterations omitted).

Applying the proper standard, it is plain that this is far from "the rare case when a court may ignore a severability provision set forth in the text of the relevant statute." *PHH Corp.*, 881 F.3d at 199 (Kavanaugh, J., dissenting). If the Court invalidates and severs the for-cause removal provision, it should either affirm the district court's order in light of Acting Director Mulvaney's ratification or remand to the district court to permit a reconstituted Bureau the opportunity to ratify or dismiss the petition.

IV. The District Court Correctly Rejected Seila Law's Other Attacks on the Civil Investigative Demand

A. The CID Was Within the Bureau's Authority to Issue

This Court has "emphasized the strictly limited role of the district court when an agency subpoena is attacked for lack of jurisdiction." *CFPB v. Great Plains Lending, LLC*, 846 F.3d 1049, 1051 n.2 (9th Cir.2017). "As long as … there is some plausible ground for jurisdiction, or, to phrase it another way, *unless jurisdiction is plainly lacking, the court should enforce the subpoena*." *Id.* (emphasis in original). The CID here was well within the Bureau's authority to issue, and Seila Law cannot show that the Bureau's authority to investigate violations of the Telemarketing Sales Rule, a law the Bureau is specifically tasked to enforce, is "plainly lacking."

The Bureau is authorized to issue a CID to "any person" it has reason to believe "may be in possession, custody, or control of" evidence "relevant to a violation" of federal consumer financial law. 12 U.S.C. §§ 5562(c), 5561(5). Seila Law is a "person," *id.* § 5481(19), and there are plausible grounds to believe it may be in possession of information relevant to violations of the Telemarketing Sales Rule, a "Federal consumer financial law," *id.* § 5481(14) (defining "Federal consumer financial law" to include "laws for which authorities are transferred under subtitles F and H" of the CFPA); Pub. L. No. 111-203, tit. X, subtitle H, § 1100C, 124 Stat. 2110-11 (authorizing the Bureau, in subtitle H of the CFPA, to

enforce the Telemarketing Sales Rule). There is thus no basis to conclude that the Bureau's authority to issue the CID is "plainly lacking."

Seila Law seeks to avoid this conclusion by arguing that a different provision of the CFPA, limiting in certain respects the Bureau's authority over the practice of law, prevented the Bureau from issuing this CID. Specifically, the CFPA's "practice-of-law exclusion" states that, subject to important exceptions, "the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by any attorney as part of the practice of law." 12 U.S.C. § 5517(e)(1). This provision, however, has no bearing on the CID here.

First, the practice-of-law exclusion in Section 5517(e) does not limit the Bureau's authority to issue CIDs. This is because Section 5517 provides elsewhere that, "[n]otwithstanding subsections (a) through (h) and (l), a person subject to or described in" those subsections "may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with [12 U.S.C. § 5562]." *Id.* § 5517(n)(2). This language makes clear that Seila Law—a person "subject to or described in" the practice-of-law exclusion in subsection (e)—remains subject to civil investigative demands that the Bureau issues in the course of carrying out its responsibilities to enforce the Federal consumer financial laws. Seila Law simply ignores this provision.

Second, Section 5517(e) expressly preserves the Bureau's ability to exercise existing federal enforcement authority over the practice of law, including under the Telemarketing Sales Rule. Paragraph 3 of the practice-of-law exclusion, titled "Existing Authority," states that the exclusion "shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to … the authorities transferred under subtitle F or H" of the CFPA. *Id.* § 5517(e)(3). The Bureau's CID seeks information about possible violations of the Telemarketing Sales Rule, a regulation to which Seila Law is subject, *see* Telemarketing Sales Rule, 75 Fed. Reg. 48458, 48467-69 (Aug. 10, 2010) (declining to make an exception for the practice of law), and over which the Bureau was given authority in subtitle H of the CFPA, *see* Pub. L. No. 111-203, tit. X, subtitle H, § 1100C, 124 Stat. 2110-11. Thus, as the district court correctly concluded, Paragraph 3 "unmistakably empowers" the Bureau to exercise its full range of authorities over "attorneys under the transferred authorities insofar as those transferred authorities implicate the practice of law." ER 9.

Seila Law's arguments to the contrary are unavailing. It proposes to read Paragraph 3 instead as simply clarifying that "a person who happens to be an attorney is not exempt from enforcement … merely because of his or her status as an attorney." Br. at 36. But that interpretation would render Paragraph 3 superfluous because Paragraph 2 of the same section already establishes exactly

that. *See* 12 U.S.C. § 5517(e)(2) (clarifying that Section 5517(e) does not shield attorney conduct that takes place outside the attorney-client relationship and that is not "part of, or incidental to, the practice of law"). Seila Law next quotes language from the CFPA's legislative history stating that Congress sought "to avoid any possible overlap between the Bureau's authority and the practice of law." Br. at 33-34 (quoting 156 Cong. Rec. E1349 (daily ed. July 15, 2010) (statement of Rep. Conyers)). But Seila Law omits other language in the same speech explaining that, notwithstanding the general limitation on the Bureau's authority over the practice of law, "Section [5517(e)(3)] makes clear that existing federal regulatory authority over activities of attorneys … transferred to the new Bureau from existing agencies under subtitles F or H of [the CFPA] is not diminished." 156 Cong. Rec. E1349.

Finally, Seila Law cites a single district court opinion, *CFPB v. The Mortgage Law Grp., LLP*, 157 F. Supp. 3d 813 (W.D. Wis. 2016), that declined to follow the plain language of Paragraph 3, believing that to do so would "create an exception that swallows th[e] general prohibition" in Paragraph 1. *Id.* at 824. In fact, as Congress itself recognized at the time, the exception in Paragraph 3 simply ensures that "existing federal regulatory authority over activities of attorneys … is not diminished" by the general prohibition in Paragraph 1. 156 Cong. Rec. E1349. The district court decision thus does not provide grounds for this Court to depart

from the plain text and legislative intent of the statute.[7] *See FTC v. Lanier Law, LLC*, 194 F. Supp. 3d 1238, 1282-83 (M.D. Fla. 2016) (declining to follow *Mortgage Law Group* and instead applying "the express terms of the statute").

B. The CID Was Procedurally Proper

When the Bureau issues a CID, it must include language stating "the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2); *see also* 12 C.F.R. § 1080.5. (This requirement tracks verbatim a provision of the FTC Act that for almost 40 years has governed CIDs sent by the FTC. *See* 15 U.S.C. § 57b-1(c)(2).) The CID here complied with this requirement because it described the nature of the conduct under investigation and the laws that may have been violated.

As required by Section 5562(c)(2), the Bureau's CID to Seila Law included a "notification of purpose" section stating that

> The purpose of this investigation is to determine whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiations, debt elimination, debt settlement, and credit counseling,

[7] Seila Law summarily asserts that the district court erred in enforcing the CID because some, perhaps all, of the information sought is privileged. Br. at 37. Seila Law's "perfunctory argument is inadequately briefed and therefore waived." *United Nurses Ass'ns of Cal. v. NLRB*, 871 F.3d 767, 780 (9th Cir. 2017). It has also failed at any point to produce a privilege log or otherwise properly assert any privilege over the withheld information, ER 12 (district court finding), as required by the Bureau's rules governing CIDs, *see* 12 C.F.R. § 1080.8(a).

> in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5563; 12 U.S.C. § 5481 et seq., the Telemarketing Sales Rule, 16 C.F.R. § 310.1 et seq., or any other Federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

ER 271. This notification describes "the nature of the conduct … under investigation"—i.e., "the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiations, debt elimination, debt settlement, and credit counseling" by debt-relief providers and others. And it describes specific "provisions of law" that may have been violated—i.e., the Telemarketing Sales Rule and Sections 1031 and 1036 of the CFPA. *See generally* 15 U.S.C. § 6102(c)(2) (violations of the Telemarketing Sales Rule by persons subject to the CFPA shall be treated as violations of a Bureau rule under Section 1031). The notification of purpose thus provides all the information required under Section 5562(c)(2).

This conclusion is confirmed by case law, which establishes that "a notification of purpose may use broad terms to articulate an investigation's purpose" and that "the CFPB may define the boundary of its investigation 'quite generally.'" *CFPB v. Accrediting Council for Indep. Colleges & Sch.*, 854 F.3d 683, 690 (D.C. Cir. 2017) (citing *FTC v. Texaco, Inc.*, 555 F.2d 862 (D.C. Cir. 1977) (en banc), and quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086

(D.C. Cir. 1992)).[8] To be sure, an administrative subpoena must satisfy the test for enforceability established by *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) and related cases. Under that test, "[t]he critical questions are: (1) whether Congress has granted the authority to investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence is relevant and material to the investigation." *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001) (citing *Morton Salt*, among others). A notification of purpose thus cannot be framed in *such* overly broad terms that it "makes it impossible to apply … the *Morton Salt* test." *Accrediting Council*, 854 F.3d at 691 (quotation marks omitted). But Seila Law offers no reason to support its assertion that the *Morton Salt* test cannot be applied here. *See* Br. at 39.

Instead, Seila Law seeks to create confusion where none exists by rewriting the notification of purpose to remove all its references to specific categories of persons, types of conduct, and consumer financial laws. *See* Br. at 38. That is not a reasonable reading of the language in the CID. As the district court observed, "what Seila Law omits through ellipses provides the fair notice that it supposedly

[8] For example, in *FTC v. Texaco*, the en banc D.C. Circuit approved a notification of purpose that said the FTC was investigating "conduct in the reporting of natural gas reserves for Southern Louisiana" and "activities relating to the exploration and development, production, or marketing of natural gas, petroleum and petroleum products, and other fossil fuels" in violation of Section 5 of the FTC Act. 555 F.2d at 868. The court explained that it would be unreasonable to require additional detail at the point when an agency's investigation may have just begun. *Id.* at 877.

seeks." ER 7. The details in the notification of purpose do not disappear simply because they are followed by broader language at the end of each list (e.g., "…or other persons"). The broader language instead reflects the reality that an investigation may uncover wrongdoing the Bureau was not aware of at the outset.

Lastly, Seila Law repeats an argument from its district court filings that is no longer relevant to this case. It contends that the notification of purpose is overly broad because it could be read to seek information about areas of the firm's practice that are unrelated to debt-relief services (such as its immigration and personal-injury work). Br. at 39. Seila Law overlooks that the district court already acted to ensure the CID would not be misread in that way by defining the terms "other services" and "services" in the CID to make clear that they refer only to the debt-relief services described in the CID's notification of purpose. ER 11. (The Bureau is not challenging and does not disagree with the district court's clarification of the CID.) Seila Law does not acknowledge the district court's narrowing construction of the language in the CID—let alone attempt to explain why that language, as narrowed, remains overly broad.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's order enforcing the CID.

Dated: March 19, 2018

/s/ Kevin E. Friedl

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STATEMENT OF RELATED CASES

The Bureau states under Ninth Circuit Rule 28-2.6 that it is unaware of any additional related cases pending in this Court beyond the three identified in Appellant's brief.

CERTIFICATE OF COMPLIANCE

This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 12,645 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). The brief's typeface and type style comply with Federal Rule of Appellate Procedure 32(a)(5) and (6).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on March 19, 2018, by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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ADDENDUM

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U.S. Const. art. II, § 3.

[The President] shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

12 U.S.C. § 5302. Severability

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

12 U.S.C. § 5491. Establishment of the Bureau of Consumer Financial Protection

(a) Bureau established

There is established in the Federal Reserve System, an independent bureau to be known as the "Bureau of Consumer Financial Protection", which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) Director and Deputy Director

(1) In general
There is established the position of the Director, who shall serve as the head of the Bureau.

(2) Appointment
Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Qualification
The President shall nominate the Director from among individuals who are citizens of the United States.

(4) Compensation
The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5.

(5) Deputy Director
There is established the position of Deputy Director, who shall—
(A) be appointed by the Director; and
(B) serve as acting Director in the absence or unavailability of the Director.

(c) Term

(1) In general
The Director shall serve for a term of 5 years.

(2) Expiration of term
An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) Removal for cause

The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) Service restriction

No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) Offices

The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

12 U.S.C. § 5511. Purpose, objectives, and functions

(a) Purpose

The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) Objectives

The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) Functions

The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

12 U.S.C. § 5517. Limitations on authorities of the Bureau; preservation of authorities

* * *

(e) Exclusion for practice of law

(1) In general

Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) Rule of construction

Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 5481(5) of this title--

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) Existing authority

Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

* * *

(n) Limited authority of the Bureau

Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions--

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 5512, 5562, or 5563 of this title.

* * *

12 U.S.C. § 5562. Investigations and administrative discovery

* * *

(c) Demands

(1) In general

Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to--

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) Requirements

Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

* * *

(e) Petition for enforcement

(1) In general

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

* * *