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Introducing the Consumer Financial Protection Bureau

THE MOST COMPREHENSIVE FINANCIAL REGULATORY LEGISLATION SINCE THE 1930s, MORE RED TAPE FOR COMPLIANCE PROS

the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was signed into law on July 21, 2010. The Consumer Financial Protection Act of 2010 is included as Title 10 of the larger act, and it establishes a new bureau within the Federal Reserve System: the Consumer Financial Protection Bureau (CFPB). The new bureau will be completely independent of the Fed's board of governors and other financial regulatory agencies, and its mandate is to focus on issues impacting how consumers are treated in the marketplace for financial products and services. Congress was specifically concerned about treatment of servicemembers, the unbanked, and senior citizens.

The creation of the CFPB will clearly impose new obligations on all providers of financial products and services directed to consumers for personal, family, or household purposes. Understanding the new bureau's role and responsibilities will be a major challenge to compliance managers at depository and nondepository institutions during the coming year.

The secretary of the Treasury has set July 21, 2011, as the official date for transferring certain consumer protection functions from current regulatory agencies to the CFPB. It is anticipated that significant changes to regulations as well as supervisory procedures will occur during this transition period. This article provides an overview of which laws and regulations the CFPB will be responsible for, and which institutions it will supervise.

Structure

The CFPB is an autonomous office within the overall structure of the Federal Reserve System. The Fed's board of governors may delegate to the CFPB authority to examine persons subject to the jurisdiction of the board for compliance with federal consumer financial laws. The board may not, however, appoint or remove any employee of the CFPB, nor can it intervene in any matters before the CFPB, including examination or enforcement actions. The board is required to provide funding for the CFPB each year beginning on the designated date of the transfer of authority to the new bureau.

The CFPB will be headed by a director nominated by the president, subject to confirmation by the Senate, for a term of five years.

Appointed by the director, a deputy director will lead the CFPB in the director's absence. The principal office of the CFPB will be in Washington, D.C., and the bureau may establish regional offices in order to carry out its responsibilities. The director is authorized to hire attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as necessary to conduct the business of the CFPB.

Similar to the board's Consumer Advisory Council, the CFPB is directed to establish a Consumer Advisory Board, with members to be appointed by the director. The membership is to include persons with expertise in consumer protection, fair lending, financial services, and community affairs, among other backgrounds. The director is supposed to include at least six persons recommended by the regional Federal Reserve Banks. The legislation requires the advisory board to meet at least twice a year.

Laws and Regulations

The Dodd-Frank Act transfers regulatory responsibility for the following consumer laws from the agencies previously given those tasks:

- The Alternative Mortgage Transaction Parity Act of 1982
- The Consumer Leasing Act of 1976
- The Electronic Fund Transfer Act (with some exceptions)
- The Equal Credit Opportunity Act
- The Fair Credit Billing Act
- The Fair Credit Reporting Act (with some exceptions)
- The Homeowners Protection Act of 1998



- The Fair Debt Collection Practices Act
- Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act (institutions without federal deposit insurance)
- Sections 502–509 of the Gramm-Leach-Bliley Act (privacy)
- The Home Mortgage Disclosure Act of 1975
- The Home Ownership and Equity Protection Act of 1994
- The Real Estate Settlement Procedures Act of 1974
- The SAFE Mortgage Licensing Act of 2008
- The Truth in Lending Act
- The Truth in Savings Act
- Section 626 of the Omnibus Appropriations Act (2009)
- The Interstate Land Sales Full Disclosure Act
- Subtitles A, B, C, and E and sections 1471, 1472, 1474, and 1475 of the Mortgage Reform and Anti-Predatory Lending Act (2010)

The CFPB also has specific authority to prevent persons subject to its supervision from committing or engaging in unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. The requirements for determining whether actions may

be unfair or deceptive are the same as those currently guiding the Federal Trade Commission (FTC) and the federal banking agencies when examining for possible unfair or deceptive acts or practices (UDAP) violations.

Who Is Regulated

The CFPB will be responsible for enforcing consumer financial protection laws and regulations against any person who engages in offering or providing a consumer financial product or service; and any affiliate of such a person if that affiliate acts as a service provider to that person. The definition of financial product or service is very broad and will encompass pretty much any financial product or service offered to a consumer for personal, family, or household purposes.

The CFPB is given specific authority over insured depository financial institutions with assets over \$10 billion. Based on the most recent call report figures, the CFPB will have responsibility to examine some 100 insured banks, savings associations, and credit unions, and their affiliates. It will also have responsibility for examining and supervising nondepository financial firms that originate, broker, or service private education loans,

payday loans, loans secured by consumer real estate, or other loans or services that the CFPB, in consultation with the FTC, determines need to be covered.

Service providers to the entities subject to CFPB authority will also fall under the bureau's oversight and supervision. The CFPB will coordinate, to the extent possible, with other federal and state supervisory agencies in conducting any examination program.

The federal banking agencies will continue to examine their supervised depository institutions having assets of less than \$10 billion. Based on the most recent call reports, the Comptroller of the Currency's examiners will monitor approximately 2,000 federally chartered institutions for compliance with consumer protection regulations. The Federal Deposit Insurance Corporation (FDIC) will be responsible for examining approximately 5,000 state-chartered institutions, and the Federal Reserve Board will be responsible for examining approximately 800 state-chartered member banks. The National Credit Union Administration will be responsible for examining approximately 7,800 federally insured credit unions. All of these agencies will coordinate examination and supervision activities with the CFPB on a sampling basis, including having bureau examiners accompany the agencies' examiners on selected on-site visits.

The CFPB also has supervisory authority over nondepository firms that provide origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes. Firms engaging in loan modifications or foreclosure relief services for consumer real estate loans, providing payday loans, or making private education loans are also subject to the CFPB's supervision. The new bureau may, in consultation with the FTC, make rules requiring other types of consumer financial products or services to come under the CFPB's authority.

Who Is Excluded

Certain businesses are specifically excluded from the CFPB's authority and supervision. Generally speaking, the exclusions are focused on activities that are not readily identified as involving consumer financial products or services. Following are examples of entities that are generally excluded from the CFPB's authority:

- merchants, retailers, and other sellers of nonfinancial goods or services
- real estate brokerages
- manufactured-home retailers and modular-home retailers
- accountants and tax preparers, as long as they are providing customary and usual accounting activities (The Dodd-Frank Act notes that extending or brokering credit is not a customary and usual accounting activity, nor incidental to that activity.)
- attorneys who practice under the laws of states where they are licensed to practice
- persons regulated by state insurance authorities, unless they are engaged in the offering or provision of any consumer financial product or services
- persons regulated by state securities commissions, the Securities and Exchange Commission, or the Commodity Futures Trading Commission

- motor vehicle dealers predominately engaged in the sale or leasing and servicing of motor vehicles

The FTC retains its authority over persons excluded from the CFPB's coverage.

The Dodd-Frank Act specifically notes that nothing in the exclusions affects the provisions of the Fair Housing Act or its enforcement by the financial regulatory agencies.

When Things Change

The CFPB came into existence on July 21, 2010, when President Obama signed the Dodd-Frank Act into law. The secretary of the Treasury is given the authority to carry out the activities of the CFPB, and he has appointed Elizabeth Warren to exercise that authority pending the president's nomination of a director and that person's confirmation by the U.S. Senate. Warren was also named as a special advisor to the president for this activity.


Other major time points for the CFPB are as follows:

- The CFPB was authorized to administer, enforce, and implement all the provisions of the designated federal consumer financial laws on the date of enactment (July 21, 2010). The CFPB's authority over the supervision of nondepository institutions also went into effect on that date, as did coordinated supervision of large depository financial institutions.
- The secretary was directed to establish an official date for transferring functions from current regulatory agencies to the new bureau not later than September 20. A *Federal Register* notice was published on September 20 designating July 21, 2011, as the official transfer date.
- The CFPB's authority over unfair, deceptive, or abusive acts or practices takes effect on the designated transfer date of July 21, 2011.
- Not later than one year after the transfer date, the CFPB is to propose for public comment rules and model disclosures that integrate TILA and RESPA disclosures for mortgage loans into a single disclosure. At a recent meeting with representatives of trade associations, consumer organizations, and other interested parties, CFPB representatives provided a draft discussion form that combines many of the above disclosures.

Rule Writing

The CFPB has authority to write regulations for all of the enumerated consumer financial laws that have been transferred to it. The Dodd-Frank Act also made a number of amendments to the various statutes that are being transferred. One interesting change was giving the CFPB authority to issue rules for the Fair Debt Collection Practices Act. Previously the FTC did not have that authority. Amendments have also been made to the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Electronic Funds Transfer Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act, among others. These amendments are substantive and the CFPB will have to issue proposed regulations to implement these changes.

The CFPB's authority to issue rules, commentary, and other



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interpretations is not subject to the approval of any other agency. However, any member agency of the new Financial Stability Oversight Council may petition the council to set aside a final regulation, or any provision of it. The council may set aside a final rule or provision only if two-thirds of the council members affirmatively vote to set the rule aside by determining that the rule would put the safety and soundness of the banking system or the stability of the financial system of the United States at risk.

Supervision and Enforcement

The CFPB has primary supervisory authority for compliance with federal consumer financial laws over the largest depository financial institutions, their affiliates, and service providers (to the extent that they are engaged in providing consumer financial products and services).

Development of a supervision program for certain nondepository covered entities will be particularly significant because no federal agency has previously had the responsibility for supervising entities such as payday lenders, mortgage companies, debt collectors, and consumer reporting agencies. During the transition period to July 21, 2011, the CFPB will begin building this supervision program, including hiring and training examination staff and making preparations necessary to begin a risk-based supervision program. It is anticipated that personnel from the federal banking agencies, the National Credit Union Administration, and the FTC will likely be transferred to the CFPB for this activity. Analysts at HUD who investigate violations of RESPA and the Interstate Land Sales Full Disclosure Act and have experience with nondepository entities will also probably be selected for transfer to the CFPB.

Because the Dodd-Frank Act does not transfer authority for BSA/AML statutes or the Community Reinvestment Act to the CFPB, employees of the banking agencies who have specialized in those activities (including attorneys) will in all likelihood remain with their current agencies. Current employees of the OTS who specialize in those activities will be transferred to the OCC, FDIC, or board with the dissolution of the OTS.

Education

The Dodd-Frank Act specifically lists conducting financial education programs as one of the CFPB's primary functions. The federal banking agencies have, over the years, developed small dedicated groups of their personnel to work with private and public organizations to improve financial education for the public. The banking agencies, in conjunction with other agencies such as the FTC, have worked to improve educational material about consumer rights and responsibilities with financial products and services. They have utilized standard and emerging technologies to help educate the public about the proper use of financial products and services. It is anticipated that many of these personnel will be transferred to the CFPB and given the opportunity to expand their efforts in this field. Prior to the designated transfer date next July, the CFPB will begin to research consumer financial products and services, develop its nationwide consumer complaint response center, and plan and prepare for the opening of outreach offices.

Next Steps

Compliance managers will be tasked with a considerable amount of work during the coming year. Maintaining ongoing compliance responsibilities at individual institutions, while trying to understand possible new regulatory and supervisory activities and directions, will be a yeoman's task that should not be underestimated. Staying informed through close contact with professional colleagues and organizations will be essential. Information from trade organizations and consulting firms will also be useful to ensure that unintended consequences do not occur on your watch. The clock is ticking and due diligence is required. ■

ABOUT THE AUTHORS

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