

# The Consumer Financial Protection Bureau

What Can it Do?  
What Should it Do?

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# Consumer Financial Protection Bureau (CFPB)

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## Dodd-Frank Wall Street Reform and Consumer Protection Act

- Signed July 21, 2010
- CFPB's effective date will be set in a few days (likely to be July 21, 2011)
  - First rules by CFPB: likely 2012

# CFPB Structure

- Bureau within Fed, but effectively independent.
- Headed by presidentially-appointed Director, confirmed by Senate.
- Financial Stability Council can veto rules but only if pose risk to financial system.
- Budget comes from Fed's. Amount set by Director up to cap (about \$485m by 2013).

# Impact on Other Agencies

Takes over some (but not all) consumer financial protection responsibilities from:

- Federal Reserve Board
- Bank regulators (OCC, FDIC, NCUA) (OTS abolished)
- Federal Trade Commission
- HUD (some rulewriting)

# CFPB Responsibilities

- Write rules
- Conduct examinations
- Enforcement
- Complaints
- Research
- Financial education

# Required Units

- Research
- Community Affairs
- Complaints
- Fair Lending and Equal Opportunity
- Financial Education
- Service Member Affairs
- Financial Protection for Older Americans

# Rulewriting Authority: What

- Takes over all consumer financial statutes: TILA, FCRA, FDCPA, EFTA, RESPA, HMDA (not FHA, CRA)
- New authority to prevent unfair, deceptive or abusive acts or practices (“organic” authority or “UDAAP” authority).
- Can regulate or ban forced arbitration.
- Cannot set usury cap.

# “Abusive” Practices

- Materially interferes with a consumer’s ability to understand a term or condition of a product or service, or
- Takes unreasonable advantage of consumer’s:
  - lack of understanding of the material risks, costs, or conditions of the product or service;
  - Inability to protect own interests when selecting or using product or service;
  - Reliance on seller/provider.

# Rulewriting: Over Whom?

Just about everyone, including:

- Bank and nonbank lenders (mortgage, credit card, student loan, auto, payday)
- Credit reporting bureaus
- Bank accounts, prepaid providers
- Remittance, check cashing providers
- Debt collectors & financial creditors collecting
- Debt settlement, credit counseling
- Others involved in financial products or services (but not credit insurance; rent-to-own uncertain).

# Exceptions to Rulewriting

- Most ***vehicle dealers*** exempt. FTC writes UDAP rules (new APA authority), Fed writes the rest.
- ***Merchants***, especially small business, who offer credit for own nonfinancial product and don't sell or assign the credit: exempt from UDAAP rules but not current statutes.

# Rulewriting Process

- Traditional notice & comment (APA)
- But under Snowe-Pryor amendment, must comply with Regulatory Flexibility Act (5 USC 602), convening small business panels to comment *before proposing* rule with a significant economic impact on small entities.
  - Could add 4 to 6 months for some rules.
  - Will the process be transparent, even-handed?

# CFPB Examination and Enforcement

- Banks, credit unions over \$10 billion
- Nonbanks:
  - Mortgage industry
  - Student and payday lenders
  - “Larger participants” in other markets (by reg)
  - Persons who pose risks to consumers (by order)
  - Exemption for attorneys acting within A/C relationship with consumer client.
- FTC, bank regulators, AGs, state regulators enforce where CFPB cannot.

# Private & AG enforcement

- Current statutes, rules under them: No change. Clarifies that if statute authorizes AG enforcement, includes national banks.
- UDAAP rules: No private right of action. State regulators and AGs can enforce (including against national banks).
- *Cuomo* codified (AG enforcement of state laws).

# Poll: How Excited Are You About the CFPB?

Do you think the CFPB will be:

- A) A major improvement.
- B) A modest improvement.
- C) No change.
- D) Will be captured and make things worse.

# Preemption

- CFPB rules do not preempt.
- Subsidiary preemption (*Watters*) repealed; AMPTA largely repealed.
- OCC can preempt on case-by-case basis if state law significantly interferes with exercise of bank powers under *Barnett* standard.
- Interest rate preemption preserved.
- *Skidmore*, not *Chevron* deference to OCC.
- Effective July 21, 2011? Grandfather clause.
- Bottom line????

# New TILA Mortgage Provisions

- Ability to repay required; safe harbor.
- YSPs, single-premium credit insurance, forced arbitration banned.
- Prepayment penalties limited.
- Some new enhanced penalties, HOEPA expanded.
- Appraisal reform.

# Other Items in Dodd-Frank

- TILA, CLA jurisdiction, damages increased
- RESPA changes
- Remittance disclosures
- Interchange fees limited; could limit prepaid fees.
- Foreclosure prevention measures.
- Credit score disclosure if adverse action.
- Check holds (EFAA: more cash available).

**FOR MORE INFORMATION:** Special NCLC Reports issue on Dodd-Frank Act ([www.nclc.org/dodd-frank](http://www.nclc.org/dodd-frank))

## **QUESTIONS ABOUT THE CFPB?**

### **NEXT: KATHLEEN KEEST, “What should it do?”**

- NCLC’s Agenda for the Consumer Financial Protection Bureau at NCLC.org: click Issues, then Regulatory Reform.

# Poll: What do you think the CFPB should do?

In addition to mortgage rules, should the top priority be:

- A) Mortgage servicing/foreclosures.
- B) More/tighter credit card rules.
- C) Debt collection.
- D) Credit reporting.
- E) Payday loans.

# CFPB: Priorities & Possibilities

National Consumer Law Center &  
Center for Responsible Lending

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September 15, 2010

# Expectations: Managing them 101

- Reality check on how fast agency can get to substantive market conduct rules:
  - Needs to get itself set-up.
  - Needs to get basic rules and systems in place to do what no federal agency has done before, *e.g.* identify and register non-bank covered persons; set up system to supervise & monitor developments, etc.
  - Congress spoke as to some priorities for rules – approximately 25 rules are mandated with statutory time lines

# “Evidence-based regulation: Setting research priorities

- Goal – “evidence-based” regulation. Requires more thoughtful and thorough research agenda.
  - Prior regulation not informed by actual market research
  - Actual market research difficult due to lack of available data
  - Invite “reality-based” economic analysis of data.
- Need research agenda set early to lay groundwork for substantive market-conduct regulation

# Substantive “market conduct” possible priorities --

- Mortgages --
  - implement anti-steering & ability to pay rules (*cf* FRB rules issued 8/16/10)
  - “qualified mortgage” standards
  - servicing reforms
  - loan mods & loss mitigation
  - more effective and meaningful enforcement of Equal Credit Opportunity Act.

# Auto finance

- Still fragmented jurisdiction due to auto dealer exemption: Joint FTC & CFPB possible priorities
  - dealer mark-ups (aka “kickbacks), including fair lending implications
  - Yo-yo deals

# Fringe market lending – payday & auto title

- No CFPB authority to set rates, but...
- Payday reforms might include eliminating access to bank accounts as collateral,
- Curb evasion tools
- Standards for time-to-pay and ability to pay
- Effective curbs to reduce or eliminate debt treadmill

# Credit cards

- Credit cards
  - Monitor for evasions of and loopholes in CARD Act requirements; effective enforcement and close loopholes
  - More scrutiny and more reforms on penalty rates & fees

# Safe bank accounts – overdraft and beyond

- Overdraft
  - Limit the number and amount of excessive fees that exceed the costs
  - Ban aggressive and deceptive marketing to induce opt-in to most expensive overdraft
  - Ban bank account manipulation to increase overdrafts
  - Require banks to offer lowest overdraft program depositor qualifies for
- Protect deposit accounts and promote safe savings

# Other issues

- Credit reports
  - Free credit score
  - Accuracy and dispute resolution
- Debt collection & Debt settlement
  - FTC debt settlement efforts will transfer
  - Old stand-byes still a problem – zombie debt; unsubstantiated debt.
- Forced arbitration (study mandated)

# Other issues -- continued

- Private student loans
  - Prohibit steering to more expensive private lending before exhausting federal loans
  - Loan modifications & debt management
  - Protect students from debts incurred for closed or fraudulent schools
- Prepaid cards
  - Equalize protections with other payment cards

# Questions? Comments?

- What do you think should be among the Bureau's early priorities?

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