The Consumer Financial Protection Bureau
What Can it Do?
What Should it Do?

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Consumer Financial Protection Bureau (CFPB)

created by

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)

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.
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.
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

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