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Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)

The Consumer Financial Protection Bureau (CFPB) was established by the Dodd-Frank Act (DFA; P.L. 111-203) to implement and enforce federal consumer financial law while ensuring consumers can access financial products and services. The CFPB also aims to ensure the markets for consumer financial services and products are fair, transparent, and competitive. Some of the CFPB's responsibilities were previously covered by other regulators but were consolidated in the CFPB. Other authorities are newly established.

Structure of the CFPB

The CFPB is headed by a director, who is appointed by the President by and with the advice and consent of the Senate for a five-year term. It is located within the Federal Reserve System (FRS), although the Federal Reserve Board does not influence the CFPB's budget or personnel decisions. The Federal Reserve Board also cannot veto a rule issued by the CFPB, but the Financial Stability Oversight Council can set aside a CFPB rule with the vote of two-thirds of its members. The CFPB, which is not subject to congressional appropriation, is funded through the earnings of the FRS. The CFPB requests monetary transfers from the FRS, and the DFA caps the amount of these transfers at 12% of the FRS's operating expenses as reported in its FY2009 Annual Report, adjusted based on a formula set in statute. The director may request additional funding in excess of the cap, subject to congressional appropriation. For FY2017, the CFPB's funding cap will be $646.2 million.

CFPB Regulatory Authority

Two of the major issues related to the CFPB's regulatory authority concern what authorities the CFPB has and over whom it may exercise them. On the first issue, the CFPB's authorities fall into three broad categories: *supervisory*, which includes the power to examine and impose reporting requirements on financial institutions; *enforcement* of various consumer protection laws and regulations; and *rulemaking*. For example, in the rulemaking category, the CFPB acquired authority to prescribe regulations pursuant to 19 federal consumer protection laws that largely predate the DFA. These "enumerated consumer laws" govern a broad and diverse set of consumer financial activities and services. The CFPB also acquired the newly established power to issue rules declaring certain acts or practices to be unlawful because they are unfair, deceptive, or abusive.

On the second issue, the CFPB generally has regulatory authority over providers of an array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, check guaranteeing, collection of consumer report data, and debt collection associated with consumer financial products.

The authorities that the CFPB may exercise and the breadth of products, services, and entities that fall within its jurisdiction are considerable, but the DFA imposes some important exceptions to and limitations on the CFPB's powers. In some instances, the law clearly defines the institutions the CFPB may regulate. In other instances, the statutory language provides the CFPB a fair amount of discretion to determine the types of institutions that may fall within its regulatory reach. What authorities the CFPB may exercise over which entities varies depending on the charter of an institution, the size of an institution, and the market in which an activity takes place.

Banks. Banks (which include institutions with a bank, thrift, or credit union charter) are regulated for *safety and soundness* as well as for *consumer compliance*. Safety and soundness, or *prudential*, regulation is intended to ensure an institution is managed to maintain profitability and avoid failure. The focus of consumer compliance regulation, by contrast, is ensuring institutions conform with applicable consumer protection and fair-lending laws. Prior to the DFA, the federal banking regulators (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration) were charged with the two-pronged mandate of regulating for both safety and soundness and consumer compliance. Pursuant to the DFA, the CFPB acquired certain consumer compliance powers over banks that vary based on whether a bank holds more or less than $10 billion in assets (a common threshold for what qualifies as a *small bank* or a *community bank*).

For banks with *more than $10 billion* in assets, the CFPB is the primary regulator for consumer compliance, whereas safety and soundness regulation continues to be performed by the prudential regulator. As a regulator of larger banks, the CFPB has rulemaking, supervisory, and enforcement authorities. This means the CFPB can issue rules for a large bank to follow, examine the bank to ensure it is in compliance with these rules, and take enforcement actions (such as imposing fines) against banks that fail to comply. A large bank, therefore, has different regulators for consumer protection and safety and soundness.

For banks with *$10 billion or less* in assets, the rulemaking, supervisory, and enforcement authorities for consumer protection are divided between the CFPB and a prudential regulator. The CFPB may issue rules that would apply to smaller banks from authorities granted under the federal consumer financial protection laws. The prudential regulator, however, would maintain primary supervisory and enforcement authority for consumer protection. The

CFPB has limited supervisory authority over smaller banks; it can participate in examinations of smaller banks performed by the prudential regulator "on a sampling basis." The CFPB does not have enforcement powers over small banks, but it may refer potential enforcement actions against small banks to the banks' prudential regulators (the prudential regulators must respond to such a referral but are not bound to take any other substantive steps).

Nonbanks. A nonbank financial institution is an institution that provides financial services but does not have a bank, thrift, or credit union charter. The CFPB wields federal consumer financial protection powers to regulate nonbank financial institutions, which previously were largely unregulated at the federal level.

The CFPB may issue rules that would affect some nonbank financial institutions and may enforce those rules, but whether the CFPB has supervisory authority and the ability to perform examinations depends on the type of nonbank institution.

The CFPB is authorized to supervise three groups of nonbanks. First, the CFPB supervises nonbanks, regardless of size, in three specific markets—mortgage companies (such as lenders, brokers, and servicers), payday lenders, and private education lenders. Second, the CFPB may supervise "larger participants" in certain consumer financial markets. The CFPB has some discretion to determine what those markets are and what constitutes a larger participant. Thus far, it has designated larger participants for supervision in several markets, including consumer debt collection, consumer reporting, student loan servicing, and international money transmitters. It is considering designations in other markets as well. Third, the CFPB may supervise a nonbank if, based on consumer complaints or other sources, the CFPB has reasonable cause to determine that the nonbank poses risks to consumers in offering its financial services or products.

Exempted Institutions. The DFA provides some industries with exemptions from CFPB regulation. The CFPB generally does not have rulemaking, supervisory, or enforcement authority over automobile dealers; merchants, retailers, and sellers of nonfinancial goods and services; real estate brokers; real estate agents; sellers of manufactured and mobile homes; income tax preparers; insurance companies; or accountants. Certain business practices of these entities, however, could trigger CFPB regulatory authority, such as engaging in an activity that makes them subject to an enumerated consumer law.

Policy Issues

The CFPB has been a controversial product of the DFA. Much of the policy discussion around it has focused on two main questions. First, is the CFPB as an institution structured appropriately to achieve the correct balance between independence on the one hand and transparency and accountability on the other? Those who criticize the CFPB's policy choices often attribute some of the perceived shortcomings to what they see as the CFPB's excessive independence, insularity, and lack of sufficient accountability. The presence of a director rather than a board, some argue, leads to a lack of diversity of viewpoints at the CFPB. Some also cite funding that is outside the traditional appropriations process as a contributing factor to the CFPB's independence. S. 3318, the Consumer Financial Protection Bureau Accountability Act of 2016, would subject the CFPB to the traditional congressional appropriations process and is an example of a proposal to reduce its independence and increase its accountability to Congress. Supporters of the CFPB highlight other aspects of its structure that they argue provide sufficient transparency and accountability, including the director's biannual testimony before Congress and the cap on CFPB funding. Other structural characteristics, they argue, are important for ensuring that the CFPB is somewhat insulated from political pressures and can focus on the technical aspect of policymaking.

The second major policy question is whether the substance of the CFPB's rulemakings has struck an appropriate balance between protecting consumers and ensuring that consumers have access to financial products while also safeguarding lenders from unduly burdensome regulations. One of the long-standing issues in the regulation of consumer financial services is the perceived trade-off between protecting consumers and ensuring the providers of financial services are not unduly burdened. If regulation intended to protect consumers increases the cost of providing a financial product, a company may reduce how much of that product it is willing to provide and to whom it is willing to provide it. Those who still receive the product may benefit from the enhanced disclosure or added legal protections of the regulation but at the cost of a potentially higher price.

Some Members of Congress believe the CFPB has struck an appropriate balance in its rulemaking between protecting consumers and ensuring that credit availability is not restricted due to overly burdensome regulations on financial institutions. Others counter that some of the CFPB's rules have imposed compliance costs on lenders of all sizes that will result in less credit available to consumers and restrict the types of products available. H.R. 1210, the Portfolio Lending and Mortgage Access Act, would modify the CFPB's Ability-to-Repay Rule and is an example of an attempt to reduce compliance costs for lenders. An analysis of whether recent rulemakings, such as the Ability-to-Repay Rule, have restricted the availability of credit is complicated by the effects of the financial crisis on the supply of and demand for credit, as well as by the fact that many of the more significant CFPB rulemakings only took effect in early 2014.

CRS Resources

CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by David H. Carpenter.

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