

## The Consumer Financial Protection Bureau: Structure, Mission and Limitation of Authority Prior to the Appointment of a Director

March 8, 2011

The Consumer Financial Protection Bureau (CFPB) was created by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act). The short title for Title X is the Consumer Financial Protection Act of 2010. The CFPB is scheduled to assume its powers as an independent bureau within the Federal Reserve System on July 21, 2011 (the Transfer Date).

The full text of the Dodd-Frank Act, including Title X, is available [here](#).

### I. Mission and Scope

#### A. CFPB's Mission

“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.” (Dodd-Frank Act § 1011(a))

“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- (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;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.” (Dodd-Frank Act § 1021(b))

#### B. CFPB's Scope

Primary Rulemaking Authority under:

- The Alternative Mortgage Transaction Parity Act of 1982;

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- The Consumer Leasing Act of 1976;
- The Electronic Funds Transfer Act;
- The Equal Credit Opportunity Act;
- The Fair Credit Billing Act;
- The Fair Credit Reporting Act;
- The Homeowners Protection Act of 1998;
- The Fair Debt Collection Practices Act;
- 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 S.A.F.E. Mortgage Licensing Act of 2008;
- The Truth in Lending Act;
- The Truth in Savings Act; and
- The Interstate Land Sales Full Disclosure Act.

(Dodd-Frank Act §§ 1002(12), 1002(14), 1022)

Regulated entities:

- Large depositories (more than \$10 billion in assets);
- Lenders and loan servicers, including payday lenders, mortgage-related businesses, and private student loan providers;
- Loan acquirers, purchasers, sellers, and brokers;
- Sellers, providers, and issuers of stored value instruments;
- Those engaged in check cashing, collecting, and guaranty services;
- Payment processors;
- Providers of credit counseling, debt management, and debt settlement services;
- Consumer reporting services; and
- Debt collectors.

(Dodd-Frank Act § 1024)

Excluded entities:

- Attorneys;
- Merchants, retailers, and other sellers of non-financial goods;
- Realtors;
- Manufactured and modular home retailers (who do not offer or provide any consumer financial product or service);
- Tax preparers;
- Persons regulated by state insurance regulators;
- Persons regulated by state securities regulators;
- Persons regulated by the SEC, CFTC, and Farm Credit Administration;
- Employee benefit and compensation plans; and
- Auto dealers.

(Dodd-Frank Act §§ 1027, 1029)

## II. Mandatory Units and Offices (Dodd-Frank Act § 1013)

- **Research Unit:** Charged with analyzing and reporting on (1) market developments for consumer financial services and products; (2) access to fair and affordable credit for traditionally underserved communities; (3) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products and services; (4) consumer awareness and understanding of the costs, risks, and benefits of consumer financial products and services; (5) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and (6) the experiences of traditionally underserved consumers, including unbanked and under-banked consumers.
- **Community Affairs Unit:** Charged with disseminating information, guidance, and technical assistance regarding the offering and provision of consumer financial products and services to traditionally underserved consumers and communities.
- **Consumer Complaint Unit:** Charged with establishing a single, toll-free number, a website, and a database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding financial products and services. Where appropriate, and subject to privacy laws, the Consumer Complaint Unit must route complaints to state regulators and share complaint information with prudential regulators, the FTC, and other federal and state agencies.
- **Office of Fair Lending and Equal Opportunity:** Charged with providing oversight and enforcement of federal laws intended to (1) ensure fair, equitable, and nondiscriminatory access to credit for individuals and communities; (2) coordinate fair lending efforts with other federal agencies and state regulators; and (3) work with private industry, fair lending, civil rights, consumer, and community advocates on the promotion of fair lending compliance and education.
- **Office of Financial Education:** Charged with developing and implementing a strategy to improve the financial literacy of consumers, through activities that include providing (1) opportunities for consumers to access financial counseling, including community-based counseling; (2) information to assist in evaluating credit products and understanding credit histories and scores; (3) saving, borrowing, and other services found at mainstream financial institutions; (4) activities intended to prepare consumers for major purchases, reduce debt, and improve individual financial situations; (5) assistance in developing long-term savings strategies; and (6) assistance in obtaining earned income tax credits and federal benefits.
- **Office of Service Member Affairs:** Charged with educating and empowering service members and their families to make better informed financial decisions while (1) coordinating with the Consumer Complaint Unit to monitor service member complaints and (2) coordinating federal and state service member consumer financial protection measures.
- **Office of Financial Protection for Older Americans:** Charged with engaging in activities designed to facilitate the financial literacy of individuals age 62 or above on (1) protection from unfair, deceptive, and abusive practices and (2) making current and future financial choices. The Office of Financial Protection for Older Americans is specifically directed to monitor and coordinate responses to senior financial adviser certification abuses.

### III. General Regulatory Duties

#### A. Rulemaking

- Original or “organic” authority to promulgate such rules deemed necessary and appropriate to prevent unfair, deceptive, or abusive practices relating to consumer financial products and services. (Dodd-Frank Act § 1031)
- Vested with authority to promulgate rules within the frameworks and under the guidance of the enumerated federal consumer financial laws. (Dodd-Frank Act §§ 1002(12), 1002(14), 1022)

#### B. Supervision (Dodd-Frank Act §§ 1024, 1025)

Authority to require reports and conduct examinations of regulated entities on a periodic basis for the purpose of (1) assessing compliance with the requirements of federal consumer protection laws; (2) obtaining information about the regulated entities’ activities subject to such laws and their associated compliance systems and procedures; and (3) detecting and assessing associated risks to consumers and markets.

#### C. Enforcement (Dodd-Frank Act §§ 1051-1055)

- Power to conduct investigations, hold hearings, and initiate litigation.
- Investigative powers similar to that of the FTC, including the power to issue subpoenas and civil investigative demands calling for the production of documents, things, written responses, and depositions.
- Authority to institute “cease-and-desist” proceedings whereby a regulated entity may be required to appear at a hearing within 30 to 60 days to show cause why a cease-and-desist order should not issue.
- Option to file suit within a three-year statute of limitations. Available relief includes rescission and reformation of contracts, refunds and return of property, restitution, disgorgement, damages and other monetary relief, public notification, and severe statutory penalties.

### IV. Specific Authorities

- **Mandatory Arbitration:** Required to perform a study and report to Congress regarding the use of agreements providing for mandatory arbitration in connection with consumer financial products and services. Specific authority to impose conditions or limitations, consistent with the findings of the study, on the use of such arbitration agreements, provided the conditions or limitations are in the public interest and will benefit consumers. (Dodd-Frank Act § 1028)
- **Unfair, Deceptive, or Abusive Acts:** Authority to declare specific acts or practices to be unfair, deceptive, or abusive. Before declaring any act or practice unfair there must be a

reasonable basis to conclude that (1) the act or practice is likely to cause substantial injury to consumers which they cannot reasonably avoid and (2) such substantial injury is not outweighed by countervailing benefits to consumers or to competition. No act or practice may be declared abusive unless (1) it materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or (2) takes unreasonable advantage of (a) a lack of understanding on the part of the consumer concerning the material risks, cost, or conditions of the product or service; (b) the inability of consumers to protect their interests in selecting a product or service; or (c) the reasonable reliance by the consumer on the regulated entity to act in the interests of the consumer. (Dodd-Frank Act § 1031)

- **Disclosures:** Authority to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits them to understand the costs, benefits, and risks associated with the product or service in light of the facts and circumstances. In connection with this authority, the CFPB will also have the authority to issue model safe-harbor forms that employ comprehensible language, clear format and design, readable font, and succinct explanations. (Dodd-Frank Act § 1032)

## V. Treasury Secretary's Interim Authority

### A. Prior to the Transfer Date (Dodd-Frank Act § 1066(b))

"The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date."

### B. Prior to the Confirmation of a Director (Dodd-Frank Act § 1066(a))

#### 1. Authorities

- Prescribe rules, issue orders, and produce guidance relating to the federal consumer financial laws that were within the authority of the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency, the Office of Thrift Supervision, the FDIC, and the National Credit Union Administration prior to the Transfer Date.
- Conduct examinations of large depositories.
- Prescribe rules, issue guidelines, and conduct a study or issue a report under the enumerated consumer laws that were previously within the authority of the FTC prior to the Transfer Date.
- Conduct all consumer protection functions relating to RESPA, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and the Interstate Land Sales Full Disclosure Act, that were within the authority of the Department of Housing and Urban Development prior to the Transfer Date.
- Enforce all orders and agreements that are issued or made prior to the Transfer Date by any transferor agency or by a court of competent

jurisdiction in performance of consumer financial protection functions with respect to large depositories that will be transferred to the CFPB on the Transfer Date.

- Replace the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency, the Office of Thrift Supervision, the FDIC, and the National Credit Union Administration in any lawsuit or proceeding commenced prior to the Transfer Date, with respect to a consumer financial protection function transferred to the CFPB.

## 2. Limitations (Newly Established CFPB Authorities)

- The Secretary is not permitted to prohibit unfair, deceptive, or abusive acts or practices under § 1031.
- The Secretary is not permitted to prescribe disclosure rules or require model disclosure forms under § 1032.
- The Secretary is not permitted to prescribe rules under § 1022 relating to, among other things, the filing of reports with the CFPB for the purpose of determining whether a nondepository institution should be supervised by the CFPB.
- The Secretary is not permitted to supervise nondepository institutions under § 1024. Accordingly, the Secretary may not (a) prescribe rules defining the scope of nondepository institutions subject to the CFPB's supervision, (b) prescribe rules establishing recordkeeping requirements that the CFPB determines are needed to facilitate nondepository supervision, or (c) conduct examinations of nondepository institutions.

## VI. Leadership

### A. Director (Dodd-Frank Act § 1011)

- Appointed by the President and confirmed by the Senate for a five-year term.
- Subject to removal by the President for inefficiency, neglect of duty, or malfeasance.

### B. Consumer Advisory Board (Dodd-Frank Act § 1014)

- Established by the Director to advise and consult with the CFPB in the exercise of its functions and to provide information to it on emerging practices in the consumer financial products and services industry.
- Director must appoint Advisory Board members who are (1) experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products and services and (2) representatives of (a) depository institutions that primarily serve underserved communities; (b) communities that have been significantly impacted by higher priced mortgage

loans; and (c) the interests of regulated entities and consumers, without regard to party affiliation.

- No fewer than six members of the Advisory Board must be appointed upon the recommendation of the regional Federal Reserve Bank Presidents on a rotating basis.

## VII. Budget (Dodd-Frank Act § 1017)

- Initially, 10% of the Federal Reserve System's 2009 operating expenses - \$369.4 million.
- Additional \$200 million appropriation authorized.



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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