

## Summary of Consumer Financial Protection Agency Act

The white paper recommends the creation of a new consumer financial protection agency that would have broad authority to protect consumers of credit, savings, payment products and other consumer financial products and services.

On June 30, 2009 a draft of the Consumer Financial Protection Agency Act of 2009 (CFPAA) was released.

The CFPAA establishes a new agency (Agency) to oversee consumer protection in financial services. The CFPAA would subject federally chartered financial institutions to state consumer protection laws that have, in the past, been preempted. The CFPAA transfers authority to the Agency from existing statutory authorities.

### What would the CFPAA regulate?

The CFPAA would apply to “consumer financial products or services.” These are understood to include financial products or services that are to be used primarily for personal, family or household purposes.

### What are “financial products or services”?

These include any product or service that directly or indirectly results from, or is related to, engaging in a financial activity. Engaging in a financial activity would include those activities identified under the Bank Holding Company Act.

### How would the Agency be constituted?

The Agency will have a five-member board. Four of the members would be appointed by the President, and subject to confirmation by the Senate. Members should have strong competencies and experiences related to consumer financial products. The fifth member will be the Director of the National Bank Supervisor.

### To whom would the regulations apply?

A covered person would be any person that engages directly or indirectly in a financial activity. The Agency’s powers do not extend to persons regulated by the SEC or the CFTC.

### What is the Agency’s mandate?

The Agency’s mission is to promote transparency, simplicity, fairness, accountability and access in the market for consumer financial services. The Agency will seek to ensure that consumers have, understand and can use the information that they need in order to make responsible choices about consumer financial products and services. The Agency will ensure that consumers are protected from abuse, unfairness and deception and that the markets for these products operate fairly and efficiently. The Agency also will ensure that traditionally underserved consumers and communities receive access to financial services.

### Will regulations promulgated under CFPAA preempt state laws?

The CFPAA notes that states are encouraged to prescribe more rigorous standards for covered persons. The CFPAA will not preempt state laws unless state laws are inconsistent with the CFPAA and are less protective than the CFPAA. National banks will be subject to nondiscriminatory state consumer protection laws.

### What is a “standard consumer product or service”?

The CFPAA will require that a consumer be offered a “standard consumer product or service” and have the ability to avoid more sophisticated “alternative consumer products or services.” A “standard” product: (1) is one that covered persons who offer alternative consumer financial products or services can readily offer; (2) is transparent to the consumer; (3) poses lower risk to the consumer; (4) facilitates comparisons with alternative consumer financial products or services and that contains the features defined by the Agency.

### Will the Agency promulgate rules relating to disclosures?

The CFPAA empowers the Agency to prescribe rules and regulations regarding consumer disclosures and communications and initially requires that the Agency provide a unified mortgage disclosure.

### Will the Agency issue additional guidance regarding product offerings?

The Agency can adopt rules or issue guidance regarding standard consumer financial products or services at or before offering alternative products or services and may require certain warnings about the heightened risk associated with alternative products or may require an opt out for the standard product. These regulations will apply only if the covered person offers an alternative product or service in the class or category as the standard product.

### Does the CFPAA transfer authority to the Agency?

Yes, the CFPAA sets forth a transfer date following the enactment of the legislation at which point regulatory authority for consumer financial protection would pass from several agencies, including the Federal Reserve, the OCC, the FDIC and others, to the Agency. Authority for administering the consumer protection provisions of a number of statutes also would pass to the Agency.

### Which financial institutions would be subject to CFPAA oversight?

Regulations would be applicable to national banks and to nondepository institutions, their subsidiaries, affiliates and agents of national banks.

### Does the CFPAA set a standard of conduct for covered persons?

The CFPAA establishes a standard of fair dealing.