



SECURITIES INDUSTRY PRACTICE

ALERT

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT: CONSUMER FINANCIAL PROTECTION ACT

Title X of the Dodd–Frank Wall Street Reform and Consumer Protection Act, known as the Consumer Financial Protection Act of 2010 (the CFPA), creates within the Federal Reserve System an independent bureau called the “Bureau of Consumer Financial Protection” (the Bureau). While the CFPA vests exclusive authority in the Bureau for the enforcement of federal consumer financial protection laws by transferring authority from existing agencies to the Bureau, the transfer date is to be established by the secretary between 180 days and 18 months after the enactment of the CFPA.

How the CFPA and the creation of the Bureau will affect your institution is therefore uncertain at this point. For many institutions it will mean scrutiny by and accountability to an additional agency with respect to its provision of financial products and services to consumers. The stated mission of the Bureau is to oversee and direct the regulation of “consumer financial products and services.” Consumer financial products or services are defined very broadly as any product or service offered or provided for use by consumers primarily for personal, family or household purposes, or in connection with such products or services.

The director of the Bureau will be appointed by the President and confirmed by the Senate for a five-year term. The Bureau is independent and autonomous from the Board of the Federal Reserve and other federal agencies. The CFPA gives the director the mandate to establish separate units for research, community affairs and collecting and tracking complaints. It also requires the director to report to Congress bi-annually on the Bureau’s activities and findings. The CFPA further mandates that all federal agencies share data in order to assist the Bureau in its efforts.

Under the CFPA, the Bureau is also directed to establish the following separate offices within the Bureau:

- 1) **Office of Fair Lending and Equal Opportunity:** To provide oversight and enforcement of federal laws intended to ensure fair lending and equitable and nondiscriminatory access to credit generally;
- 2) **Office of Financial Education:** To improve consumer financial literacy;
- 3) **Office of Service Member Affairs:** To protect the rights of members of the armed forces; and
- 4) **Office of Financial Protection of Older Americans:** To protect older and retired Americans from financial scams and other predatory practices.

The CFPA also authorizes the Bureau to establish a Consumer Advisory Board that will provide advice and consultation to the Bureau on the exercise of its functions and provide information on emerging trends, concerns and other important issues. The funding for the Bureau will come directly from the Federal Reserve as well as the Consumer Financial Civil Penalty Fund.

The Bureau has the specific and exclusive power among federal agencies to implement and enforce “Federal Consumer Financial Laws.”

Federal Consumer Financial Laws are generally defined in the CFPA to include virtually all existing consumer protection laws and regulations that have been enacted by Congress or promulgated or enforced by existing regulatory bodies, including the FTC, HUD and various other agencies. These would include existing consumer financial services and fair lending statutes, such as the Truth in Lending Act (TILA), Home

Ownership and Equity Protection Act (HOEPA), Real Estate Settlement and Procedures Act (RESPA), Community Reinvestment Act (CRA), Equal Credit Opportunity Act (ECOA), Home Mortgage Disclosure Act (HMDA) and the Fair Debt Collection Practices Act (FDCPA) to name a few. Power to enforce these laws and regulations will be transferred to the Bureau pursuant to the CFPB. The Bureau is also empowered to provide consumer financial education and to investigate complaints. The Bureau has exclusive jurisdiction over banks and credit unions with total assets exceeding \$10 billion for the purposes of enforcing federal consumer financial laws, obtaining information about activities subject to such laws and detecting and assessing associated risks to consumers and markets for consumer financial products and services. It is to conduct joint examinations, coordinate its findings and appeals and work with the respective regulators of banks and credit unions with total assets of less than \$10 billion.

The Bureau has the authority to exempt any class of covered persons, products or services from its regulations. Excluded from its reach are those individuals, such as securities and commodities dealers, lawyers, CPAs, insurance agents and real estate agents, who are regulated by other authorities. Interestingly, those who sell modular homes and car dealers are also exempt. Each of the forgoing parties are only exempt however, to the extent their activities do not involve the provision of financial products and services.

Pursuant to the CFPB, the Bureau is to oversee and administer investigations and responses of various government agencies in the investigation of and response to consumer complaints. The Bureau has exclusive rule making authority and the CFPB provides that it is to be

given deference by courts to its interpretation of the law. Federal agencies are required to provide the Bureau with access to reports and other information in the conduct of its duties. The Bureau also has specific authority to take action to prohibit unfair deceptive or abusive acts under federal consumer financial laws in conjunction with a consumer financial product or service. Any rules promulgated by the Bureau will pre-empt weaker state laws, but states would be free to adopt stricter laws. In addition, the state attorney generals will have concurrent authority to enforce federal consumer financial laws.

The Bureau has the power to require disclosures for consumer financial services and products and to adopt model forms of disclosures for use by providers. It also has the ability to restrict mandatory pre-dispute arbitration. It is required within one year of the effective date of the CFPB to develop a combined disclosure that will comply with the requirements of TILA and RESPA for mortgage loans.

Unlike much of the legislation that has recently been adopted to address the problems in the financial services industry, the CFPB has very little detail as to its practical application to consumer products and services. Rather, it deals mainly with duties and powers granted to the Bureau in order to carry out its mission to protect consumers. As drafted, the Bureau will have authority to impact nearly every aspect of the provision of consumer financial services. The ramifications the exercise of these wide sweeping powers will have in the financial services industry will therefore remain to be seen. Fox Rothschild attorneys will be monitoring the ongoing development of the Bureau under the CFPB and keep you apprised of the implications for your institution.

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