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

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the Consumer Financial Protection Bureau (CFPB) to implement and enforce federal consumer financial law while maintaining consumer access to financial products and services. Dodd-Frank consolidated in the CFPB certain regulatory authorities related to consumer finance that were previously held by other agencies and created new powers not previously held by federal regulators. Dodd-Frank authorizes the CFPB to exercise these powers with the goal of promoting fair, transparent, and competitive markets for consumer financial products and services.

Structure of the CFPB

Dodd-Frank established the CFPB as an independent bureau within the Federal Reserve System (Fed). The CFPB is headed by a single director, appointed by the President with the advice and consent of the Senate for a five-year term. The Fed's Board of Governors does not influence the CFPB's operations other than through the Fed chairman's role as a member of the Financial Stability Oversight Council (FSOC), which can overturn a CFPB rule with the consent of two-thirds of its members. (The CFPB director is also a voting member of FSOC.) Rather than being funded through regular appropriations, the CFPB funds its operations through monetary transfers from the Fed. The Fed must transfer amounts requested by the CFPB director based on the director's determination of need, subject only to a cap based on a statutory formula. For FY2021, the CFPB received approximately $596 million, which was below its $718 million limit.

CFPB Regulatory Authority

Dodd-Frank charges the CFPB to implement and enforce consumer protection laws, lead financial education initiatives, collect consumer complaints, and conduct consumer finance research. The CFPB has broad 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, collection of consumer reporting data, and consumer debt collection. Although the scope of the CFPB's regulatory power is considerable, it is also subject to certain statutory exceptions and limitations. The CFPB's regulatory authorities fall into three broad categories: *supervision* (including the power to examine and impose reporting requirements on financial institutions), *enforcement* of various consumer protection laws, and *rulemaking*.

The CFPB may issue regulations to implement 19 federal consumer protection laws that largely predate Dodd-Frank. These "enumerated consumer laws" govern a broad and diverse set of consumer financial services and providers.

Dodd-Frank also empowers the CFPB with new authority to issue rules declaring acts or practices associated with consumer financial products and services to be unlawful because they are unfair, deceptive, or abusive. Other aspects of the CFPB's regulatory power—particularly the scope of its supervisory and enforcement authority—vary depending on an institution's size and whether it holds a bank charter.

Banks. Banks (i.e., institutions with bank, thrift, or credit union charters) are regulated for both *safety and soundness* and *consumer compliance*. Bank regulators conduct safety and soundness (*prudential*) regulation with the goal of ensuring that banks maintain profitability and avoid failure. Consumer compliance regulation is designed to ensure that banks comply with applicable consumer protection and fair-lending laws.

The CFPB and the federal banking regulators (i.e., the Fed, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and National Credit Union Administration) share consumer compliance regulation over banks, with their authorities varying depending on the bank's size. The CFPB holds primary consumer compliance regulatory authority over larger banks with more than $10 billion in assets. Smaller "community" banks must comply with CFPB's rules on implementing enumerated consumer laws, but the bank regulators hold primary supervisory and enforcement authority for issuing consumer compliance regulation for smaller banks.

Nonbanks. Nonbank financial institutions provide financial services but do not have bank, thrift, or credit union charters. The CFPB may issue and enforce rules that affect these nonbank financial institutions, but the CFPB's supervisory authority over these institutions varies based on the nonbank's activities and size.

First, Dodd-Frank expressly authorizes the CFPB to supervise three categories of financial institutions regardless of size—mortgage companies (including lenders, brokers, and servicers); payday lenders; and private education lenders. Second, the CFPB may supervise nonbank institutions the CFPB determines are "larger participants" in consumer financial markets. Third, the CFPB may supervise a nonbank that, based on consumer complaints or other sources, the CFPB "has reasonable cause to determine … is engaging, or has engaged in, conduct that poses risks to consumers.... "

Exempted Institutions. Dodd-Frank exempts some industries from the CFPB's regulatory jurisdiction. 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. There are, however, certain business practices that could trigger CFPB regulatory authority, such as when the entity engages in an activity governed by an enumerated consumer law (e.g., debt collection activities subject to the Fair Debt Collection Practices Act (FDCPA, 15 U.S.C. §§1692-1692p)).

Selected Policy Issues

Policy debates involving the CFPB generally center on how the agency balances protecting consumers, credit access, and costs to industry in its policymaking. The following section addresses a selection of policy issues of interest to Congress.

The COVID-19 Pandemic. Since the onset of the COVID-19 pandemic, many Americans have lost income and had difficulty paying their debts. The CFPB has responded by using its authorities to encourage loan forbearance and other financial relief options for affected consumers. As COVID-19 mortgage relief programs end, the CFPB has proposed rules that would provide additional protections for consumers facing home foreclosure. However, how the ongoing pandemic will impact consumer credit markets in the future is unclear.

Debt Collection. When a consumer defaults on a debt, lenders often hire third parties to collect the arrears. Consumers have no say over the debt collectors that lenders choose, arguably making consumer protections particularly consequential in this market. The CFPB recently finalized two new rules to implement the FDCPA, which regulates the third-party debt collection market. The rules clarify how debt collectors may communicate with consumers and the information debt collectors must disclose to consumers. Debate exists about whether these new regulations' communication and other standards appropriately balance consumer protection concerns with costs to industry.

Financial Technology. Financial technology, or *fintech*, refers to new technologies used in the provision of financial services or products. Related policy questions generally concern whether the current regulatory framework appropriately fosters the benefits of new technologies while mitigating potential risks to consumers. The CFPB has launched several programs designed to reduce regulatory uncertainty for fintech products, facilitate industry and stakeholder coordination, and promote research into fintech services and products. The agency is also developing a new rule that would clarify standards regarding consumer-authorized access to financial data.

Payday Lending. Payday loans are short-term, small-dollar loans offered for a set fee. They allow consumers to access cash in advance of a paycheck or other scheduled payment (e.g., pension) with minimal underwriting conditions. Many consumers "rollover" these loans or get new ones for similar amounts shortly after the initial loan is due for an additional fee, which can lead to some payday borrowers remaining in debt far beyond the original loan term. In these cases, payday loans can cost more than other credit products. In October 2017, the CFPB finalized a rule regulating payday and other similar types of short-term, high-cost loans. The rule would have, among other things, required lenders to verify that borrowers had the ability to repay the loans before they could be originated and restricted lenders' access to consumer bank accounts for loan repayment. However, in July 2020, the CFPB rescinded part of the 2017 rule, including its ability-to-repay provisions. Disagreement exists about how to weigh a consumer's right to access payday and other short-term, small-dollar loan products against the possible value of limiting loan terms that may encourage multiple rollovers and make them more expensive and difficult to repay.

Agency Independence. The CFPB, much like the banking regulators, is funded outside the traditional appropriations process, which limits congressional oversight of the agency. Dodd-Frank also protected the CFPB director from presidential removal, except for cause; however, the Supreme Court in *Seila Law v. CFPB* held this statutory removal protection unconstitutional. As a result of the *Seila Law* decision, the CFPB director now serves at the pleasure of, and may be removed at will by, the President. Policymakers debate the degree of independence the CFPB should have from Congress and the President, with some arguing that the agency can operate more effectively when insulated from political pressures and others countering that such insulation decreases accountability and raises constitutional concerns. Some policymakers have called for legislation that would change the CFPB's funding and leadership structure consistent with Supreme Court jurisprudence on agency independence.

CRS Resources

CRS In Focus IF11682, *Introduction to Financial Services: Consumer Finance*

CRS Report R45813, *An Overview of Consumer Finance and Policy Issues*

CRS Insight IN11550, *COVID-19: Consumer Debt Relief During the Pandemic*

CRS Insight IN11590, *CFPB Finalizes Two New Debt Collection Regulations*

CRS Insight IN11745, *Open Banking, Data Sharing, and the CFPB's 1033 Rulemaking*

CRS Report R46333, *Fintech: Overview of Financial Regulators and Recent Policy Approaches*

CRS Insight IN11059, *CFPB Finalizes New Payday Lending Rule, Reversing Prior Regulation*

CRS Legal Sidebar LSB10507, *Supreme Court Rules CFPB Structure Unconstitutional: Implications for Congress*

Cheryl R. Cooper, Analyst in Financial Economics
David H. Carpenter, Legislative Attorney

IF10031

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