An Overview of Selected Legislation in the 113th Congress Related to the Consumer Financial Protection Bureau (CFPB)

(name redacted)
Analyst in Financial Economics

(name redacted)
Analyst in Government Organization and Management

(name redacted)
Analyst in American National Government

December 29, 2014

Congressional Research Service
7-....
www.crs.gov
R43837

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The Consumer Financial Protection Bureau (CFPB) has been a controversial product of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203; the Dodd-Frank Act). Some in Congress view the CFPB as an important protector of consumers and families against predatory financial actors. Others believe the CFPB is an institution not subject to sufficient accountability that imposes undue regulatory burdens on providers of financial services and limits credit available to households. This policy disagreement among Members of Congress has been on display during the controversy surrounding the confirmation of the CFPB's director, in oversight hearings, and in legislation that has been introduced.

This report focuses on selected legislation related to the CFPB that has seen committee or floor action during the 113th Congress. Most of these proposals address one of two main policy topics, the structure of the CFPB and the substance of the CFPB's rulemaking.

On the first policy question, many acknowledge that the structure of a government agency may affect the policies an agency creates. Financial regulators generally are structured in statute to have characteristics that increase their independence from the President or Congress, which may make policymaking related to these regulators more technical and less political or partisan, for better or worse. Independence may also make regulators less accountable to elected officials and can reduce presidential or congressional influence.

Since the CFPB was established, some have argued that it has too much independence and not enough accountability. Critics point to structural issues, such as the presence of a director rather than a board and funding that is outside the traditional congressional appropriations process. Supporters of the CFPB highlight other aspects that they argue provide transparency and accountability, including the CFPB director's biannual testimony before Congress and the cap on the CFPB's non-appropriated 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.

With regard to the second policy question, one of the long-standing issues in the regulation of consumer financial services is the perceived trade-off between protecting consumers and ensuring that the providers of financial goods and 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 that benefit may come at the cost of a potentially higher price for the product and reduced availability for others.

Some Members of Congress believe the CFPB has struck the appropriate balance in its rulemaking between protecting consumers and ensuring that credit availability is not restricted due to overly burdensome regulations on financial institutions, especially small banks. 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. An analysis of whether recent rulemaking has 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 the fact that many of the more significant CFPB rulemakings only took effect in early 2014.

Contents

Introduction ... 1
Overview of the CFPB ... 1
Balancing Independence with Transparency and Accountability ... 2
H.R. 3183, To amend the Consumer Financial Protection Act of 2010 to provide consumers with a free annual disclosure of information the Bureau of Consumer Financial Protection maintains on them, and for other purposes, and H.R. 4604, the CFPB Data Collection Security Act ... 3
H.R. 3193, the Consumer Financial Freedom and Washington Accountability Act ... 5
H.R. 3389, the Ensuring Harmed Consumers Receive Compensation Act ... 6
H.R. 3770, the Bureau of Consumer Financial Protection-Inspector General Reform Act of 2013 ... 8
Appropriations ... 10
H.R. 4262, the Bureau Advisory Commission Transparency Act ... 11
H.R. 4383, the Bureau of Consumer Financial Protection Advisory Boards Act ... 13
H.R. 4466, the Financial Regulatory Clarity Act of 2014 ... 14
H.R. 4662, the Bureau Advisory Opinion Act ... 16
H.R. 4804, the Bureau Examination Fairness Act ... 17
H.R. 4811, the Bureau Guidance Transparency Act ... 18
Balancing Consumer Protection with Credit Availability and Regulatory Burden ... 20
H.R. 1779, the Preserving Access to Manufactured Housing Act of 2013 ... 20
H.R. 2672, the Helping Expand Lending Practices in Rural Communities Act ... 22
H.R. 2673, the Portfolio Lending and Mortgage Access Act ... 23
H.R. 3211, the Mortgage Choice Act of 2014 ... 24
H.R. 4521, the Community Institution Mortgage Relief Act of 2014 ... 25

Contacts

Author Contact Information ... 28

Introduction

The Consumer Financial Protection Bureau (CFPB) has been a controversial product of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[1] Since it began operations in July 2011, the CFPB has been hailed by some as being the "cop on the beat" that protects consumers,[2] whereas others have derided it as "perhaps the single most powerful and least accountable Federal agency in all of Washington."[3] From this debate about the merits of the CFPB, two main sets of policy questions have emerged, with supporters and critics of the CFPB generally falling on opposing sides:

1. Is the CFPB as an institution structured appropriately so as to achieve the correct balance between independence on the one hand and transparency and accountability on the other?
2. Has the substance of the CFPB's rulemaking struck an appropriate balance between protecting consumers from abuse and ensuring that consumers have access to financial products while lenders are not unduly burdened by new regulations?

Congress has assessed these questions using a range of its authorities, including holding oversight hearings and providing advice and consent during the confirmation of the CFPB's director. This report focuses on Congress's exercise of another of its authorities—the consideration of legislation related to the CFPB. After providing an overview of the CFPB, the report examines some of the legislative proposals from the 113th Congress that have seen committee or floor action and that respond to the two policy questions described above. Each bill is explained and placed in the larger context of the policy debates about the CFPB.

Overview of the CFPB

Title X of the Dodd-Frank Act established the CFPB,[4] and, in doing so, it consolidated many consumer financial protection responsibilities into one agency. The Dodd-Frank Act states that the purpose of the CFPB is to implement and enforce federal consumer financial law while ensuring that consumers have access to financial products and services. It also instructs the CFPB to ensure the markets for consumer financial services and products are fair, transparent, and competitive. To fulfill its mandate, the CFPB can issue rules, examine certain institutions, and enforce consumer protection laws and regulations.

The Dodd-Frank Act further established that the CFPB is to be headed by a director, appointed by the President and subject to the advice and consent of the Senate, for a five-year term. After the

---

[1] P.L. 111-203.

[2] Consumer Financial Protection Bureau (CFPB), "CFPB Ready to Help Consumers on Day One," press release, July 21, 2011, http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-ready-to-help-consumers-on-day-one/.

[3] House Committee on Financial Services, "Chairman Hensarling's Opening Statement at Hearing on CFPB," press release, January 28, 2014, at http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=367901.

[4] For a more detailed description of the CFPB, see CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by (name redacted).

expiration of the term, the director may continue to serve until a successor has been appointed and qualified. The CFPB is located within the Federal Reserve System. The Federal Reserve Board, however, cannot veto a rule issued by the CFPB, although the Financial Stability Oversight Council (FSOC)[5] can set aside a CFPB-proposed rule with the vote of two-thirds of its members. The CFPB, which is not subject to the congressional appropriations process, is funded through the earnings of the Federal Reserve System. The Dodd-Frank Act caps the CFPB's funding at 12% of the Federal Reserve's operating expense as reported in its FY2009 Annual Report, subject to annual adjustment based on a formula set in statute. For FY2015, the transfer cap is estimated to be $618.7 million.[6]

The CFPB has the authority to enforce many of the federal financial consumer laws,[7] primarily for large depository institutions (such as banks) with assets of more than $10 billion as well as for some nonbank institutions, such as mortgage lenders, mortgage servicers, payday lenders, and private education lenders. However, some consumer protection responsibilities were not given to the Bureau. The CFPB is not the primary consumer protection regulator of depositories with less than $10 billion in assets. The prudential regulators that regulate the smaller institutions for safety and soundness continue to regulate these institutions for consumer protection.[8] The Dodd-Frank Act also provides some industries with exemptions from CFPB regulation. The CFPB generally does not have 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; and accountants.[9]

Balancing Independence with Transparency and Accountability

As described in more detail in CRS Report R43391, *Independence of Federal Financial Regulators*, by (name redacted), (name redacted), and (name redacted), the structure of a government agency may affect the policies created by that agency. Financial regulators generally have certain characteristics that increase their independence from the President or Congress, and that independence may make policymaking more technical and less political or partisan, for better or worse. Independence may also make regulators less accountable to elected officials and can reduce presidential and congressional influence, at least in the short term.

Since the CFPB was established, some have argued that it has too much independence and not enough accountability. They point to structural issues, such as that the CFPB is headed by a single

[5] The Financial Stability Oversight Council (FSOC) is a council of financial regulators, including the CFPB, that is charged with monitoring systemic risk in the financial system and coordinating several federal financial regulators. For more on the FSOC, see CRS Report R42083, *Financial Stability Oversight Council: A Framework to Mitigate Systemic Risk*, by (name redacted). The authority to review CFPB regulations is found in P.L. 111-203, §1023.

[6] CFPB, *Strategic plan, budget, and performance plan and report*, p. 11, at http://files.consumerfinance.gov/f/strategic-plan-budget-and-performance-plan-and-report-FY2013-15.pdf.

[7] For the list of the enumerated consumer laws that have been transferred to the CFPB, see P.L. 111-203, §1002.

[8] For more on the regulation of financial institutions, see CRS Report R43087, *Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets*, by (name redacted).

[9] The Dodd-Frank Act provides exceptions such that, under certain conditions, the CFPB may regulate these otherwise-excluded industries. See CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by (name redacted).

director rather than a board and that it is funded outside the traditional congressional appropriations process. Supporters of the CFPB highlight other aspects that they argue provide transparency and accountability, including the CFPB director's biannual testimony before Congress and the cap on the CFPB's funding.[10] The remainder of this section evaluates CFPB-related legislation that would alter the structure and design of the Bureau to increase its transparency and accountability.

H.R. 3183, To amend the Consumer Financial Protection Act of 2010 to provide consumers with a free annual disclosure of information the Bureau of Consumer Financial Protection maintains on them, and for other purposes, and H.R. 4604, the CFPB Data Collection Security Act[11]

H.R. 3183 was ordered to be reported by the House Committee on Financial Services on November 21, 2013. H.R. 3183 as ordered reported would allow individuals to request from the CFPB, at no cost to the individual, all information about the individual held by the CFPB at the time of the request, the source of the information, and any other person or federal department or agency to which the CFPB disclosed the individual's information.

H.R. 4604 was ordered to be reported by the House Committee on Financial Services on June 11, 2014. Similar to H.R. 3183, H.R. 4604 as ordered reported concerns information that the CFPB has collected about consumers. H.R. 4604 as ordered reported would allow individuals to opt out of allowing the CFPB to collect personally identifiable information about them. It would also require the CFPB to delete or destroy certain information about consumers and entities that it regulates after a specified period of time. In the event of a privacy breach at the CFPB that exposes consumers' personally identifiable information, the CFPB would notify consumers and provide them with one year of free credit monitoring. H.R. 4604 as ordered reported would limit the personally identifiable information that the CFPB could collect if it does not have a Senate-confirmed director. It would also require CFPB employees to have a confidential security clearance to access personally identifiable information collected by the Bureau.

The CFPB uses data about consumers to inform its actions. It procures data from publicly available sources (such as other federal entities), requests information from entities it supervises, receives complaints directly from consumers about their experiences with certain financial products and services, conducts surveys and interviews with consumers, and purchases data from data vendors.[12] The CFPB is generally not focused on the actions of individual consumers but on aggregated information about consumers that highlights the functioning of consumer markets. The Bureau does, however, have access to data containing personal identifiers in some instances, such as when it collects information on borrowers from a particular company whose actions have

---

[10] For more examples from supporters of the CFPB of existing measures to promote accountability of the CFPB, see Senate Banking, Housing and Urban Affairs Committee, "Accountability at the Consumer Financial Protection Bureau," at http://www.banking.senate.gov/public/_files/MemoRegardingAccountabilityattheCFPB.pdf.

[11] Unless otherwise noted, each section was authored by Sean Hoskins, Analyst in Financial Economics.

[12] U.S. Congress, House Committee on Financial Services, *Written Testimony of Steven Antonakes, Acting Deputy Director, Consumer Financial Protection Bureau*, 113th Cong., 1st sess., July 9, 2013.

harmed borrowers in the course of ensuring that those borrowers receive restitution.[13] The CFPB has instituted policies related to data that contain personally identifiable information about consumers. These policies are intended to ensure that the data are protected and that employees and third parties have limited access to it only under specified conditions.[14]

A September 2014 Government Accountability Office (GAO) review of the CFPB's data collection found that the CFPB collects a significant amount of data but that other financial regulators, such as the Federal Reserve System and the Office of the Comptroller of the Currency (OCC), "collect similarly large amounts of data."[15] GAO found that the CFPB "has taken steps to protect and secure these data collections," including removing personal identifiers from the data where possible and establishing an information-security program.[16] GAO also determined that "additional efforts are needed in several areas to reduce the risk of improper collection, use, or release of consumer financial data."[17] GAO made 11 recommendations for the CFPB that were divided into three broad categories: (1) establishing additional written procedures for data collection and privacy practices; (2) completing the implementation of security and privacy steps; and (3) complying with the Paperwork Reduction Act[18] by receiving Office of Management and Budget (OMB) approval for certain data collections.[19] GAO reports that the CFPB "agreed with GAO's recommendations and noted steps they plan to take or have taken to address them."[20]

Critics of the CFPB's data collection argue that the Bureau is amassing a significant amount of data on consumers. Learning what information the CFPB has collected and having the ability to opt out of collection efforts, they argue, could afford consumers more control over the data the government collects on them and increase the transparency and accountability of the CFPB.[21] Part of the concern stems from questions about the security of the data held by the CFPB. Destroying some types of data after a certain period of time and requiring a confidential security clearance, the argument goes, would provide added protections to consumers.

Opponents of the proposals counter that preserving the CFPB's ability to collect data is essential to ensuring that the Bureau makes informed decisions in fulfilling its mission. They also contend that keeping data for extended periods of time allows the CFPB to observe important long-run trends in consumer markets. Additionally, opponents assert that the data the CFPB collects is, for

[13] In his testimony, Mr. Steven Antonakes cites an example in which the CFPB used "data obtained through its supervisory authority to ensure restitution of approximately $6.5 million to close to 50,000 servicemembers harmed by violations of Federal consumer financial law." See U.S. Congress, House Committee on Financial Services, *Written Testimony of Steven Antonakes, Acting Deputy Director, Consumer Financial Protection Bureau*, 113th Cong., 1st sess., July 9, 2013, p. 3.

[14] See CFPB, *Our Commitment to Privacy*, December 6, 2012, at http://files.consumerfinance.gov/f/20131_cfpb_Privacy-Policy.pdf and 12 C.F.R. §1070.

[15] U.S. Government Accountability Office (GAO), *Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced*, GAO-14-758, September 2014, p. i, http://gao.gov/assets/670/666000.pdf.

[16] Ibid.

[17] Ibid.

[18] P.L. 96-511.

[19] GAO, *Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced*, GAO-14-758, September 2014, pp. 65-66, http://gao.gov/assets/670/666000.pdf.

[20] Ibid., p. ii.

[21] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills," June 10, 2014, at http://www.cq.com/doc/congressionaltranscripts-4493691?0.

the most part, scrubbed of personally identifiable information.[22] The additional requirements that the proposals would impose on the CFPB, they argue, would go beyond what other financial regulators must follow even though these regulators also collect data about consumers.

The Congressional Budget Office (CBO) estimates that "enacting H.R. 3183 would increase direct spending by $18 million over the 2015-2024 period"[23] and "enacting H.R. 4604 would cost the CFPB $83 million over the 2015-2024 period, thus increasing direct spending by that amount."[24]

H.R. 3193, the Consumer Financial Freedom and Washington Accountability Act[25]

H.R. 3193 was passed by the House on February 27, 2014. Originally a narrower bill, H.R. 3193 was modified prior to floor consideration by H.Res. 475. H.Res. 475 made in order for consideration an amendment in the nature of a substitute to H.R. 3193 consisting of the legislative text of five bills previously reported by the House Financial Services Committee. The five bills were:

- H.R. 2385, the CFPB Pay Fairness Act of 2013, reported by the House Financial Services Committee on February 10, 2014;
- H.R. 2446, the Responsible Consumer Financial Protection Regulations Act of 2013, reported by the House Financial Services Committee on February 6, 2014;
- H.R. 2571, the Consumer Right to Financial Privacy Act of 2013, reported by the House Financial Services Committee on February 6, 2014;
- H.R. 3193, reported by the House Financial Services Committee on February 6, 2014; and
- H.R. 3519, the Bureau of Consumer Financial Protection Accountability and Transparency Act of 2013, reported by the House Financial Services Committee on February 6, 2014.

H.R. 3193 as passed by the House would reduce the majority required to set aside or delay a regulation promulgated by the CFPB from two-thirds of FSOC to one-half, excluding the CFPB director. It would also change the grounds for a member of FSOC to bring a petition to set aside or delay the regulation from posing a risk to the safety and soundness of the banking or financial system to being "inconsistent with the safe and sound operations of United States financial institutions."[26] In addition, H.R. 3193 as passed by the House would require the CFPB to consider the impact of its rules on the safety and soundness of depository institutions, and it would replace the CFPB's director and deputy directors with a five-person commission to head the Bureau.

---

[22] Ibid.

[23] Congressional Budget Office (CBO), *Cost Estimate for H.R. 3183*, February 6, 2014, at http://cbo.gov/sites/default/files/hr3183.pdf.

[24] CBO, *Cost Estimate for H.R. 4604,* September 5, 2014, at http://cbo.gov/sites/default/files/hr4604.pdf.

[25] This section was authored by (name redacted), Specialist in Macroeconomic Policy, and Sean Hoskins, Analyst in Financial Economics.

[26] H.R. 3193, §5.

Commissioners could only be removed for cause and would serve a five-year term. They would be appointed by the President subject to Senate confirmation, and not more than three commissioners could be members of the same political party. A chairperson would be selected by the President from among the commissioners and would exercise the executive and administrative functions of the bureau. Under the bill as modified, the CFPB would become a stand-alone, independent agency and would no longer be an autonomous bureau of the Federal Reserve. H.R. 3193 as passed by the House would eliminate the statutorily required revenue transfers from the Fed to finance the CFPB's budget and subject that budget to the congressional appropriations process. It would authorize "such sums as may be necessary" to be appropriated through FY2015 and place CFPB employee pay on the federal government's general schedule. It would also govern the CFPB's use of confidential information.

Supporters of H.R. 3193 as passed by the House argue that the different pieces of the proposal are collectively intended to increase the transparency and accountability of the CFPB. For example, supporters contend that because the CFPB's funding is from the Federal Reserve System, "Congress's traditional use of the 'power of the purse' to hold executive agencies accountable to the American people is of little to no use when it conducts oversight of the CFPB."[27] Subjecting the CFPB to the appropriations process would strengthen congressional oversight.

Opponents of the measure argue that changes to the CFPB's funding, leadership structure, and treatment by FSOC are part of an effort to "impede the CFPB in its mission of protecting American consumers."[28] The existing structure, they argue, is important to reinforce the CFPB's independence from the political process, an attribute generally found in various forms in other financial regulators as well.[29]

CBO projects that H.R. 3193 as passed would reduce mandatory spending by $6 billion over 10 years. Assuming future appropriations were provided, that reduction would be offset by a roughly equal increase in discretionary spending.[30]

H.R. 3389, the Ensuring Harmed Consumers Receive Compensation Act

H.R. 3389 was ordered to be reported by the House Committee on Financial Services on June 11, 2014.[31] H.R. 3389 as ordered reported would restrict payments from the CFPB's Consumer Financial Civil Penalty Fund to the victims of activities for which civil penalties have been imposed.

---

[27] U.S. Congress, House Committee on Financial Services, *Bureau of Consumer Financial Protection Accountability and Transparency Act of 2013*, 113th Cong., 2nd sess., H.Rept. 113-347.

[28] U.S. Congress, House Committee on Financial Services, *Consumer Financial Protection Safety and Soundness Improvement Act of 2013,* 113th Cong., 2nd sess., H.Rept. 113-346.

[29] For more on the independence of financial regulators, see CRS Report R43391, *Independence of Federal Financial Regulators*, by (name redacted), (name redacted), and (name redacted).

[30] CBO, Cost Estimate for *H.R. 3193*, February 7, 2014, at http://www.cbo.gov/sites/default/files/hr3193.pdf.

[31] As introduced, H.R. 3389 was titled the CFPB Slush Fund Elimination Act of 2013. The House Committee on Financial Services approved changes to H.R. 3389, including the title.

The Dodd-Frank Act established the Civil Penalty Fund, which is administered by the CFPB.[32] When the CFPB obtains a civil penalty in any judicial or administrative action under federal consumer financial laws against an entity it regulates, the CFPB is authorized to deposit that penalty into the Civil Penalty Fund. The CFPB may use the fund to compensate victims of activities for which penalties have been imposed. If the victims cannot be located or payments are otherwise not practicable, the CFPB may use the funds for consumer education and financial literacy programs. The CFPB also sets aside money from the fund to cover administrative expenses associated with hiring third-party vendors to distribute the funds to affected consumers. As of May 2014,[33] the CFPB had deposited $119 million into the fund; approximately $31 million was allocated to consumers and $13.4 million was allocated to a consumer education and financial literacy program (the unallocated money remains in the fund).[34] H.R. 3389 as ordered reported would prevent the CFPB from using the funds in the Civil Penalty Fund for consumer education and financial literacy and would remit to the Treasury those funds not used to compensate victims.

A June 2014 GAO report reviewed the Civil Penalty Fund, examining how the fund is administered and comparing it with other similar funds. GAO found that CFPB "has implemented a number of internal controls for managing the fund"[35] but recommended that CFPB "document the specific factors considered in determining the amount of funding, if any, allocated to consumer education and financial literacy programs."[36] GAO reports that CFPB has generally agreed with GAO recommendations.

In comparing the CFPB with several selected agencies, GAO found that the CFPB, with its Civil Penalty Fund, differed from the Department of Justice, Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), and OCC in that those agencies did not have a separate fund for penalties they imposed but remitted the funds to Treasury. By contrast, the Commodity Futures Trading Commission (CFTC), Securities and Exchange Commission (SEC), and Centers for Medicare and Medicaid Services (CMS) have funds for penalties that, although all are different, share similarities with the CFPB's Civil Penalty Fund.

Supporters of H.R. 3389 as ordered reported take issue with the CFPB's Civil Penalty Fund for multiple reasons. During the markup of the bill, H.R. 3389's supporters argued that because they believed the CFPB lacked sufficient accountability, it was inappropriate for the CFPB to have discretion to allocate money from a fund for purposes besides compensating victims, especially when many of the CFPB's settlement agreements already require covered financial institutions to remediate harmed consumers.[37] They also questioned the need for additional financial literacy

[32] P.L. 111-203, §1017.

[33] The CFPB allocates funds on a six-month cycle. The next cycle ends September 30, 2014 with allocation to follow on November 29, 2014. See CFPB, *Civil Penalty Fund Allocation Schedule,* at http://files.consumerfinance.gov/f/201305_cfpb_civil-penalty-fund_allocation-schedule.pdf.

[34] GAO, *Opportunity Exists to Improve Transparency of Civil Penalty Fund Activities*, GAO-14-551, June 2014, pp. 5-6, http://www.gao.gov/assets/670/664451.pdf.

[35] Ibid., p. i.

[36] Ibid.

[37] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills," June 10, 2014, at http://www.cq.com/doc/congressionaltranscripts-4493691?0.

programs, pointing to reports by GAO that the federal government already has multiple programs to support financial literacy, and whether CFPB's financial literacy programs are effective.[38]

Opponents of H.R. 3389 as ordered reported argue that supporting financial literacy is an important part of the CFPB's mission and, therefore, the CFPB should be allowed to continue using the Civil Penalty Fund for that purpose. They also contend that the CFPB plays a significant role in coordinating the multiple financial literacy programs across the government.[39]

CBO estimates that H.R. 3389 as ordered reported would reduce direct spending by $8 million over the 2015-2024 period.[40]

H.R. 3770, the Bureau of Consumer Financial Protection-Inspector General Reform Act of 2013[41]

H.R. 3770 was ordered to be reported by the House Committee on Financial Services on June 11, 2014. H.R. 3770 as ordered reported would create a new, separate "federal establishment" inspector general (IG) to audit, investigate, and evaluate the CFPB.

The overwhelming majority of IGs are governed by the Inspector General Act of 1978, as amended (hereinafter referred to as the IG Act).[42] Pursuant to the IG Act, IGs are vested with substantial independence and powers to combat waste, fraud, and abuse within designated federal departments and agencies.[43] To execute their missions, offices of inspectors general (OIGs) conduct and publish audits and investigations, among other duties. Established by public law as permanent, nonpartisan, and independent offices, OIGs audit, investigate, and review operations within more than 70 federal agencies.[44]

The IG Act provided the blueprint for IG appointments and removals, powers and authorities, and responsibilities and duties—and it explicitly created OIGs in 12 *federal establishments*.[45] The

[38] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills," June 10, 2014, at http://www.cq.com/doc/congressionaltranscripts-4493691?0, and GAO, *Overview of Federal Activities, Programs, and Challenges*, GAO-14-556T, April 2014, at http://www.gao.gov/assets/670/662833.pdf.http://www.gao.gov/products/gao-14-556t.

[39] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills," June 10, 2014, at http://www.cq.com/doc/congressionaltranscripts-4493691?0.

[40] CBO, *Cost Estimate of H.R. 3389*, August 19, 2014, at http://cbo.gov/sites/default/files/hr3389.pdf.

[41] This section was authored by (name redacted), Analyst in National Government.

[42] 5 U.S.C. Appendix.

[43] For more information on federal inspectors general (IGs), see CRS Report R43814, *Federal Inspectors General: History, Characteristics, and Recent Congressional Actions*, by (name redacted) and (name redacted).

[44] Three other IG posts (in the armed forces departments) are recognized in public law: Air Force (10 U.S.C. §8020), Army (10 U.S.C. §3020), and Navy (10 U.S.C. §5020). These offices, however, are not examined here because they have a significantly different heritage, set of authorities, operational structure and organization, and degree of independence.

[45] P.L. 95-452. Certain federal departments were not required to establish IGs pursuant to the IG Act of 1978, including the Department of Education, the Department of Defense, and the Department of State. Two IGs whose origins predated the IG Act served as models for the 1978 act: that of the Department of Health, Education, and Welfare, now Health and Human Services (P.L. 94-505), established in 1976, and that of the then-new Department of Energy (P.L. 95-91), established in 1977.

Inspector General Act Amendments of 1988 created a new set of IGs in *designated federal entities*, which are usually smaller federal agencies.[46] (See text box.)

Typically, the jurisdiction of an IG includes only the programs and operations of the affiliated agency. A few IGs, however, have express authority to cover more than one agency, organization, program, or activity.[47] For example, the Inspector General of the Board of Governors for the Federal Reserve System, an establishment IG, was given jurisdiction over the CFPB in the Dodd-Frank Act. To reflect this expanded coverage, the IG was retitled the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection.

Federal Establishments and Designated Federal Entities

Federal establishments, as identified in the IG Act, include the 15 Cabinet departments and larger federal agencies. Each IG is appointed by the President with the advice and consent of the Senate and can be removed by the President but *not* by the agency head.

Designated federal entities, as identified in the IG Act, include the usually smaller boards, commissions, foundations, and government enterprises. Each IG is appointed and removable by the head of the affiliated agency.

Among other requirements, H.R. 3770 would create a new, separate federal establishment IG to audit, investigate, and evaluate the CFPB. The bill would also require the CFPB IG to appear before the Senate Committee on Banking, Housing, and Urban Affairs and the House Committees on Financial Services and on Energy and Commerce two times per year to present the contents of the OIG's statutorily required semiannual reports. Pursuant to Section 3(c) of H.R. 3770, 2% of the CFPB's annual funding would be provided to the OIG. The bill would require the President to appoint the CFPB's IG within 60 days of enactment,[48] and the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection would serve as the CFPB's IG until an IG was appointed. Pursuant to Section 5 of H.R. 3770, upon appointment of an IG to the CFPB OIG, the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection would be renamed the Inspector General of the Board of Governors of the Federal Reserve System.

---

[46] P.L. 100-504.

[47] 5 U.S.C. App. §§2-4 and 8G(g)(1). The Inspector General of the Intelligence Community (IC), created by the Intelligence Authorization Act for Fiscal Year 2010 (P.L. 111-259, §405), has express cross-agency jurisdiction; this enactment recognizes the continued authority of the existing statutory inspectors general over IC components. The same law (P.L. 111-259,§431) created IG posts in four Defense Department agencies, identified as designated federal entities under the IG Act: the Defense Intelligence Agency, National Geospatial-Intelligence Agency, National Reconnaissance Office, and National Security Agency. A second type of IG with interagency jurisdiction is the Inspector General of the Department of State and Broadcasting Board of Governors (recognizing the Broadcasting Board of Governors as a separate organization outside the State Department; P.L. 105-277, Division G, Title XIII, Chapter 3, §1322(a)(3); 112 Stat. 2681-777 and 2681-778). In 2010, the Inspector General of the Board of Governors for the Federal Reserve System was given jurisdiction over a new organization—the CFPB, which was established as an "independent bureau" in the Federal Reserve System by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, §1011). To reflect this expanded coverage, the IG was retitled the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection (P.L. 111-203, §1081(1)-(2)).

[48] The appointment process of a federal establishment IG includes the advice and consent of the Senate. Whether the Senate would be required to act within the 60-day time cap to allow for completion of the appointment process is unclear.

H.R. 3770, if enacted, would create two federal establishment IGs within the same federal agency (the Federal Reserve System). Only one federal department currently contains two federal establishment IGs: the U.S. Department of the Treasury.[49]

Proponents of the bill argue that establishing an IG that focuses specifically on the CFPB "will allow for increased oversight of an agency that has been given broad authority."[50] Proponents have also noted that because the CFPB does not receive direct congressional appropriations, congressional oversight of the entity is more difficult than if it were subject to appropriations.[51] A Senate-confirmed IG, they argue, would hold the CFPB more accountable.

Opponents may argue that the Federal Reserve IG already performs audits, inspections, and evaluations on the CFPB. Establishing a new, separate IG, therefore, could create redundancies and unclear jurisdictional boundaries between the two IGs as they conduct oversight operations. Additionally, establishing any IG would likely increase federal budget deficits.[52] CBO's score of H.R. 3770 is presented in greater detail below.

Appropriations

Pursuant to the IG Act, presidentially appointed IGs in federal establishments are provided a separate appropriations account for their offices.[53] These so-called line items may prevent agency administrators from limiting, transferring, or otherwise reducing IG funding once it has been specified in law.[54]

H.R. 3770, if enacted, would set the newly authorized CFPB OIG's annual budget at 2% of the CFPB's overall funding. CRS could find no other instances for which the funding or appropriation level of an IG is statutorily set at a particular percentage of its affiliated agency's funding or appropriation level. Supporters of the bill might argue that this provision would ensure a budget for the OIG that would be proportional to that of the board it covers—regardless of growth or contraction of the CFPB's funding. Requiring 2% proportional funding, however, may limit the authority of the OIG to request more or less funding to execute its mission. Once every three years, for example, an OIG undergoes a peer review, which may require additional resources. In other years, the OIG workflow may require fewer resources. The Federal Reserve System generates its own revenue. The appropriations process described above that funds most OIGs, therefore, may not be applicable to a new CFPB OIG. Congress may choose to adopt an

[49] The U.S. Department of the Treasury OIG covers department operations, and the Treasury Inspector General for Tax Administration investigates, audits, and inspects the operations of the federal tax system.

[50] The Office of Representative Steve Stivers, "Stivers Introduces the Bureau of Consumer Financial Protection—Inspector General Act of 2013," press release, December 13, 2013, at http://stivers.house.gov/news/documentsingle.aspx?DocumentID=364520.

[51] Ibid.

[52] To reduce certain start-up costs, one potential option would be to move some resources—for example, employees, information, and funding—from the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection to a new CFPB OIG. H.R. 3770 does not address whether this could happen.

[53] 31 U.S.C. §1105(a)(25). The IGs in the Central Intelligence Agency and of the Intelligence Community have similar safeguards for their budget accounts. (50 U.S.C. §403(q)(17)(f) and 50 U.S.C. §403-3H(m), respectively.)

[54] In contrast, each designated federal entity IG's budget is part of the parent entity's budget and may be susceptible to some reallocation of funds.

appropriations process that provides the CFPB OIG the opportunity to articulate its funding needs directly to Congress, thereby allowing some flexibility in the funding process.

CBO projects that H.R. 3770 as ordered reported would increase direct spending by $100 million over the next 10 years and increase revenues by $51 million over the same time period (due to lower costs for the Federal Reserve's OIG). As a result, "taking those effects together, CBO estimates that enacting H.R. 3770 would increase budget deficits by $49 million over the 10-year period."[55]

H.R. 4262, the Bureau Advisory Commission Transparency Act[56]

H.R. 4262 was introduced in the House on March 14, 2014, and concurrently referred to the House Committees on Financial Services and Oversight and Government Reform. H.R. 4262 as ordered reported on June 10, 2014 would require any CFPB advisory committee to be administered pursuant to the Federal Advisory Committee Act (FACA).[57]

The CFPB's four advisory boards and councils are the Consumer Advisory Board, Community Bank Advisory Council, Credit Union Advisory Council, and Academic Research Council.[58] Pursuant to Sec. 1101 of the Dodd-Frank Act, the CFPB was established as an independent bureau of the Federal Reserve System. As will be described in greater detail below, the Federal Reserve System is explicitly exempted from FACA. FACA, therefore, arguably does not apply to the CFPB.[59] The CFPB stated that its "Advisory Boards and Councils are organized to be transparent and operate in the spirit of the principles that underlie the FACA."[60]

Federal advisory committees are designed to collect a variety of viewpoints and provide advice to the federal government from outside sources.[61] Advisory committees may be created by Congress, the President, or agency heads, and they may conduct studies, render independent advice, or make recommendations to various bodies within the federal government.[62]

In 1972, Congress passed FACA in response to the perception that existing advisory committees were duplicative, inefficient, and lacked adequate control or oversight.[63] FACA sets structural and operational requirements for many advisory committees, including formal reporting and oversight procedures. FACA, for example, requires that committee membership be "fairly balanced in terms of the points of view represented" and that the advice provided by committees be objective

[55] CBO, *Cost Estimate of H.R. 3770*, November 3, 2014, at http://cbo.gov/sites/default/files/cbofiles/attachments/hr3770.pdf.

[56] This section was authored by (name redacted), Analyst in National Government.

[57] 5 U.S.C. Appendix—Federal Advisory Committee Act; 86 Stat.770, as amended.

[58] CFPB, "Advisory Groups," at http://www.consumerfinance.gov/advisory-groups/.

[59] FACA's nonapplicability to the CFPB is asserted in CFPB, "Advisory Boards and Councils: Frequently Asked Questions," p. 9, at http://files.consumerfinance.gov/f/201401_cfpb_advisory-board-councils-faqs.pdf.

[60] CFPB, "Advisory Boards and Councils: Frequently Asked Questions," p. 9, at http://files.consumerfinance.gov/f/201401_cfpb_advisory-board-councils-faqs.pdf.

[61] For more information on federal advisory committees, generally, see CRS Report R40520, *Federal Advisory Committees: An Overview*, by (name redacted).

[62] The Federal Advisory Committee Act does not define agency heads.

[63] See, for example, U.S. Congress, Senate Committee on Government Operations, *The Federal Advisory Committee Act*, 92nd Cong., 2nd sess., September 7, 1972, S.Rept. 92-1098 (Washington: GPO, 1972), pp. 5-6.

and accessible to the public.[64] Additionally, FACA requires that committee meetings be open to the public, unless the material discussed meets certain requirements.

Both the Central Intelligence Agency and the Federal Reserve System are explicitly exempted from FACA's requirements. Members of Congress presented two arguments for exempting the Federal Reserve System from FACA's requirements at the time of the law's enactment.

1. One goal of FACA was to reduce federal costs by eliminating duplication of committees. These committees are usually provided federal appropriations to support their operations. The Federal Reserve's Federal Advisory Council was funded through Federal Reserve Banks' earnings, and, therefore, applying FACA would not reduce federal appropriations.
2. Another goal was to protect the potential improper release of sensitive information or opinions. Some Members of Congress and the Chairman of the Federal Reserve Board asserted that "premature publication of views candidly expressed at meetings" on delicate subjects of "monetary policy, the international payments system, and liquidity conditions in the banking system ... could prove harmful."[65]

Supporters of the H.R. 4262 may argue that applying FACA to an advisory committee may improve both the perception and reality of transparent governmental operation and accessibility, thereby increasing confidence and trust in an advisory body's findings or recommendations. As some opponents of FACA's application have stated, however, FACA's requirements may also place a number of additional chartering, record-keeping, notification, and oversight requirements on the entity. In particular, some agencies have claimed that compliance with the various FACA requirements is cumbersome and resource intensive, reducing the ability of committees to focus on substantive issues in a spontaneous and timely fashion.[66] Other scholars have argued that the scope of the openness requirements could have the practical effect of stifling candid advice and discussion within a committee.[67] Congress can choose to exempt certain congressionally mandated advisory committees from all or some of FACA's provisions to allow them to operate more quickly than FACA might permit. For example, the requirement that all meetings be posted "with timely notice" in the *Federal Register*[68] can slow down the daily operations of an advisory committee, which will typically not hold meetings until 15 days after the notice is published. Congress can choose to exempt a committee from this publication requirement. Additionally, Congress may determine that the subject matter discussed at advisory board meetings is substantively sensitive and should be withheld from public record. Pursuant to FACA, however, agencies are already provided the authority to hold closed-door meetings, provided the substance of the meeting meets particular requirements.[69]

---

[64] P.L. 92-463; 86 Stat. 770, October 6, 1972.

[65] Senator Jacob K. Javits, "Federal Advisory Committee Act," remarks in the Senate, *Congressional Record*, vol. 118, part 23 (September 11, 1972), p. 30273.

[66] Stephen P. Croley and William F. Funk, "The Federal Advisory Committee Act and Good Government," *Yale Journal on Regulation*, vol. 14, no. 2 (Spring 1997), pp. 503-504.

[67] Dover A. Norris-York, "The Federal Advisory Committee Act: Barrier Or Boon to Effective Natural Resource Management," *Environmental Law*, vol. 26 (1996), pp. 419, 425-426.

[68] 5 U.S.C. Appendix FACA §9(2).

[69] Pursuant to 41 C.F.R. §102-3.155, a committee's designated federal officer must obtain prior approval from either the agency head or the General Services Administration's Committee Management Secretariat to hold a closed (continued...)

CBO projects that H.R. 4262 as ordered reported would increase direct spending by $1 million over the next 10 years because the CFPB "would incur additional costs to train staff, review committee activities annually, and prepare reports, and to provide accommodation for public meetings."[70]

H.R. 4383, the Bureau of Consumer Financial Protection Advisory Boards Act[71]

H.R. 4383 was ordered to be reported by the House Committee on Financial Services on June 10, 2014.[72] H.R. 4383 as ordered reported would require the CFPB to establish and appoint members to a Small Business Advisory Board, Credit Union Advisory Council, and Community Bank Advisory Council. The two councils, the Credit Union Advisory Council and the Community Bank Advisory Council, already exist because the CFPB voluntarily created them. H.R. 4383 would statutorily mandate their existence and set requirements for their size and composition. The board and councils would advise and consult with the CFPB in the exercise of the bureau's functions related to small businesses, credit unions, and community banks, respectively.

Each advisory board would comprise at least 15 and no more than 20 members who would be appointed by the director of the CFPB. The members would be required to be representatives of their relevant business type. Additionally, the CFPB director would be encouraged to ensure "the participation of minority- and women-owned small business concerns and their interests" in the Small Business Advisory Board, "the participation of credit unions predominantly servicing traditionally underserved communities and populations and their interests" in the Credit Union Advisory Council, and "the participation of community banks predominantly serving traditionally underserved communities and populations and their interests" in the Community Bank Advisory Council. The board and councils would each be required to meet from time to time upon the call of the director and at least twice a year. Members of the board and councils who are not full-time employees of the United States government would receive compensation and have travel expenses covered.

Currently, the CFPB identifies on its website four short-term advisory boards whose charters are of limited duration (each charter is for two years but may be amended by the director of the CFPB).[73] Those four groups are the Consumer Advisory Board, the Community Bank Advisory Council, the Credit Union Advisory Council, and the Academic Research Council. Unlike these groups, however, the existence of the proposed board and councils would not be of limited

(...continued)

meeting. A designated federal officer is a full- or part-time federal employee who ensures that a federal advisory committee is complying with FACA's requirements.

[70] CBO, *Cost Estimate of H.R. 4262*, August 12, 2014, at http://cbo.gov/sites/default/files/hr4262_0.pdf.

[71] This section was authored by (name redacted), Analyst in Government Organization and Management.

[72] The Financial Services Committee ordered reported H.R. 4383 with a complete substitute amendment and an amendment to the title of the bill. This section describes the text of the bill as ordered reported by the committee. See http://financialservices.house.gov/uploadedfiles/bills-113hr-hr4383-p000606-amdt-001.pdf for a copy of the bill as reported.

[73] For example, the Consumer Advisory Board, which advises and consults with the CFPB on the exercise of its functions under consumer financial laws and provides information on emerging practices in the area of consumer financial products and services, has a charter that lasts for two years after the date of its first meeting. See http://www.consumerfinance.gov/advisory-groups/ for information on this and the other advisory groups.

duration. The proposed board and councils would create a permanent source of feedback for the CFPB on small business, credit union, and community bank concerns. The Academic Research Council, which was voluntarily created by the CFPB and advises the bureau on "research methodologies, data collection, and analytic strategies and provides feedback about research and strategic planning," would not be codified by H.R. 4383 as ordered reported.[74]

The proposed board and councils would offer additional methods of providing feedback to the CFPB, which proponents of the bill say could improve decision-making at the agency. Some methods do exist under current law to receive feedback on various topics—for example, the CFPB may be required to seek input from the small business community under the Regulatory Flexibility Act.[75] The new boards would supplement that with additional feedback on topics identified in the bill.

Opponents might suggest that the value of what these entities can offer to the agency may not be worth the cost of each board or council—CBO estimates that H.R. 4383 would "cost about $4 million over the 2015-2024 period" to support the three new entities.[76]

H.R. 4466, the Financial Regulatory Clarity Act of 2014[77]

H.R. 4466 was ordered to be reported by the House Committee on Financial Services on May 22, 2014, and is currently before the House Committee on Agriculture. H.R. 4466 as ordered reported would require the CFPB and other financial regulators to assess their existing federal regulations and orders prior to issuing a new regulation or order. Each agency's assessment must consider whether the new proposal is in conflict with, inconsistent with, or duplicative of any previously issued regulations or orders and whether those previously issued orders are outdated. If any previously issued regulations are determined to have any of these characteristics, the agency would be required to "take all available measures under current law to resolve any duplicative or inconsistent existing regulation or order with any proposed regulation or order before issuing a final regulation or order." The bill also would require each agency to submit a report to Congress on its assessment, including in the report any recommendations to Congress for statutory changes that may be needed before the agency can repeal or amend any regulations identified.

The proposed requirements in H.R. 4466 would be similar to existing requirements in various executive orders that do not currently apply to independent regulatory agencies, including the CFPB. In 1993, President William Clinton issued Executive Order 12866, which is still in effect, in which he stated that agencies should "avoid regulations that are inconsistent, incompatible, or

---

[74] CFPB, "Advisory Groups," at http://www.consumerfinance.gov/advisory-groups/.

[75] 5 U.S.C. §601-612. If the CFPB were to certify that a rule does not have a significant economic impact on a substantial number of small entities, however, the requirements of the Regulatory Flexibility Act (RFA) would not apply. Section 609 of the RFA requires that if the CFPB (as well as the Environmental Protection Agency and the Occupational Safety and Health Administration) determines a proposed rule is likely to have a significant economic impact on a substantial number of small entities, the CFPB must convene a review panel. The panel must consist of employees from the CFPB, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy from the Small Business Administration. Following the meeting, the panel is to report on the comments received and its findings and the agency is expected to treat the report as input into the proposed rule. For more information on the RFA, see CRS Report RL34355, *The Regulatory Flexibility Act: Implementation Issues and Proposed Reforms*, coordinated by (name redacted).

[76] CBO, *Cost Estimate of H.R. 4383,* August 20, 2014, at http://cbo.gov/sites/default/files/hr4383_0.pdf.

[77] This section was authored by (name redacted), Analyst in Government Organization and Management.

duplicative with [their] other regulations."[78] In January 2011, President Barack Obama issued Executive Order 13563, which reaffirmed Executive Order 12866 and directed executive agencies (not including the CFPB or other independent regulatory agencies) to undertake an examination of their current rules and eliminate or update any that were "outmoded, ineffective, insufficient, or excessively burdensome."[79] Executive Order 13579, issued by President Obama later in 2011, encouraged independent regulatory agencies, including the CFPB, to conduct a similar review of their regulations.[80] Specifically, the order asked the independent regulatory agencies to "consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

Following the issuance of Executive Order 13579, many independent regulatory agencies did engage in a retrospective review of rules, including the CFPB, which instigated a review of its inherited regulations in December 2011.[81] The CFPB stated in its *Federal Register* notice announcing that review that it was "based in part on guidance provided by the Office of Management and Budget" pertaining to Executive Order 13579.[82] There has been some debate over whether the President can and should assign independent regulatory agencies such a task.[83] Regardless of that debate, however, having a requirement for retrospective review in statute would emphasize the importance to Congress, as well as the President, of retrospective review at the CFPB and other covered agencies.

One might argue that the other agencies covered by H.R. 4466, all of which have been in existence longer than the CFPB, may find retrospective review more fruitful for identifying previously issued rules that should be amended or eliminated. The CFPB may have more limited success in such a retrospective review simply because it is a newer agency and has been issuing rules only for a few years.

On the other hand, the CFPB inherited rulemaking authority from several federal agencies and, as the CFPB demonstrated in the review it instigated in December 2011 referenced above, a retrospective review could take these inherited regulations into account. Furthermore, H.R. 4466 would require the CFPB and the other agencies to undertake this consideration process each time

[78] Executive Order 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, October 4, 1993.

[79] Executive Order 13563, "Improving Regulation and Regulatory Review," 76 *Federal Register* 3821, January 21, 2011.

[80] Executive Order 13579, "Regulation and Independent Regulatory Agencies," 76 *Federal Register* 41587, July 11, 2011.

[81] On December 5, 2011, the CFPB issued a notice in the *Federal Register* that it was undertaking a project for "streamlining regulations it recently inherited from other Federal agencies." The CFPB asked the public in that notice "to identify provisions of the inherited regulations that the Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary." The notice commenced a three-month comment period, which the CFPB later extended. See Bureau of Consumer Financial Protection, "Streamlining Inherited Regulations," 76 *Federal Register* 75825, December 5, 2011; and Bureau of Consumer Financial Protection, "Streamlining Inherited Regulations," 77 *Federal Register* 14700, March 13, 2012.

[82] CFPB, "Streamlining Inherited Regulations," 76 *Federal Register* 75825, December 5, 2011, p. 75825.

[83] This debate usually focuses on identifying the appropriate level of independence the independent regulatory agencies (defined in 44 U.S.C. 3502(5)) have from the President. For more information about this debate, see CRS Report R42821, *Independent Regulatory Agencies, Cost-Benefit Analysis, and Presidential Review of Regulations*, by (name redacted) and (name redacted) and CRS Report R42720, *Presidential Review of Independent Regulatory Commission Rulemaking: Legal Issues*, by (name redacted) and (name redacted).

a new regulation or order is issued, which could help to prevent a buildup of duplicative or inconsistent regulations in the future.

H.R. 4662, the Bureau Advisory Opinion Act

H.R. 4662 was ordered to be reported by the House Committee on Financial Services on June 11, 2014. H.R. 4662 as ordered reported would require the CFPB to establish a procedure to provide responses to questions by a CFPB-regulated entity as to whether a product or service offered by that entity would violate a federal consumer financial protection law. The CFPB would be required to respond within 90 days but could make an extension of up to 45 days. The CFPB would also make public its advisory opinion but would not disclose certain information about the request, such as the identity of the requesting entity.

In a June 18, 2014, hearing,[84] CFPB Director Richard Cordray was asked about whether the CFPB would issue advisory opinions and stated that it is "something we're working to do in appropriate cases."[85] He also noted that the CFPB provides informal feedback in response to questions it receives as well as formal guidance[86] on topic areas about which it receives questions. Following Director Cordray's comments, the CFPB published a notice in the *Federal Register* on October 16, 2014, seeking comment on its proposed Policy of No-Action Letters.[87] Under the proposal, a company would be able to ask the CFPB for a no-action letter with regard to a new product or service. Under the CFPB's proposed policy, a

> No-Action Letter would be a statement that the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to particular aspects of its product, under specific identified provisions of statutes or regulations. Such a letter may be limited as to time, volume of transactions, or otherwise, and may be subject to potential renewal.[88]

Supporters of H.R. 4662 (which was introduced prior to the CFPB's no-action letter proposal) argue that the CFPB's methods of providing information to businesses about specific questions do not provide enough certainty and transparency to businesses as to whether a particular product or service would comply with federal consumer protection laws. They contrast the CFPB's approach with those of agencies such as the Internal Revenue Service (IRS), SEC, and FTC that provide formal opinions in different formats. The IRS, for example, provides *written determinations* in which it advises taxpayers on certain issues under its jurisdiction.[89] The SEC may provide a *no-action letter* to entities that are unsure as to whether a product or service would violate a federal securities law if the SEC staff concludes that it "would not recommend that the Commission take enforcement action against the requester based on the facts and representations described in the

[84] U.S. Congress, House Committee on Financial Services, *The Semi-Annual Report of the Consumer Financial Protection Bureau*, 113th Cong., 2nd sess., June 18, 2014.

[85] CQ Congressional Transcripts, "House Financial Services Committee Holds Hearing on the Consumer Financial Protection Bureau's Semi-Annual Report," June 18, 2014, at http://www.cq.com/doc/congressionaltranscripts-4498242?6&search=WDg1k6RY.

[86] CFPB, "Guidance documents," at http://www.consumerfinance.gov/guidance/.

[87] CFPB, "Policy On No-Action Letters," 79 *Federal Register* 62118, October 16, 2014.

[88] CFPB, "Policy On No-Action Letters," 79 *Federal Register* 62120, October 16, 2014.

[89] Internal Revenue Service (IRS), "About IRS Written Determinations," at http://www.irs.gov/uac/About-IRS-Written-Determinations.

individual's or entity's request."[90] The FTC provides *advisory opinions* "to help clarify FTC rules and decisions, often in response to requests from businesses and industry groups."[91] Supporters argue that the approaches offered by the IRS, SEC, and FTC provide more certainty to businesses than the one used by the CFPB.

Critics of H.R. 4662 counter that the requirement that the CFPB respond within specified time frames is unworkable, especially if the CFPB is inundated with requests. The need to respond to many requests in a narrow time frame, they argue, would limit the CFPB's ability to pursue its other activities for protecting consumers. Some of the critics who were still generally supportive of the bill suggested charging a fee to those who ask for an advisory opinion (which is an approach used by some but not all of the agencies described previously) and removing or modifying the time limits for a response from the CFPB.

H.R. 4804, the Bureau Examination Fairness Act

H.R. 4804 was ordered to be reported by the House Committee on Financial Services on June 11, 2014. H.R. 4804 as ordered reported would (1) prevent enforcement attorneys from being a part of the CFPB's examinations; (2) require the CFPB to satisfy certain criteria before requesting data from a company (such as ensuring the different divisions of the CFPB coordinate with each other before requesting the data and using samples of data rather than full data sets when possible); (3) require the CFPB to meet certain deadlines for completing its examinations of companies; and (4) limit the CFPB to performing one examination of an institution at any one time.

As part of its regulation of financial institutions, the CFPB performs examinations. As described in its supervision and examination manual, the purpose of examining institutions is to "assess compliance with Federal consumer financial laws, obtain information about activities and compliances systems or procedures, and detect and assess risks to consumers and to markets for consumer financial products and services."[92] The CFPB is also required to coordinate with other regulators and to use where possible publicly available information and existing reports by other regulators pertaining to regulated entities. [93]

The CFPB has the authority to perform examinations on depositories (such as banks and credit unions) with more than $10 billion in assets and certain nondepository financial institutions (such as payday lenders, providers of private student loans, mortgage servicers, and other entities), but it is not the primary consumer protection supervisor for depositories with $10 billion or less in assets. The supervisory powers for small depositories remain with the institutions' prudential regulator (i.e., the OCC, FDIC, National Credit Union Association, and Federal Reserve), although the CFPB does have some limited supervisory authority over smaller depository institutions. For instance, the Bureau, "on a sampling basis," may participate in examinations of smaller depository institutions conducted by prudential regulators.[94]

---

[90] Securities and Exchange Commission, "No-Action Letters," at http://www.sec.gov/answers/noaction.htm.

[91] Federal Trade Commission, "Advisory Opinions," at http://www.ftc.gov/policy/advisory-opinions.

[92] CFPB, *CFPB Supervision and Examination Manual,* p. 3, at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

[93] P.L. 111-203, §1025.

[94] For more on whom the CFPB supervises, see CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by (name redacted).

H.R. 4804 would codify some of the CFPB's existing examination practices. For example, the CFPB brought enforcement attorneys, who (among other things) investigate potential violations of consumer protection laws, on some supervisory examinations before reversing its policy in 2013.[95] Some argued that the presence of enforcement attorneys created an adversarial dynamic between the CFPB and the financial institution.[96] Additionally, the deadlines mandated in H.R. 4804 for the CFPB to complete its examination and provide feedback to the institution on its performance are similar to the timeliness guidelines the CFPB has instituted for itself,[97] although a March 2014 OIG report stated that the CFPB "did not meet internal timeliness requirements for examination reporting."[98]

Supporters of H.R. 4804 argue that the bill would provide clarity and certainty about supervisory examinations while also reducing the CFPB's discretion.[99] The existing uncertainty about examinations and the CFPB's ability to change its current practices, the argument goes, imposes "unjustified costs on legitimate businesses seeking to comply with the law."[100] Opponents of H.R. 4804, however, note that the CFPB is not the primary supervisor for depositories with less than $10 billion in assets. H.R. 4804, therefore, would affect the CFPB's supervision of large depositories and nonbank firms and is not aimed at community banks. Additionally, critics of H.R. 4804 believe the CFPB should have the discretion to establish its examination policies, similar to the other regulators.[101]

CBO estimates that H.R. 4804 would "increase direct spending by $178 million over the 2015-2024 period" because the CFPB would have to hire additional staff to satisfy the new deadlines.[102]

H.R. 4811, the Bureau Guidance Transparency Act[103]

H.R. 4811 was ordered to be reported by the House Committee on Financial Services on June 11, 2014. H.R. 4811 as ordered reported would require the CFPB to subject its guidance documents to certain procedural requirements.[104] First, a guidance document would be subject to public

[95] Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, *The CFPB Should Reassess Its Approach to Integrating Enforcement Attorneys*, December 16, 2013, at http://oig.federalreserve.gov/reports/CFPB_Enforcement_Attorneys_Examinations_full_Dec2013.pdf.

[96] Kevin Petrasic, "CFPB Should Leave Enforcement Lawyers Out of Bank Exams," *American Banker*, December 12, 2012, at http://www.americanbanker.com/bankthink/cfpb-should-leave-enforcement-lawyers-out-of-bank-exams-1055079-1.html.

[97] The CFPB requires a final report of examination for depository institutions to be issued within 110 days. See Office of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, *The CFPB Can Improve the Efficiency and Effectiveness of Its Supervisory Activities*, March 27, 2014, p, 7, at http://oig.federalreserve.gov/reports/CFPB-Supervisory-Activities-Mar2014.pdf.

[98] Ibid., p. 9.

[99] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills," June 10, 2014, at http://www.cq.com/doc/congressionaltranscripts-4493691?0.

[100] Ibid.

[101] Ibid.

[102] CBO, *Cost Estimate of H.R. 4804*, August 20, 2014, at http://cbo.gov/sites/default/files/cbofiles/attachments/hr4804.pdf.

[103] This section was authored by (name redacted), Analyst in Government Organization and Management.

[104] Guidance documents are sometimes referred to as *nonlegislative rules*, *interpretive rules*, or *policy statements*. (continued...)

notice and a comment period prior to finalization. Second, upon issuing the final version of the guidance document, the CFPB would be required to post any "studies, data, methodologies, analyses, and other information relied on by the Bureau in preparing and issuing such guidance." Finally, the bill would prohibit Bulletin 2013-02, entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act," from taking effect. If enacted, H.R. 4811 would not prohibit the CFPB from reissuing Bulletin 2013-02. However, prior to reissuing the bulletin, the CFPB would be required to subject it to the aforementioned procedural requirements.[105]

Currently, federal agencies are generally required to subject their regulations, but not their guidance documents, to notice and comment procedures under the Administrative Procedure Act (APA).[106] Specifically, under the APA, agencies generally must publish a notice of proposed rulemaking, hold a public comment period, and allow for a 30-day delay following the publication of the final rule before the rule may become effective.[107] Guidance documents are not subject to these APA requirements, nor are they currently subject to any broad procedural requirements.[108]

The APA also does not require agencies to make public the studies, data, methodologies, or other related information used in the development of their regulations. As a matter of practice, however, agencies often make information upon which their rules are based available to the public. Various executive orders also encourage agencies to use the best data available and to make that information available to the public.[109]

Proponents of subjecting agency guidance documents to rulemaking-type procedures often argue that guidance documents are a potentially significant means through which agencies can implement policy and that even though a guidance document cannot impose a requirement, it can still have a notable effect. Subjecting guidance documents to a rulemaking-type process, they argue, will add an element of transparency and public participation that currently exists for the formulation of rules but not for guidance documents.

In contrast, opponents of such requirements argue that mandating rulemaking-type procedures for guidance documents would remove flexibility for the agency. When issuing or amending rules, agencies must generally follow the above-mentioned set of procedures in law and executive orders, but guidance documents are not subject to these requirements and therefore can be

---

(...continued)

Agencies issue guidance documents for a number of reasons; guidance documents may be used to explain the meaning or provide an interpretation of a particular regulation or law or to provide advice to the public about how to comply with a regulation or law. Guidance documents in themselves cannot create a new legal obligation. A guidance document that creates a new legal obligation would be considered a legislative rule under the Administrative Procedure Act (APA) and would be subject to the APA's notice and comment provisions.

[105] See http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf for a copy of this bulletin.

[106] 5 U.S.C. §551 et seq. For more information, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by (name redacted).

[107] The APA contains some exceptions for these notice and comment requirements, but agencies must be able to demonstrate that the rule qualifies for one of these exceptions. This exception is known as the *good cause* exception, and if an agency were to invoke the section, it must be because the agency determined that conducting notice and comment was "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. §553(b)(B)).

[108] 5 U.S.C. §553(b)(A) provides the exception from notice and comment requirements for guidance documents. In some cases, an agency may be required to issue a particular guidance document under a specific procedure(s), but there is no equivalent to the APA's rulemaking requirements for guidance documents.

[109] See Executive Orders 12866, 13563, and 13579, cited above.

changed or amended more easily. Opponents of subjecting guidance documents to rulemaking procedures also argue that additional procedural requirements may invite legal challenges to agency actions.

CBO projects that H.R. 4811 as ordered reported would "would cost the CFBP $49 million over the 2015-2024 period, thus increasing direct spending by that amount" but would not affect revenues or discretionary spending. [110]

Balancing Consumer Protection with Credit Availability and Regulatory Burden

As mentioned previously, the CFPB's purpose is "to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[111] 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 goods and 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 that benefit may come at the cost of a potentially higher price for the product.

Some Members of Congress believe that, in its rulemaking, the CFPB has struck the appropriate balance between protecting consumers and ensuring that credit availability is not restricted due to overly burdensome regulations on financial institutions, especially small banks. 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 to them. This section will evaluate CFPB-related legislation that would alter the contents of the CFPB's rulemaking.

H.R. 1779, the Preserving Access to Manufactured Housing Act of 2013

H.R. 1779 was ordered to be reported by the House Committee on Financial Services on May 22, 2014. H.R. 1779 as ordered reported would affect the market for manufactured housing by amending the definitions of *mortgage originator* and *high-cost mortgage* in the Truth-in-Lending Act (TILA).[112] Manufactured homes, which are often located in more rural areas, are a type of single-family housing that is factory built and transported to a placement site rather than constructed on-site.[113] The Dodd-Frank Act changed the definitions for mortgage originator and

[110] CBO, *Cost Estimate of H.R. 4811*, at http://cbo.gov/sites/default/files/hr4811.pdf.

[111] P.L. 111-203, §1021.

[112] 15 U.S.C. §§1601, et seq.

[113] CFPB, *Manufactured-housing consumer finance in the United States,* September 2014, p. 9, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

high-cost mortgage to provide additional protections to borrowers, and those changes may affect the market for manufactured homes. H.R. 1779 would modify the definitions again with the goal of increasing the credit available for manufactured homes.

A mortgage originator is someone who, among other things, "(i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan."[114] The current definition excludes employees of manufactured-home retailers under certain circumstances, such as when the employees do not advise consumers on the terms of a loan that the consumer could receive to purchase the manufactured home. H.R. 1779 would expand the exception such that retailers of manufactured homes or their employees would be considered mortgage originators for the purposes of TILA if they received more compensation for a sale that included a loan than for a sale that did not include a loan.

The definition of mortgage originator is relevant to the manufactured-housing industry because some rules issued by the CFPB, such as the Ability-to-Repay (ATR) rule,[115] require compensation paid to a mortgage originator to be included in the definition of points and fees. When points and fees are above certain thresholds, consumers may receive certain additional protections that could impose additional costs on lenders. The more types of costs included in the definition of points and fees, the more likely it is that the caps will be breached and lenders may be subject to additional legal liability. If the definition of mortgage originator is modified by H.R. 1779 as ordered reported so that certain fees paid to manufactured-home retailers would not be included in the points and fees cap, then the points and fees thresholds would be less likely to be breached and the risk to lenders would be reduced (although borrowers would also be less likely to receive added consumer protections). A lender, in that instance, may be more willing to offer credit for a manufactured-housing loan. The CFPB has noted that the treatment of manufactured-home retailers is one of the issues on which it has received feedback and stated that it "will continue to conduct outreach with the manufactured-home industry and other interested parties to address concerns about what activities are permissible for a retailer and its employees without causing them to qualify as loan originators."[116]

H.R. 1779 as ordered reported would also narrow the definition of high-cost mortgage. The Dodd-Frank Act expanded the protections available to high-cost mortgages, and the CFPB issued a rule implementing those changes.[117] A mortgage is deemed a high-cost mortgage if the annual

[114] P.L. 111-203, §1401. The definition of mortgage originator has multiple exemptions, such as for those who perform primarily clerical or administrative tasks in support of a mortgage originator or those who engage in certain forms of seller financing.

[115] CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*, by (name redacted). Title XIV of the Dodd-Frank Act established the Ability-to-Repay (ATR) requirement and instructed the CFPB to establish the definition for qualified mortgage as part of its implementation. The ATR rule requires a lender to determine based on documented and verified information that at the time a mortgage loan is made, the borrower has the ability to repay the loan. Lenders that fail to comply with the ATR rule could be subject to legal liability.

[116] CFPB, "Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 60410, October 1, 2013.

[117] CFPB, "High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)," 78 *Federal Register* 6855, January 31, 2013.

percentage rate (APR) or the points and fees for the mortgage exceed certain thresholds.[118] The definition of high-cost mortgage is particularly important for the manufactured-home market because a loan used to purchase a manufactured home is generally more likely to be a high-cost loan than a mortgage for a non-manufactured home.[119] As described previously, H.R. 1779 would amend the points and fees definition, making it less likely that the high-cost mortgage threshold would be triggered. As described below, H.R. 1779 also would increase the APR trigger for certain types of high-cost mortgages. Both changes would make it less likely for a manufactured-home loan to be deemed a high-cost mortgage.

If a mortgage is high cost, then a lender is limited in the types of fees it can charge, is restricted in the features it can offer on the mortgage (such as a balloon payment), and must provide additional disclosures about the terms of the loan. In addition, a borrower must receive housing counseling if a mortgage is high cost. Although consumers may benefit from these protections, the protections may impose additional costs on lenders and make it less likely that a lender will extend credit to a borrower whose mortgage is above the high-cost threshold. H.R. 1779 would increase the APR threshold for certain loans used to purchase a manufactured home, making it less likely that a loan will receive a high-cost designation and potentially making it more likely that a lender will originate a manufactured-home loan.

Supporters of H.R. 1779 argue that the changes to the definitions of mortgage originator and to high-cost mortgage would expand credit in the manufactured-housing market. Opponents of H.R. 1779 believe loosening the protections available to consumers could result in consumers receiving relatively high-interest loans without the counseling and disclosure typically associated with such loans.

CBO projects that H.R. 1779 as ordered reported would "increase direct spending by less than $500,000 in 2015 to implement changes to the TILA" but would not affect revenues or discretionary spending.[120]

H.R. 2672, the Helping Expand Lending Practices in Rural Communities Act

H.R. 2672 was passed by the House on May 6, 2014. H.R. 2672 would establish a process by which individuals could petition the CFPB for counties that were not designated as rural by the CFPB to receive the rural designation. It would also establish evaluation criteria and an evaluation process for the CFPB to follow in assessing the petitions.

---

[118] Under the annual percentage rate (APR) test, a loan is considered to be a high-cost mortgage if the APR exceeds the average prime offer rate (APOR, which is an estimate of the market mortgage rate based on a survey of rates) by more than 6.5 percentage points for most mortgages or by 8.5 percentage points for certain loans under $50,000. It is also high cost if the points and fees exceed 5% of the total amount borrowed for most loans in excess of $20,000 or the lesser of 8% of the total amount or $1,000 for loans of less than $20,000. A mortgage can also be high cost if there is a prepayment penalty that meets certain criteria, although that issue is not addressed by H.R. 1779. See CFPB , "High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)," 78 *Federal Register* 6856, January 31, 2013.

[119] CFPB, *Manufactured-housing consumer finance in the United States,* September 2014, p. 35, at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

[120] CBO, *Cost Estimate of H.R. 1779,* June 26, 2014, at http://cbo.gov/sites/default/files/hr1779.pdf.

In implementing its regulations, the CFPB designates certain counties as rural. Lenders operating in rural areas may be exempt from some regulations or have additional compliance options that are unavailable to lenders in areas that are not designated as rural. For example, the ATR rule has an additional compliance option that allows small lenders operating in rural or underserved areas to originate balloon mortgages, subject to some restrictions.[121] The compliance option for rural lenders is specified in the Dodd-Frank Act, but the definition of rural is left to the discretion of the CFPB. Balloon mortgages originated by lenders in areas that are not designated as rural may be ineligible for qualified mortgage (QM) status (although the CFPB has established a two-year transition period to allow small lenders to originate balloon mortgages, subject to some restrictions). Lenders that benefit from exemptions may be able to offer products to their consumers that lenders in non-rural areas would be less likely to offer, but consumers in rural areas may not receive the same protections as those in non-rural areas.

Some argue that the CFPB's method of designating counties as rural, which is based on the U.S. Department of Agriculture's Urban Influence Codes, is inflexible and may not account for "atypical population distributions or geographic boundaries."[122] The CFPB stated that it believes it defined rural in a manner consistent with the intent of the exemptions contained in statute but that, over the next two years, it "intends to study whether the definitions of 'rural' or 'underserved' should be adjusted."[123] When publishing the ATR rule, the CFPB estimated that its definition of rural results in 9.7% of the total U.S. population being in rural areas.[124] It is unclear, however, for what fraction of the 9.7% of the population in rural areas a rural lender is the only source for affordable credit.

CBO projects that H.R. 2672 as ordered reported would increase direct spending by $3 million over the next 10 years but would not affect revenues or discretionary spending.[125]

H.R. 2673, the Portfolio Lending and Mortgage Access Act

H.R. 2673 was ordered to be reported by the House Committee on Financial Services on May 22, 2014. H.R. 2673 as ordered reported would create an additional category of QM. A mortgage would receive QM status so long as it appears on the balance sheet of the creditor that originated it. The criteria that would otherwise need to be satisfied to receive QM status, such as limits on the fees associated with the mortgage or restrictions on certain product features, would not apply.

Title XIV of the Dodd-Frank Act established the ATR requirement and instructed the CFPB to establish the definition for QM as part of its implementation. The ATR rule requires a lender to determine based on documented and verified information that at the time a mortgage loan is made, the borrower has the ability to repay the loan. Lenders that fail to comply with the ATR rule could be subject to legal liability. A lender is presumed to have complied with the ATR rule

[121] See CRS Report R43081, *The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues*, by (name redacted).

[122] Conference of State Bank Supervisors, "Letter of Support for H.R. 2672," December 4, 2013, at http://www.csbs.org/legislative/Documents/CSBSLetterofSupportforHR2672Dec42013.pdf.

[123] CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," p. 6, at http://files.consumerfinance.gov/f/201305_cfpb_final-rule_atr-concurrent-final-rule.pdf.

[124] CFPB, "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act," 78 Federal Register 6543, January 30, 2013.

[125] CBO, *Cost Estimate of H.R. 2672,* May 2, 2014, at http://cbo.gov/sites/default/files/cbofiles/attachments/hr2672.pdf.

when it offers a QM. A QM is a mortgage that satisfies certain underwriting and product-feature requirements, such as being below specified debt-to-income ratios, having a term of 30 years or fewer, and having fees associated with the mortgage below certain thresholds. There are several different categories of QM, including ones related to mortgages made by small lenders and lenders in rural or underserved areas. There is also a category for mortgages that meet the standards of Fannie Mae and Freddie Mac. Unlike the other QM compliance options, the additional QM compliance option that would be created by H.R. 2673 would have no underwriting or product-feature requirements; any mortgage could receive QM status so long as the mortgage is held in the portfolio of the lender that originated it.

Some argue that the ATR rule has negatively affected lenders, especially those that originate mortgages and hold them in their portfolios. Lenders that hold the mortgage, the argument goes, should have discretion over what types of mortgages they originate and to whom they lend because the lender bears the consequences of a potential default by the borrower when the mortgage is held in portfolio. The lender, therefore, has "every incentive to ensure that the mortgage is conservatively underwritten and that the borrower has the ability to repay."[126] Proponents of H.R. 2673 argue that mortgages retained in portfolio by the original lender should receive QM status without the need to satisfy additional underwriting and product requirements.

Critics of H.R. 2673 contend that the retained risk of the mortgage held in the lender's portfolio may be insufficient to align the incentives of the lender and the borrower. In a period of rising house prices, the lender may be able to sell the home of a delinquent borrower for enough to cover the amount of the loan. In such a scenario, the lender may be more concerned about the value of the underlying house than about the borrower's ability to repay the loan even if the lender holds the loan in its portfolio. The lender may be protected from losses, but the consumer would bear some of the consequences of the foreclosure. Critics are also concerned that establishing a QM compliance option that does not have additional underwriting and product-feature requirements, such as limits on the fees that can be charged for the mortgage, could lead to consumers having insufficient protection against abusive or unfair practices.

CBO projects that H.R. 2673 as ordered reported would affect direct spending but that "those effects would be insignificant." H.R. 2673 would not affect revenues or discretionary spending.[127]

H.R. 3211, the Mortgage Choice Act of 2014

H.R. 3211 was passed by the House on June 9, 2014. H.R. 3211 as passed would modify the definition of points and fees for a QM to exclude from the definition insurance held in escrow and certain fees paid to affiliates of the lender.[128] Certain fees paid for comparable services provided by independent or unaffiliated companies, such as for title insurance, are already excluded from the definition of points and fees. By excluding additional types of costs that are currently included in the definition of points and fees, more expensive mortgages would be likely to fall within the points and fees threshold and therefore be eligible for QM status. As described in more detail below, some are concerned that lenders will be less likely to originate mortgages that do not have

[126] Independent Community Bankers of America, "Letter in Support of H.R. 2673," at https://www.icba.org/files/ICBASites/PDFs/ltr082713.pdf.

[127] CBO, *Cost Estimate of H.R. 2673,* September 3, 2014, at http://www.cbo.gov/sites/default/files/hr2673.pdf.

[128] H.R. 5461, which was passed by the House on September 16, 2014, has a section on points and fees that is similar to the text of H.R. 3211.

QM status. They argue that a broader definition of QM is therefore important for ensuring broad credit availability.

As mentioned previously, a lender is presumed to have complied with the ATR rule when it offers a QM. To receive QM status, a loan must meet certain underwriting and product-feature requirements. One of the requirements is that certain points and fees associated with originating the mortgage be below specified thresholds. The points and fees calculation includes, among other things, the compensation paid to the loan originator; some real estate-related fees paid to affiliates of the lender (for example, for property appraisals); premiums for some types of insurance; and prepayment penalties.[129] Because of the benefits associated with being a QM, some argue that lenders will predominantly originate QMs.[130] The definition of QM (including what constitutes points and fees), therefore, could have a significant effect on the amount of credit that is available to potential borrowers.

Some argue that by removing certain costs from the definition of points and fees, H.R. 3211 would expand credit availability by allowing more mortgages to receive QM status. It would also, supporters of the bill contend, allow certain real estate-related services to compete on fairer terms.[131] Opponents of H.R. 3211 state that exempting certain fees from the caps could result in lenders steering borrowers to overpriced services and lead to less protection for consumers.[132]

CBO projects that H.R. 3211 as ordered reported would affect direct spending but that the effect would be insignificant. CBO also estimates that H.R. 3211 would not affect revenues or discretionary spending.[133]

H.R. 4521, the Community Institution Mortgage Relief Act of 2014

H.R. 4521 was ordered to be reported by the House Committee on Financial Services on May 22, 2014. H.R. 4521 as ordered reported would make two modifications to CFPB mortgage rules to reduce the regulatory burden of small lenders. H.R. 4521 would (1) exempt from certain escrow requirements a mortgage held by a lender with assets of $10 billion or less and (2) exempt from certain servicing requirements a servicer that annually services 20,000 or fewer mortgages.

An escrow account is an account that a "mortgage lender may set up to pay certain recurring property-related expenses ... such as property taxes and homeowner's insurance."[134] Property taxes and homeowner's insurance are often lump-sum payments owed annually or semiannually. To ensure a borrower has enough money to make these payments, a lender may divide up the

---

[129] CFPB, "Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide," pp. 32-35, at http://files.consumerfinance.gov/f/201304_cfpb_compliance-guide_atr-qm-rule.pdf, and 15 USC §1602(bb)(4).

[130] For example, see U.S. Congress, House Committee on Financial Services, *Written Testimony of Jack Hartings, President and CEO of Peoples Bank Co.*, 113th Cong., 2nd sess., January 14, 2014.

[131] National Association of Realtors, "Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (TILA)," Docket No. CFPB-2014-0009/RIN 3170-AA43, at http://www.ksefocus.com/billdatabase/clientfiles/172/3/2050.pdf.

[132] National Association of Consumer Advocates, *Letter in Opposition to H.R. 3211,* at http://www.consumeradvocates.org/sites/default/files/HR%203211%20Oppo%20Letter%2010-17-13.pdf.

[133] CBO, *Cost Estimate of H.R. 3211*, June 5, 2014, at http://cbo.gov/sites/default/files/cbofiles/attachments/hr3211.pdf.

[134] CFPB, *What is an escrow or impound account?*, at http://www.consumerfinance.gov/askcfpb/140/what-is-an-escrow-or-impound-account.html.

amount owed and add it to a borrower's monthly payment. The additional amount paid each month is placed in the escrow account and then is drawn on by the mortgage servicer that administers the account to make the required annual or semiannual payments. Maintaining escrow accounts for borrowers may be costly to some banks, especially smaller lenders. An escrow account is not required for all types of mortgages but was required for at least one year for *higher-priced mortgage loans* even before the Dodd-Frank Act. A higher-priced mortgage loan is a loan with an APR "that exceeds an 'average prime offer rate'[135] for a comparable transaction by 1.5 or more percentage points for transactions secured by a first lien, or by 3.5 or more percentage points for transactions secured by a subordinate lien."[136]

The Dodd-Frank Act, among other things, extended the amount of time an escrow account for a higher-priced mortgage loan must be maintained from one year to five years, although the escrow account can only be terminated after five years if certain conditions are met. It also provided additional disclosure requirements.[137] The CFPB issued a rule implementing these requirements. The CFPB's rule also included exemptions from escrow requirements to lenders that (1) operate predominantly in rural or underserved areas; (2) extend 500 or fewer mortgages; (3) have less than $2 billion in total assets; and (4) do not escrow for any mortgage they service (with some exceptions). An exempted lender must maintain an escrow account for a higher-priced mortgage loan, however, if at the time the loan is made the lender intends to sell the loan to another party ("is subject to a forward commitment"). An exempted lender does not need to maintain an escrow account for a loan that it intends to hold in portfolio. H.R. 4521 would expand the exemption such that a lender would not have to maintain an escrow requirement for a mortgage so long as the mortgage is held by the lender in its portfolio and the lender has $10 billion or less in assets.

The second part of H.R. 4521 addresses mortgage servicers. A mortgage servicer functions as an intermediary between the mortgage holder and the borrower. The role of the servicer may be performed by the same institution that made the loan to the borrower or by another institution. Servicers collect payments from borrowers that are current and forward them to the mortgage holder, work with borrowers that are delinquent to try to get them current, and extinguish the mortgage (such as through foreclosure) if a borrower is in default.

Servicers received added attention from Congress after the surge in foreclosures following the bursting of the housing bubble. The Dodd-Frank Act imposed additional requirements on servicers to protect borrowers through amendments to TILA and the Real Estate Settlement Procedures Act (RESPA).[138] The CFPB issued rules implementing those changes. The CFPB regulations included, among other things, additional disclosure requirements about the timing of rate changes, requirements for how payments would be credited, obligations to address errors in a timely fashion, and guidance on when foreclosure could be initiated and how servicers must have continuity of contact with borrowers.

[135] The average prime offer rate (APOR) is an estimate of the market mortgage rate based on a survey of rates. The CFPB will publish the APOR weekly.

[136] CFPB, "Escrow Requirements Under the Truth in Lending Act (Regulation Z)," 78 *Federal Register* 4726, January 22, 2013.

[137] CFPB, *Small Entity Compliance Guide: TILA Escrow Rule,* April 18, 2013, p. 4, at http://files.consumerfinance.gov/f/201307_cfpb_updated-sticker_escrows-implementation-guide.pdf.

[138] 12 U.S.C. §§2601, et seq.

For the rules implemented under TILA, servicers "that service 5,000 mortgage loans or less and only service mortgage loans the servicer or an affiliate owns or originated" are considered small servicers and are exempted from certain requirements related to disclosures and periodic statements.[139] For the rules implemented under RESPA, some of the requirements were specific mandates in Dodd-Frank and some were implemented at the discretion of the CFPB; small servicers are exempted from those implemented at the discretion of the CFPB but must comply with those mandated by Dodd-Frank. For example, small servicers are exempted from the continuity-of-contact requirements but must comply with certain disclosure requirements for changes in interest rates.[140] H.R. 4521 would modify the exemption for the rules implemented under RESPA by directing the CFPB to provide exemptions to or adjustments for the RESPA servicing provision for servicers that service 20,000 or fewer mortgages. In providing exemptions or adjustments, the CFPB would be directed to "reduce regulatory burdens while appropriately balancing consumer protections."[141]

Supporters of H.R. 4521 argue[142] that small financial institutions were not the cause of the financial crisis and should be exempted from many of the regulations that apply to larger institutions to reduce the regulatory burden on smaller lenders. Although the CFPB's rules that would be affected by H.R. 4521 already have some exemptions for small lenders, H.R. 4521 would expand those exemptions to include more lenders. Additionally, supporters argue that the exemption for escrow accounts would only apply to lenders below the $10 billion threshold that hold the loan in their portfolio. The lender would have additional incentive, the argument goes, to make sure the borrower will pay taxes and insurance even without the escrow account because the lender is exposed to some of the risk by keeping it in its portfolio.

Opponents of H.R. 4521 have contended[143] that the exemptions in the CFPB's regulations are sufficient to protect small lenders and that expanding the exemptions would weaken the protections available to consumers. Critics point to mortgage servicers in particular as actors that performed poorly during the foreclosure crisis and should not receive additional exemptions from CFPB regulations.

CBO projects that H.R. 4521 would "increase direct spending by less than $500,000 in 2015 for expenses of the CFPB to prepare and enforce new rules" but would not affect revenues or discretionary spending.[144]

---

[139] CFPB, "Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)," 78 *Federal Register* 10699, February 14, 2013.

[140] For a summary of what small servicers are exempt from and must comply with, see CFPB, Small Entity Compliance Guide: 2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, June 7, 2013, p. 17, at http://files.consumerfinance.gov/f/201307_cfpb_updated-sticker_servicing-implementation-guide.pdf.

[141] H.R. 4521, §3.

[142] CQ Congressional Transcripts, "House Financial Services Committee Holds Markup on Various Financial Services Bills, Day 1" May 7, 2014, at http://www.cq.com/doc/congressionaltranscripts-4473078?0.

[143] Ibid.

[144] CBO, *Cost Estimate of H.R. 4521*, June 26, 2014, at http://www.cbo.gov/sites/default/files/hr4521.pdf.

Author Contact Information

(name redacted)
Analyst in Financial Economics
[redacted]@crs.loc.gov, 7-....

(name redacted)
Analyst in Government Organization and Management
[redacted]@crs.loc.gov, 7-....

(name redacted)
Analyst in American National Government
[redacted]@crs.loc.gov, 7-....

EveryCRSReport.com

The Congressional Research Service (CRS) is a federal legislative branch agency, housed inside the Library of Congress, charged with providing the United States Congress non-partisan advice on issues that may come before Congress.

EveryCRSReport.com republishes CRS reports that are available to all Congressional staff. The reports are not classified, and Members of Congress routinely make individual reports available to the public.

Prior to our republication, we redacted names, phone numbers and email addresses of analysts who produced the reports. We also added this page to the report. We have not intentionally made any other changes to any report published on EveryCRSReport.com.

CRS reports, as a work of the United States government, are not subject to copyright protection in the United States. Any CRS report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS report may include copyrighted images or material from a third party, you may need to obtain permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Information in a CRS report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to members of Congress in connection with CRS' institutional role.

EveryCRSReport.com is not a government website and is not affiliated with CRS. We do not claim copyright on any CRS report we have republished.