Updated January 8, 2019

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

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the Bureau of Consumer Financial Protection (CFPB) to implement and enforce federal consumer financial law while ensuring consumers can access financial products and services. The CFPB also aims to ensure that markets for consumer financial services and products are fair, transparent, and competitive. Dodd-Frank consolidated certain consumer finance-related responsibilities previously covered by other regulators in the CFPB and created new authorities unique to the CFPB, as discussed below.

Structure of the CFPB

The CFPB is headed by a director appointed by the President with the consent of the Senate for a five-year term. It is located within the Federal Reserve System (Fed), although the Federal Reserve Board does not influence the CFPB's budget or personnel decisions. The Federal Reserve Board also cannot veto a rule issued by the CFPB, but the Financial Stability Oversight Council can overturn a CFPB rule with the vote of two-thirds of its members. The CFPB, which is not subject to congressional appropriations, is funded through the earnings of the Fed. The CFPB requests monetary transfers from the Fed with a cap on the amount of these transfers based on a formula set in statute. For FY2018, the CFPB's funding cap was $663 million, while the agency's net operating costs were $523 million.

CFPB Regulatory Authority

The CFPB generally has regulatory authority over providers of an array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, collection of consumer reporting data, and debt collection associated with consumer financial products. The authorities that the CFPB may exercise and the breadth of products, services, and entities that fall within its jurisdiction are considerable, but Dodd-Frank imposes some important exceptions to and limitations on those powers. The CFPB's authorities fall into three broad categories: *supervisory*, including the power to examine and impose reporting requirements on financial institutions; *enforcement* of various consumer protection laws and regulations; and *rulemaking*.

The CFPB is authorized to prescribe regulations to implement 19 federal consumer protection laws that largely predated Dodd-Frank. These "enumerated consumer laws" govern a broad and diverse set of consumer financial services and generally apply to any entity engaged in the business of offering those services. Dodd-Frank also provided CFPB new power to issue rules declaring certain acts or practices associated with consumer financial products and services to be unlawful because they are unfair, deceptive, or abusive. Other aspects of the CFPB's regulatory power—particularly the scope of its supervisory and enforcement authority—vary depending on an institution's size and whether it holds a bank charter.

Banks. Banks (which include institutions with a bank, thrift, or credit union charter) are regulated for *safety and soundness* as well as for *consumer compliance*. Safety and soundness, or *prudential*, regulation is intended to ensure an institution is managed to maintain profitability and avoid failure. The focus of consumer compliance regulation, by contrast, is to ensure institutions conform to applicable consumer protection and fair-lending laws.

Pursuant to Dodd-Frank, the CFPB acquired certain consumer compliance powers over banks that vary based on whether a bank holds more or less than $10 billion in assets (a common threshold for what qualifies as a *small bank* or a *community bank*). For banks with *more than $10 billion* in assets, the CFPB is the primary regulator for consumer compliance, whereas safety and soundness regulation continues to be performed by the bank regulator. For banks with *$10 billion or less* in assets, the rulemaking, supervisory, and enforcement authorities for consumer protection are divided between the CFPB and a bank regulator. The CFPB may issue rules that would apply to smaller banks, but bank regulators hold primary supervisory and enforcement authority for consumer compliance regulation of smaller banks.

Nonbanks. A nonbank financial institution is an institution that provides financial services but does not have a bank, thrift, or credit union charter. The CFPB may issue and enforce rules that affect many nonbank financial institutions, but the CFPB's supervisory authority over these institutions varies based on their activities and size.

The CFPB is authorized to supervise three groups of nonbanks. First, the CFPB supervises nonbanks, regardless of size, in three specific markets—mortgage companies (such as lenders, brokers, and servicers), payday lenders, and private education lenders. Second, the CFPB may supervise "larger participants" in certain consumer financial markets. The CFPB has some discretion to determine what those markets are and what constitutes a larger participant. Third, the CFPB may supervise a nonbank if, based on consumer complaints or other sources, the CFPB has reasonable cause to determine that the nonbank poses risks to consumers in offering its financial services or products.

Exempted Institutions. Dodd-Frank exempts some industries from the CFPB's regulatory jurisdiction. The CFPB generally does not have rulemaking, supervisory, or enforcement authority over automobile dealers; merchants, retailers, and sellers of nonfinancial goods and services; real estate brokers; real estate agents; sellers of manufactured and mobile homes; income tax preparers; insurance companies; or accountants. Certain business practices of these entities, however, could trigger CFPB regulatory authority, such as if they engage in an activity governed by an enumerated consumer law.

Policy Issues

This section highlights selected policy issues of congressional interest relating to the CFPB. Generally, policy debates concern whether CFPB policymaking appropriately balances protecting consumers, credit access, and costs to industry.

Payday Lending. Payday loans are designed to be short-term advances that allow consumers to access cash before they receive a paycheck. Often, these loans are designed to be paid back on a consumer's next payday. Payday loans are offered through storefront locations or online for a set fee. Generally, underwriting of these loans is minimal, with consumers required to provide little more than a prior paystub and checking account information to take out a loan. Many consumers "roll over" these loans shortly after the initial loan is due, which may result in these consumers being in debt for an extended period of time. Because consumers generally pay a fee for each new loan, payday loans can be more expensive than other credit products.

In October 2017, the CFPB finalized a rule covering payday, vehicle title, and other high-cost installment loans, with which lenders generally are expected to comply by August 2019. However, the CFPB has announced that it is reconsidering this rule and planning to propose changes in the near future.

The regulation of payday lending has been an area of intense disagreement. In particular, debate exists around the value of requiring lenders to determine whether consumers can reasonably pay back their loans before extending them credit. There is also disagreement about how to weigh a consumer's right to choose a particular financial product against the possible value of limiting loan terms that may encourage multiple rollovers that consumers might have difficulty repaying.

Fair Lending. The CFPB implements and, for certain entities, enforces various fair lending laws, including the Equal Credit Opportunity Act (ECOA; 15 U.S.C. §§ 1691-1691f) and the Home Mortgage Disclosure Act (HMDA; 12 U.S.C. §§ 2801-2811). These laws are intended to ensure that lenders do not discriminate against consumers on the basis of race, gender, or other protected bases. Dodd-Frank also requires the CFPB to maintain an Office of Fair Lending and Equal Opportunity.

Some Members of Congress have questioned whether the CFPB has appropriately defined and sufficiently articulated fair lending enforcement criteria to firms trying to comply with such criteria, while others have questioned the sufficiency of CFPB's enforcement of these laws.

Student Lending. Student loans are loans that allow students to pay for tuition and living expenses while they are in post-secondary school. The CFPB is the primary regulator for private student loan lending and servicing. However, most student loans are owned by the federal government. Unlike other types of credit, most federal student loans are accessible to all students without regard to creditworthiness, estimated future income, or other estimates of the student's ability to repay the loan. Federal student loan programs are managed by the Department of Education, which contracts out student loan servicing and sets standards in these contracts. The CFPB has asserted a role in ensuring compliance with consumer protection laws in federal student loan servicing.

Policymakers continue to debate the role that the CFPB should play in the federal student loan industry. Consumer groups advocate for more active enforcement of consumer protection standards. Yet, because the Department of Education already assumes a significant role in the regulation of federal student loans—and a substantial amount of default risk for their nonpayment—some have questioned the need for the CFPB to regulate in the same space.

Congressional Oversight. The CFPB's structure continues to spark debate among policymakers over whether it provides the agency an appropriate amount of independence, particularly from Congress and the President. The constitutionality of the CFPB's structure also is currently the subject of litigation. The CFPB's independence is achieved in part by the fact that it is headed by a director who, rather than serving at the pleasure of the President, may only be removed for cause. Moreover, although the CFPB Director is required to testify biannually before Congress and respond to congressional requests for information, the CFPB is funded outside the traditional appropriations process, which reduces congressional oversight. Some have argued that these structural elements improperly reduce accountability of the agency's decision making and activities. Others argue that the CFPB's structure allows the agency to meet its statutory obligations efficiently and with an appropriate amount of insulation from political pressures.

CRS Resources

CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*, by Darryl E. Getter.

CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by Henry B. Hogue, Marc Labonte, and Baird Webel.

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

IF10031

Disclaimer