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Updated January 4, 2021

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

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the Consumer Financial Protection Bureau (CFPB) to implement and enforce federal consumer financial law while ensuring that 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 in the CFPB certain consumer-finance-related responsibilities previously covered by other regulators 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 advice and 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 cannot veto a rule issued by the CFPB, but the Financial Stability Oversight Council, of which the Fed chairman is a member, can overturn a CFPB rule with the consent of two-thirds of its members. The CFPB is funded through the earnings of the Fed, not through appropriations. The CFPB requests monetary transfers from the Fed to the extent needed to fund its operations, subject to a cap based on a statutory formula. For FY2020, the CFPB's $580 million budget was below its $696 million cap.

CFPB Regulatory Authority

The CFPB is statutorily charged with implementing and enforcing consumer protection laws, leading financial education initiatives, collecting consumer complaints, and conducting consumer finance research.The CFPB 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 consumer debt collection. The authorities that the CFPB may exercise and the breadth of products, services, and entities that fall within its jurisdiction are considerable, but they are also subject to certain statutory exceptions and limitations. The CFPB's regulatory 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 *rulemaking*.

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

Banks. Banks (which include institutions with a bank, thrift, or credit union charter) are regulated for both *safety and soundness* and *consumer compliance*. Safety and soundness, or *prudential*, regulation is conducted by bank regulators and is intended to ensure that banks are managed to maintain profitability and avoid failure. Consumer compliance regulation is intended to ensure that banks conform to applicable consumer protection and fair-lending laws and, for banks above a certain size, is primarily the responsibility of the CFPB.

The CFPB's regulatory authority over banks varies 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. For banks with *$10 billion or less* in assets, the rulemaking, supervisory, and enforcement authorities for consumer protection are divided between the CFPB and the prudential bank regulators. The rules that the CFPB issues to implement the enumerated consumer laws apply to smaller banks, but bank regulators hold primary supervisory and enforcement authority for consumer compliance regulation of these 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's financial products or services pose risks to consumers.

Exempted Institutions. Dodd-Frank exempts some industries from the CFPB's regulatory jurisdiction. The CFPB generally does not have rulemaking, supervisory, or enforcement authority over automobile dealers; merchants, retailers, and sellers of nonfinancial goods and services; real estate brokers; real estate agents; sellers of manufactured and mobile homes; income tax preparers; insurance companies; or accountants. 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.

Selected Policy Issues

This section highlights selected policy issues of congressional interest relating to the CFPB, which generally concern how the CFPB balances protecting consumers, credit access, and costs to industry in its policymaking.

Payday Lending. Payday loans are short-term, small-dollar loans offered for a set fee. They allow consumers to access cash in advance of a paycheck or other scheduled payment (e.g., pension) with minimal underwriting conditions. Borrowers must typically write the lender a check for the loan amount that the lender can cash when the loan is due, typically on the borrower's next payday. However, many consumers "rollover" these loans or get new ones for a similar amount shortly after the initial loan is due for an additional fee. As a result, payday borrowers can remain in debt far beyond the original loan term, and in these cases, payday loans can cost much more than other credit products. In October 2017, the CFPB finalized a rule regulating payday and other high-cost installment loans. The rule would have, among other things, required payday lenders to verify that a borrower had the ability to repay the loan and restricted a lender's ability to access consumer bank accounts for loan repayment. However, in July 2020, the CFPB rescinded part of the 2017 rule, including its ability-to-repay provisions. Disagreement exists about how to weigh a consumer's right to access a particular financial product against the possible value of limiting loan terms that may encourage multiple rollovers that consumers might have difficulty repaying.

Debt Collection. When a consumer defaults on a debt, lenders often hire third parties to collect those debts. Because consumers have no say over the debt collectors that lenders choose, consumer protection laws and regulations governing collection practices may be particularly consequential. The CFPB has been actively engaged in rulemaking to clarify and update provisions of the Fair Debt Collection Practices Act (15 U.S.C. §§1692-1692p), which regulates the third-party debt collection market. In May 2019, the CFPB issued a Notice of Proposed Rulemaking, which generally seeks to clarify how debt collectors should communicate with consumers. Debate exists about whether the proposed rule's communication and other standards appropriately balance consumer protection concerns with costs to industry.

Financial Technology. Financial technology, or *fintech*, refers to financial innovations that apply new technologies to a financial service or product. Policy questions in this space generally relate to whether the current regulatory framework appropriately fosters the benefits of new technologies while mitigating potential risks to consumers. The CFPB has launched several programs designed to reduce regulatory uncertainty for fintech products, facilitate industry and stakeholder coordination, and promote research into fintech services and products.

The COVID-19 Pandemic. Since the onset of the Coronavirus Disease 2019 pandemic, many Americans have lost income and had difficulty making loan payments. The CFPB has responded by using its authorities to reduce the regulatory burden on industry and encourage loan forbearance and other financial relief options for affected consumers. However, how the pandemic will impact consumer credit markets in the future is unclear.

Agency Independence. Policymakers debate the degree of independence the CFPB should have from Congress and the President, with some arguing that the agency can operate more efficiently when insulated from political pressures, while others counter that such insulation decreases accountability. The CFPB, much like the banking regulators, is funded outside the traditional appropriations process, which limits congressional oversight over the agency. Although, as originally structured, the CFPB director could be removed from office only for cause, in *Seila Law v. CFPB*, the Supreme Court held that this statutory removal restriction violated the Constitution. As a result, the CFPB director now serves at the pleasure of, and may be removed at will by, the President. Some have called for legislation that would change the CFPB's funding and leadership structure consistent with *Seila Law* and other Supreme Court jurisprudence on agency independence.

CRS Resources

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

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

CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*

CRS Report R46477, *The Debt Collection Market and Selected Policy Issues*

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

CRS Report R46332, *Fintech: Overview of Innovative Financial Technology and Selected Policy Issues*

CRS Report R46356, *COVID-19: Consumer Loan Forbearance and Other Relief Options*

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

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