



Please contact our attorneys in our CFPB Task Force if you have any questions regarding this update.

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This week, President Obama is expected to usher in a new era of financial regulation by signing landmark reform legislation into law. Among other significant items, the law creates the Consumer Financial Protection Bureau, or "CFPB," and transfers to the CFPB responsibility for virtually all federal financial consumer protection laws. In fact, this authority will be so broad that many industry commentators believe that the CFPB will largely determine the near-term winners and losers in the consumer financial marketplace.

Among its responsibilities, the CFPB will take over direct or indirect supervision of most providers of consumer financial products and services, and will be empowered to declare individual acts or practices to be "unfair, deceptive or abusive" ("UDAP"). Thus, any organization operating in the consumer finance sphere—a broad group ranging from banks and thrifts to credit reporting agencies, payday lenders, debt settlement entities and many others—is likely to be impacted by the operations and decisions of the Bureau.

To assist our clients and friends in navigating this new regulatory landscape, Venable LLP is pleased to announce the formation of a Task Force to focus on the organization and operation of the CFPB. Bringing together attorneys with exceptional depth of experience in relevant industries and regulatory agencies, the Task Force will provide insight into the CFPB's operations and policy decisions, and will represent clients in the rulemaking, investigation, and enforcement proceedings that will shape this area of law.

Accordingly, Venable's CFPB Task Force is pleased to present this initial overview of the CFPB, including a discussion of its structure and organization, primary authorities, jurisdiction, and probable implementation process, as well as significant legal issues for the consumer financial services industry.

The Structure and Organization of the CFPB

The CFPB will be an independent bureau housed within the Federal Reserve Board ("FRB") and funded out of FRB revenues. As an independent bureau within a federal agency that exists outside of the Executive Branch, the CFPB may be insulated from many of the usual political influences associated with federal administrative functions.

The CFPB will be led by a Director, who will be appointed by the President and confirmed by the Senate for a set term of five years. In contrast to other agencies with voting boards that hold mandates to oversee important components of our economy, the Director will be solely responsible for the CFPB's issuance of regulations, enforcement and policy development.

The Director will be responsible for organizing several functional units and offices within the CFPB, including the following:

- Research
- Community Affairs
- Consumer Complaint Function
- Office of Fair Lending and Equal Opportunity
- Office of Financial Education
- Office of Service Member Affairs
- Office of Financial Protection for Older Americans
- Consumer Advisory Board

In addition, because the CFPB will have direct examination and supervision authority over all non-exempted (or partially exempted) providers of consumer financial products and services—termed "covered persons"—the Director will be responsible for recruiting and organizing an examination, supervision and enforcement staff that ultimately may dwarf the size of comparable staffs at the federal banking agencies.

The CFPB's Primary Authorities

In an effort to centralize and coordinate federal financial consumer protection efforts, the CFPB has been given extraordinary authority in the following primary areas:

- Federal Financial Consumer Protection Laws—The CFPB will receive interpretative and rule-making authority over 17 federal consumer protection laws, including the Truth-in-Lending Act and the Real Estate Settlement Procedures Act. Even in instances in which other state or federal agencies will continue to exercise primary examination authority, the responsibility for issuing regulations and interpretations for virtually all federal financial consumer laws will now reside with the CFPB.
- Enhanced Consumer Disclosure Authority—In addition to the above-mentioned individual consumer protection laws, the CFPB has been given separate authority to require new disclosures for all consumer products and services. This authority would permit, for example, expanding upon loan program disclosures beyond what is required by Regulation Z for categories of loans that have been subject to criticism by many consumer groups, such as payday loans and certain mortgage products.
- Expansive UDAP Authority—In order to address concerns about unfair treatment of consumers by providers of consumer financial products and services, the CFPB has been given broad authority to declare acts or practices related to the delivery of a consumer financial product or service to be "unfair, deceptive or abusive."
- Examination, Supervision and Enforcement—Except for exempted financial service providers, the CFPB has been given authority to examine and enforce consumer laws against large depository institutions and their holding companies and affiliates, as well as literally thousands of companies not previously directly regulated by the federal government.

Coverage and Exemptions

Upcoming CFPB Events

Legislative Taskforce Brown Bag Lunch: Wall Street Reform Act: Creation of a New Consumer Protection Agency

Monday, July 26th
12:00 - 2:00 pm EST

[Venable DC Office](#)

Program Description: The new Consumer Financial Protection Bureau will have sweeping authority to regulate financial products and services. The speakers will discuss the implications of this new regulatory body and how it will change the regulatory landscape.

[Click here](#) to register.

New Financial Reform Package: An Analysis of Dodd-Frank for Lawyers and Related Professionals

Monday, July 26th
2:00 - 3:30 pm EST
Telephone and Audio Webcast

Program Description: This program will focus exclusively on the Dodd-Frank Wall Street Reform and Consumer Protection Bill, the most significant and comprehensive financial services legislation that Congress has enacted since the Great Depression. Almost every type of depository or financial institution will be affected, either in the manner in which it is regulated or the manner in which it will be permitted to operate. You'll need to understand and absorb this brave new world of financial regulation.

[Click here](#) to register.

It may come as a surprise to many participants in the consumer financial services market that some or all of their activities will now be subject to direct or indirect supervision by the CFPB. In addition, many non-core business initiatives that include consumer financial components will have to be analyzed to determine whether the CFPB might be capable of asserting jurisdiction.

While a full analysis of the CFPB's reach is beyond the scope of this Alert, as a general matter, the CFPB will have jurisdiction over all non-exempted persons and entities that provide a consumer financial product or service to a consumer. It is noteworthy that, unlike most federal regulatory schemes that focus on charter form (such as banking), the CFPB's jurisdiction will cut across all individuals and corporate forms and focuses on the fact that a consumer financial product or service is being delivered.

Covered persons include the following:

- Banks, thrifts, and credit unions
- Consumer finance lenders
- Mortgage loan originators, loan servicers and brokers
- Currency exchanges
- Real estate settlement companies, appraisers, appraisal companies, and appraisal management companies
- Consumer credit reporting agencies
- Debt collectors
- Debt settlement and management services
- Check cashing, collection, or guaranty services
- Lenders and brokers in certain lease-to-own arrangements
- Financial and investment advisors (not registered with the Securities and Exchange Commission)
- Payday lenders
- Credit counselors
- Broker-dealers, non-depository trust companies, and deposit intermediation services
- Service providers and related persons of covered persons
- Some sellers or issuers of stored value cards and instruments
- Money services businesses, money transmitters, and wire transmitters
- In limited cases, tax preparers, accountants, merchants or retailers, and attorneys
- Financial data processors, including data storage providers, transmission services, and software and hardware providers

In a compromise heavily fought for by depository institutions, banks, thrifts and credit unions (including affiliates) with assets less than \$10 billion will continue to be examined by their respective prudential regulators. Large depository institutions with assets over \$10 billion, however, will be directly examined by the CFPB.

While the definition of "covered persons" is very broad, it remains to be seen whether the CFPB will be capable of asserting direct supervision over every category of covered person—particularly during the initial stages of the CFPB's organizational efforts. For example, it is possible that the CFPB may delegate to other regulatory authorities the task of examining and supervising entities not exempted from direct CFPB supervision, such as state-licensed lenders.

While the majority of consumer financial service providers were not able to obtain exemptions from CFPB jurisdiction, several industry groups were successful (or partially successful) in their efforts to be exempted. These include:

- Investment advisors and other Securities and Exchange Commission-regulated parties
- Commodity Futures Trading Commission-regulated parties
- State securities commission-regulated parties
- Farm Credit Administration-regulated parties
- Real estate brokers
- Insurance companies
- Certified public accountants and income tax preparers
- Merchants or retailers of nonfinancial products and services
- Mobile home retailers
- Auto dealers
- Employee benefit plans
- Charitable organizations

It is important to note that the exemptions identified above generally relate to core business activities and arguably may not extend to ancillary businesses that involve consumer financial services and products. The CFPB will likely issue regulations that will circumscribe the scope of any exemptions that are enjoyed by these entities. It is also probable that, as part of the rulemaking process, many covered persons will attempt to obtain exemptions for specific products and business activities.

Accordingly, exempted businesses should closely monitor regulatory developments as the CFPB interprets the scope of exemptions from its direct or indirect regulatory jurisdiction.

The Implementation Process

Although the CFPB may eventually grow into a sizable government agency, there are several necessary organizational hurdles that it must address.

The first is staffing. Other than staff from the Office of the Comptroller of the Currency, there is no mandated transfer of personnel from federal agencies to the CFPB. Thus, the Director will be required to negotiate with other federal agencies in order to recruit a staff. Because of the required number of functional offices that must be created, this task may take a considerable period of time to accomplish.

The second is the organizational challenge of assembling an examination and supervision staff. Because the CFPB's jurisdiction is based upon function and not charter form, any effective examination processes must be capable of accommodating the various industry segments and their respective approaches to consumer compliance. Moreover, with the exception of banking organizations and their examination policies and procedures, the CFPB will be faced with the task of drafting new examination procedures that must accommodate different approaches to effective compliance.

Finally, and most importantly, virtually every aspect of the creation and functions of the CFPB will depend upon the administrative rulemaking process, including the transfer of federal consumer protection statutes to the CFPB, the issuance of guidance regarding the CFPB's interpretation of key statutory terms and provisions, and the negotiation of relationships with other federal agencies and

state licensing authorities. Even assuming the successful assembly of a core operating staff for the CFPB, it is difficult to imagine how these initial administrative tasks can be completed within twelve to eighteen months.

Within sixty days of enactment, the Secretary of the Treasury is required to designate a "transfer date" in six to twelve months, on which the CFPB will become operational (with the flexibility to extend the transfer date by an additional year). Until the appointment of the Director, the Secretary of the Treasury is authorized to exercise the powers granted to the CFPB.

Significant Legal Issues for the Consumer Financial Industry

While space does not permit a complete analysis of all of the legal concerns that consumer financial product and service providers must consider, several of the more significant questions for industry are as follows:

- Use of UDAP Authority
- Federal Preemption
- Coverage Determinations
- Examination and Supervision
- Interaction with the Federal Trade Commission, the Federal Banking Agencies and State Regulators

In the weeks and months ahead, Venable will be addressing such evolving legal issues in separate alerts and materials. To sign up to receive future alerts on this and other pertinent legal topics, please visit www.Venable.com/subscriptioncenter.

About Venable's CFPB Task Force

We are dedicated to providing our thoughts and observations on the CFPB and the impact that its policy determinations will have on the current and long-term businesses of consumer financial product and service providers. Task Force updates and materials can be found at www.Venable.com/cfpb-task-force.

Please note that many of the topics discussed in this Alert are summary in nature, and will continue to evolve as the CFPB commences its operations.

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