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# A Brief Overview of the CFPB

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## Overview

- How we ended up with the CFPB
- Who is covered by the CFPB
- How the CFPB is structured
- CFPB staffing
- Regulatory, supervisory, and enforcement powers of the CFPB
- Preemption matters with the CFPB
- Politics surrounding the CFPB



# Background – The “Great Recession”

- Subprime loan crisis
- Housing bubble bursts
- Sept. 7, 2008 - Federal government takes over Fannie Mae and Freddie Mac
- Sept. 14, 2008 - Lehman Brothers files for bankruptcy
- Sept. 16, 2008 - Federal government emergency \$85B loan to AIG
- Sept. 19, 2009 – Treasury Sec. Paulson announces the Troubled Asset Relief Program (TARP)
- Sept. 25, 2009 - Washington Mutual shutdown (largest U.S. thrift failure)
- Sept. 29, 2008 – Dow Jones Industrial Average plummets 777 points
- Nov. 2008 – Obama elected President of the U.S.
- Dec. 2008 – Fed cuts its main interest rate to 0 to 0.25 percent
- Feb. 2009 – Congress approves and Obama signs into law \$787B economic stimulus plan
- Mar. 2009 – unemployment for Feb. reported at 8.1%
- Apr. 2009 – Chrysler files for bankruptcy
- June 2009 – General Motors files for bankruptcy
- June 17, 2009 – President Obama proposes plan to create a Consumer Financial Protection Agency (“CFPA”)
- July 21, 2010 – President Obama signs the Dodd-Frank Act, which establishes the Consumer Financial Protection Bureau (“CFPB”)



## Background: Dodd-Frank Act, Title X

- July 21, 2010 – President Obama signs the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376
  - Title X – “Consumer Financial Protection Act”
    - *Establishes a new Consumer Financial Protection Bureau (CFPB) within the Federal Reserve System*

***July 21, 2011 = Designated Transfer Date***



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Signing the Wall Street Reform and  
Consumer Protection Act

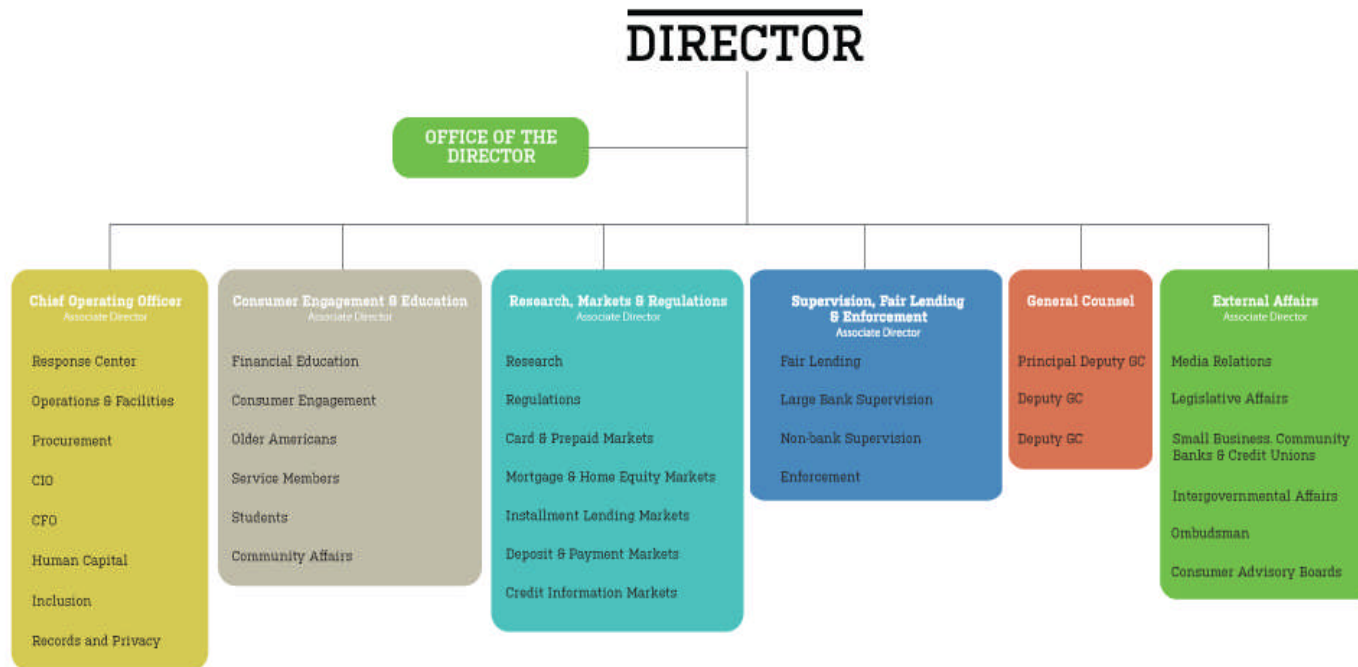


## Who is covered by the CFPB?

- 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 SEC)
- 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



# CFPB Structure

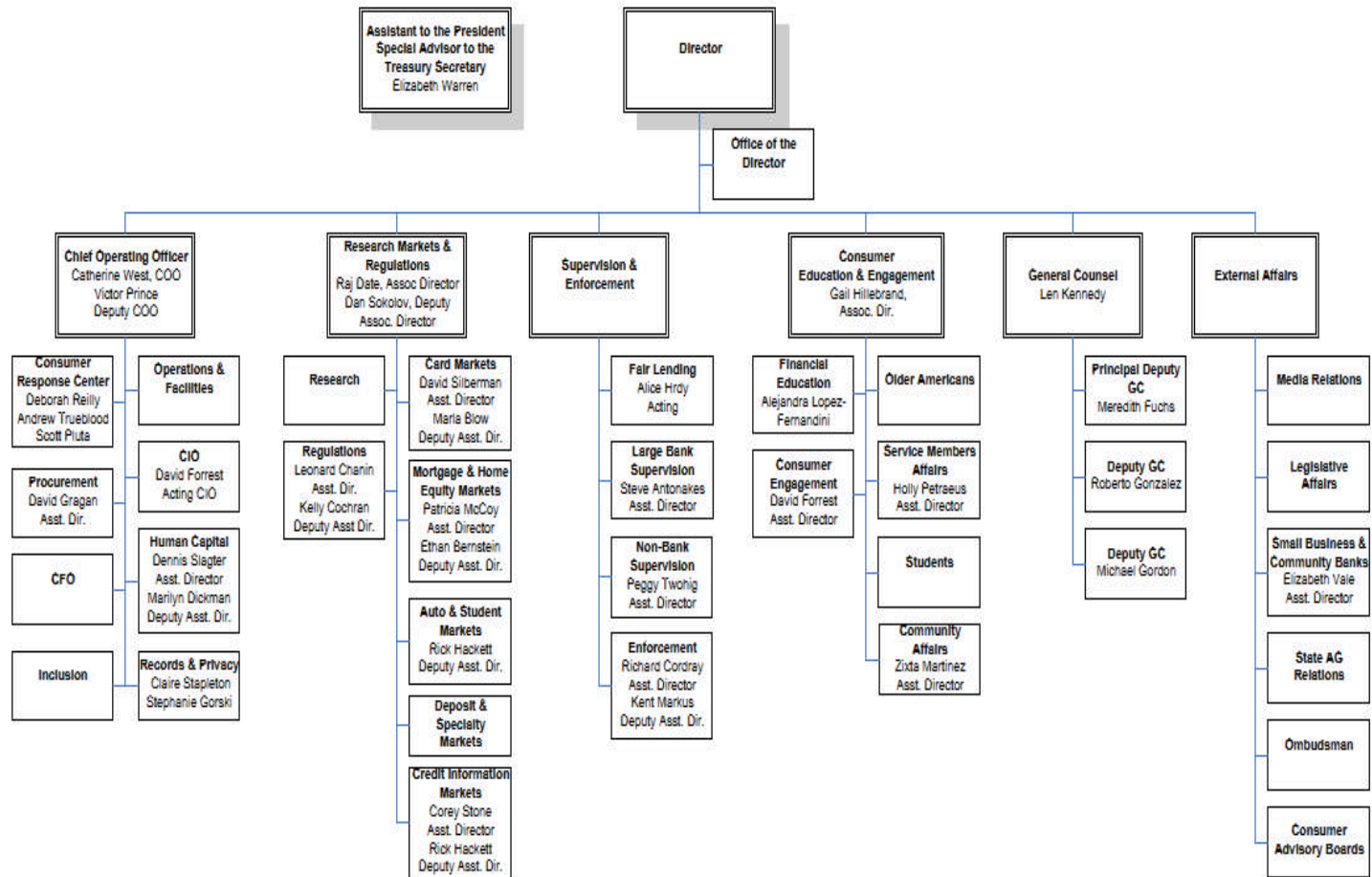


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# CFPB Staffing

## Organizational Chart of the CFPB



# CFPB Rulemaking Authority

- General Authority: The CFPB is granted broad rulemaking authority to issue rules, orders, and guidance “as may be necessary or appropriate” to carry out the objectives of federal consumer financial law. Sec. 1022
- General Standards for Rulemaking:
  - Cost-benefit analysis (*incl. reduction of access to consumer financial products or services*)
  - Consult with prudential and other regulators before issuing rule
- UDAP + Abusive: CFPB can prescribe rules identifying unlawful unfair, deceptive, or abusive acts or practices. Sec. 1031(b)
- Exclusive Rulemaking Authority: CFPB has exclusive rulemaking authority if both CFPB and another federal agency have authority to issue rules under federal consumer financial law
- Review of Regulations: Financial Stability Oversight Council (“FSOC”), by 2/3 vote, can stay effectiveness of CFPB regulation posing risk to safety and soundness





# “Enumerated Consumer Laws”

- Truth in Lending Act (“TILA”)
- Electronic Funds Transfer Act (“EFTA”)
- Equal Credit Opportunity Act (“ECOA”)
- Fair Credit Reporting Act (“FCRA”)
- Fair Debt Collections Practices Act (“FDCPA”)
- Gramm-Leach-Bliley Act (“GLBA”) provisions re disclosure of nonpublic personal information
- Home Mortgage Disclosure Act (“HMDA”)
- Home Ownership and Equity Protection Act (“HOEPA”)
- Interstate Land Sales Full Disclosure Act
- Real Estate Settlement Procedures Act (“RESPA”)
- S.A.F.E. Mortgage Licensing Act (“SAFE Act”)
- Truth in Savings Act
- Alternate Mortgage Transaction Parity Act
- Consumer Leasing Act



# Supervisory Authority

- Nondepository Covered Persons
  - Payday lenders
  - Private student loan providers
  - Participants in residential mortgage industry
  - Any covered person that is a “larger participant of a market for other consumer financial products or services”
  - Any covered person the CFPB determines “poses risks to consumers with regard to the offering or provision of consumer financial products or services”
- Reports and examinations of nondepository covered persons
- CFPB exclusive authority to enforce compliance  
(*exception for FTC ... FTC and CFPB will sign MOU*)



# Supervisory Authority

- Very Large Banks and Credit Unions with \$10 billion in assets
  - CFPB may require reports and conduct examinations
  - CFPB primary enforcement authority re federal consumer financial law
- Banks and Credit Unions with \$10 billion or less in assets
  - Prudential regulators conduct examinations
  - Prudential regulators retain enforcement authority



# Enforcement Authority

- UDAP + Abusive
  - CFPB may take actions to prevent a covered person or service providers from committing or engaging in an “unfair, deceptive, or abusive act or practice.” Sec. 1031(a).
  - Unfairness: CFPB reasonable basis to conclude:
    - (1) act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, *and*
    - (2) substantial injury not outweighed by countervailing benefits to consumers or competition
    - \* public policy *not* serve as primary reason for determination
  - Abusive: act or practice:
    - (1) materially interfere with ability of consumer to understand a term/condition of a consumer financial product or service, *or*
    - (2) take unreasonable advantage of: (a) consumer’s lack of understanding of the associated material risks/costs/conditions, (b) consumer’s inability to protect interests in selecting/using consumer financial product or service, or (c) consumer’s reasonable reliance on a covered person to act in consumer’s interest
  - Deceptive: *no standards specified in the law*



# Enforcement Authority

- Subtitle E – Enforcement Powers (*enforcement powers additionally discussed elsewhere throughout law*)
- CFPA enforcement authority includes power to:
  - Conduct investigations (*incl. power to issue subpoenas and civil investigative demands*)
  - Conduct hearings (*can issue cease-and-desist orders, require affirmative action*)
  - Commence civil actions
- Civil Penalties: \$5k/day for federal consumer financial law violations; \$25k/day for reckless violations; \$1M/day for knowing violations
- Additional Relief: rescission or reformation of contracts, refunds, restitution, disgorgement for unjust enrichment, damages or other monetary relief, limits on activities and functions.
- State Attorneys General:
  - Generally authorized to bring civil actions in the name of their states to enforce provisions of the law or regulations
  - Against national banks and savings associations, may only bring civil suits to enforce CFPB regulations
- Federal Trade Commission: CFPB and FTC will negotiate an agreement to coordinate enforcement actions. Sec. 1024(c)(3).



# Preemption

- State Law:
  - Law does not preempt state law except to extent it is inconsistent with Dodd-Frank
  - More restrictive state laws apply
  
- National Banks and Federal Thrifts: state consumer financial law preempted by a court of the OCC only if three conditions are met:
  - (1) it would have a discriminatory effect on national banks or federal thrifts
  - (2) in accordance with the preemption standard in *Barnett Bank of Marion County, N.A. v. Nelson*, the law “prevents or significantly interferes with the exercise by the national bank of its powers”
  - (3) it is preempted by another federal law



## Continuing Political Discussion Post-Passage of the Dodd-Frank Act

- H.R. 87, A Bill to Repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act
- HR 1121: The Responsible Consumer Financial Protections Act of 2011
- HR 1315: The Consumer Financial Protection Safety and Soundness Improvement Act of 2011
- HR 1667: The Consumer Financial Protection Transfer Clarification Act
- May 5, 2011: 44 Senate Republicans send letter to President Obama indicating no confirmation for any CFPB director nominee until structural changes made to CFPB



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# Questions?

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