



Summary of Administration-Drafted “Consumer Financial Protection Agency Act”

Mission of the CFPA

- Ensure that consumers have comprehensible information they can use to make responsible financial decisions.
- Protect consumers from abuse, unfairness, deception and discrimination.
- Ensure that markets for consumer financial products operate fairly and efficiently, and can grow and innovate.
- Ensure that the underserved have access to financial services.
- The Agency shall seek to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products.

Composition of CFPA

- Five members, appointed by the President and confirmed by the Senate, serving 5-year terms.
- Four are to be experts in consumer finance, and the fifth is the National Bank Supervisor. (No other banking agencies are represented)

Funding

- While the CFPA is entitled to an annual appropriation, it is also given the authority to assess annual fees or assessments on all firms within its jurisdiction.
- The basis for these fees and assessments can include:
 - Outstanding volume of consumer credit accounts
 - Total assets under management
 - Individual consumer financial transactions
- Any civil penalties collected by an Agency action shall be used to pay back victims of abusive financial practices.

Scope of Authority

- *Covered firms:* Any firm that directly or indirectly is involved with the provision, servicing, processing, or transacting of a consumer financial product or service, or financial activity, is within the jurisdiction of the CFPA.
- A “*financial activity*” includes:

- Deposit-taking; extending credit and servicing loans; check-guaranty services; debt collection; real estate settlement; leasing personal or real property; acting as an investment adviser; financial data processing; or any other activity the Agency wants to include.
- All “consumer financial protection” functions, including certain employees, at the Fed, OCC, OTS, FDIC, FTC, and NCUA are transferred to the CFPA (but not HUD employees).
- CFPA is given jurisdiction over the following statutes:
 - Community Reinvestment Act
 - Consumer Leasing Act
 - Electronic Funds Transfer Act
 - Equal Credit Opportunity Act
 - Fair Credit Billing Act
 - Fair Credit Reporting Act, except red flag guidelines, affiliate sharing, and disposal of records
 - Fair Debt Collection Practices Act
 - FDIC Act relating to consumer provisions
 - GLBA relating to disclosure of personal information
 - HMDA
 - HOEPA
 - RESPA
 - SAFE Mortgage Licensing Act
 - Truth in Lending Act
 - Truth in Savings Act
 - Alternative Mortgage Transaction Parity Act
- *Exclusive Rulemaking:* The CFPA is authorized to prescribe rules, periodically examine, require reports from, and issue orders for all firms under its jurisdiction. As part of this, the Agency is tasked with monitoring the marketplace for anti-consumer products or services.
 - It appears the CFPA has precedence in the event of a conflicting interpretation of a consumer protection rule over any other federal agency.
- *Enforcement:* The Agency is also given primary enforcement authority, including subpoena power and the ability to issue cease-and-desist orders, for the consumer laws under its jurisdiction.
- CFPA is not permitted to establish usury limits on credit extensions.
- The Agency is given the option of exempting any specific firm or group of firms (presumably this could include community banks), or single consumer product or service from its rulemaking based on specific factors including:
 - Total assets
 - Total volume of transactions involving consumer products
 - The extent to which the firm engages in one or more financial activity

Specific Authorities

- The CFPB has broad authority to write rules, in consultation with other Federal banking agencies as it deems appropriate, to identify and prohibit acts or practices it considers abusive, unfair, or deceptive.
 - In identifying an unfair practice, the Agency must apply a “reasonableness” standard, weighing the likelihood of substantial injury against potential countervailing benefits to consumers or competition.
- *Consumer disclosures*: the CFPB is tasked with writing new rules governing consumer disclosures, with a mandate to ensure that any disclosure informs a consumer of all risks and costs in a clear and concise manner.
 - For mortgage loans, the Agency is tasked with creating a model disclosure combining the requirements of TILA and RESPA into a single document.
 - For all other consumer products, the Agency will develop procedures for approving pilot disclosures created by individual firms.
 - For non-bank firms, the states are “encouraged” to write their own rules to deter unfair and abusive practices.
- “*Standard consumer financial products or services*”:
 - The Agency shall define what a “standard consumer financial product or service” is, and shall consider the following factors: is the product readily available by any firm that offers any other product; transparent; low-risk; and does it allow a consumer to compare costs and benefits; and does it contain any other features the Agency deems appropriate.
 - Firms may not offer an alternative product to a consumer without: first, offering a “standard” product, second, warning the consumer about the heightened risk of the alternative product, and third, giving the consumer the opportunity to decline the standard product, unless the alternative product has been approved – after public notice and comment – by the CFPB.
 - The Agency may impose duties of care onto firms in the way they deal with their customers directly, i.e. that the person interacting with the consumer is acting in the best interest of the consumer, and that any advice given to a consumer can be justified. However, no private rights of action are permitted.
 - The Agency may also write rules on compensation practices for those who directly interact with consumers, but stops short of giving authority to set limits on total dollar amounts of compensation.

Preemption

- Nothing in the proposed bill preempts state law. Any action by the Agency shall be considered a federal “floor,” and states may enact measures that are stricter.
- State attorneys general may bring a civil action for violation of any rule the CFPB finalizes.

Additional Provisions of Note

- *Mandatory arbitration* clauses: the agency may restrict the use of mandatory arbitration at its discretion.
- *Start up*: until the Senate confirms 3 board members, the Treasury will run the agency.

- *Collection of deposit account data:* at every location at which a consumer can make a deposit (including every branch and ATM), every bank must maintain records of the number and dollar amounts of deposit accounts of customers.
 - The information shall be geo-coded along the census tracts of the consumer.
 - The information shall be made available to the public and CFPB, which shall use the data on branches and deposit accounts as part of the examination of the bank under CRA, as well as to assess the distribution of accounts across income and minority populations.
- *Collection of small business loan data:* banks are required to ask business loan applicants whether the business is a women- or minority-owned business and maintain a record of the responses, if they are given.
- *Accuracy of credit bureau information:* the CFPB is directed to write new rules governing the accuracy and integrity of information a bank submits to a credit reporting agency.
- *Funding for Mortgage Registry:* the proposal gives the CFPB, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry authority to charge fees to cover the costs of maintaining the nationwide database, but fees may not be charged to consumers.
- *Electronic information:* All covered firms are required to make electronically available to consumers information about financial products or services that a consumer has obtained, including information relating to any transaction, account costs, charges and usage data.