

July 21, 2010

Financial Regulatory Reform: Establishment of Bureau of Consumer Financial Protection

On July 15, 2010, the Senate approved the conference report for H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The House had approved the conference report on June 30. The bill was signed into law by President Obama on July 21. The Act includes a number of important provisions of interest, which we will address in a series of Alerts to our banking clients. The Act provides for the establishment of a new consumer financial protection agency to be known as the Bureau of Consumer Financial Protection (the "Bureau"). A summary of the objectives and duties of the Bureau is as follows:

Objectives and General Authority of the Bureau

General Authority

The Bureau has broad rulemaking, supervisory, examination and enforcement powers over "covered persons," which are persons that provide "consumer financial products and services." Consumer financial products and services are broadly defined under the Act to include, among others, the following activities directed at consumers:

1. Lending and servicing loans
2. Extending or brokering capital leases
3. Deposit-taking activities and the transmission or exchange of funds
4. Check cashing and clearing services
5. Providing real estate settlement services (to the extent not expressly excluded)
6. Providing payments or other financial data processing services by technological means
7. Providing financial advisory services
8. Debt collection



Related practice areas:

[Financial Services Regulation](#)

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The Act provides for certain specified exceptions to the definition of covered persons. Most notable among these exceptions are:

1. persons regulated by the SEC, including registered broker-dealers, registered investment advisers, registered investment companies and the like;
2. persons regulated by the U.S. Commodity Futures Trading Commission, to the extent their activities are subject to the jurisdiction of the CFTC under the Commodity Exchange Act; and
3. persons engaged in the business of insurance and regulated by any state insurance regulator.

Other exceptions to the definition of covered persons include motor vehicle dealers, real estate agents and brokers, accountants and tax preparers, attorneys, employee benefit and compensation plans, persons engaged in activities relating to charitable contributions, and sellers of nonfinancial goods or services. However, certain of these exceptions are limited.

The Bureau has exclusive authority to issue regulations, orders and guidance to administer and implement the objectives of federal consumer financial protection laws (e.g., Truth in Lending Act, Equal Credit Opportunity Act and RESPA). In carrying out its rulemaking authority, the Bureau will consider factors such as the likely risks to consumers related to certain financial products and services, consumers' understanding of risks and costs for different financial products and services, the legal protections available to consumers, and the pertinent characteristics of different categories of covered persons.

Supervisory and Rulemaking Authority

The Bureau is authorized to conduct examinations on a periodic basis to assess compliance with federal consumer financial laws and the effectiveness of a covered person's compliance programs and activities. To accomplish this, the Bureau will establish a supervision program based on an assessment of the risks in certain products and geographic areas, taking into consideration the asset size of the covered person, the covered person's volume of transactions in consumer financial products and services, risks to consumers created by these products and services, and the extent to which the covered person is subject to oversight by state authorities for consumer protection.

The Bureau has access to examination reports on covered persons made by other federal regulatory agencies and will grant other federal and state regulatory agencies access to examination reports on covered persons prepared by the Bureau.

For insured depository institutions and credit unions with total assets of more than \$10 billion, or any affiliate of these entities, the Bureau has:

1. exclusive rulemaking authority to issue rules under any federal consumer financial law;

2. exclusive examination authority to assess compliance with federal consumer financial laws; and
3. primary enforcement authority with respect to federal consumer financial laws.

For insured depository institutions and credit unions with total assets of less than \$10 billion (no reference is made to affiliates in the Act, but service providers are covered), the Bureau:

1. has exclusive rulemaking authority to issue rules to the extent authorized to do so under any federal consumer financial law;
2. may participate in examinations by prudential regulators to assess compliance with federal consumer financial laws; and
3. has no enforcement authority with respect to federal consumer financial laws, since these entities' prudential regulators will have exclusive enforcement authority.

Authority over Nondepository Covered Persons

The Bureau also has authority to supervise all nondepository institutions participating in the consumer mortgage market, the student loan market and the payday loan market.

Specific Authority of the Bureau

The Bureau may take any action to prevent a covered person from committing or engaging in unfair, deceptive or abusive acts or practices in connection with the offering or providing of a consumer financial product or service.

The Bureau may prescribe model disclosures as safe harbors so that any covered person using these model disclosures will be in compliance with the applicable disclosure requirements.

The Bureau will establish procedures for providing timely responses to consumers for complaints against or inquiries about a covered person and timely responses by covered persons to the Bureau concerning consumer complaints or inquiries. The Bureau will also establish rules requiring a covered person to respond timely to consumer requests for information concerning the consumer's purchase of a consumer financial product or service.

Enforcement Powers

The Bureau may institute investigations against any covered person, issue subpoenas, make demands for the production of records, commence civil actions, conduct hearings, issue cease and desist orders, and assess civil monetary penalties.

If the Bureau obtains evidence that a person has engaged in conduct that may constitute a violation of federal criminal law, the Bureau will forward

the evidence to the United States attorney general, who may institute criminal proceedings.

Organization of the Bureau

The Bureau is an independent agency within the Federal Reserve System that is headed by a director appointed by the President and confirmed by the Senate for a five-year term. In addition to having divisions for research, community affairs and consumer complaints, the Bureau will establish and maintain an Office of Fair Lending and Equal Opportunity, an Office of Financial Education, an Office of Service Member Affairs and an Office of Financial Protection for Older Americans. A Consumer Advisory Board will also be established. This board, which will comprise six members (including experts in civil rights) recommended by the Federal Reserve Bank presidents, is designed to bring a broad spectrum of perspectives together to advise the director of the Bureau.

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