

CONSUMER FINANCIAL PROTECTION BUREAU

OVERVIEW

by

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CFPB: Overview

- The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) was established by Title X of the Dodd-Frank Wall Street Reform Act and the Consumer Protection Act as an independent bureau within the Federal Reserve Board (“Board”)
 - The Board provides the Bureau’s base funding
 - But the Board may not intervene in the Bureau’s activities
- The Bureau has supervision, enforcement, rulemaking authority
 - Also authority for financial literacy, complaints and related research
 - The Bureau is responsible for consumer financial products and services offered by both banks and non-banks
 - The Bureau also is directed to ensure that markets for consumer financial products and services are fair, transparent and competitive

CFPB: Organization

- The Bureau has a single director
 - Appointed by President, confirmed by Senate
 - 5-year term
 - Interim management: Treasury Department
- Designated transfer date
 - The date when authority over specific consumer protection statutes and regulations transferred to the Bureau
 - The designated transfer date was July 21, 2011
 - Transfer of laws and rulewriting authority for 18 major federal consumer protection statutes
 - Transfer of personnel from other agencies as well

CFPB: Funding

- Funded by the Federal Reserve Board
- 10% of Federal Reserve System's operating budget
 - \$400 to \$600 million in year one
- Not funded by annual appropriations, user fees, or litigation recovery
 - However, \$200 million in supplemental appropriations is available
 - And the Bureau can fund some activities through the imposition of civil penalties
- Compare:
 - FTC \$300 million (1,200 full-time employees)
 - OCC \$800 million
 - SEC \$1.1 billion

CFPB Jurisdiction: Covered Persons

- Covered Person
 - Any entity engaged in offering or providing “*Consumer Financial Products or Services*,” and
 - Any affiliated service provider
- Service Provider
 - Any entity that provides material service—for example, design, operation, maintenance, processing—to a Covered Person in connection with offering a Consumer Financial Product or Service
 - Not a “Covered Person” but still subject to Bureau rulemaking, supervision and enforcement authority

CFPB: Substantive Jurisdiction

- Consumer Financial Products or Services
 - Extending credit, servicing loans, brokering loans
 - Deposit-taking activities
 - Issuing stored value cards
 - Payment processing
 - Check cashing
 - Analyzing, collecting, maintaining credit report information
 - Debt collection
- Does not include
 - Insurance
 - Securities and commodities trading
- Bureau has authority to define the coverage definition
- Thus, the Bureau has the ability to expand its own authority

CFPB: Jurisdiction

- Excluded Persons
 - Retailers (retailing excluded, but consumer financial activities of retailers can still be covered)
 - Motor vehicle dealers (includes autos, boats, RVs)
 - Real estate brokerage
 - Insurance
 - Securities
 - Regulated by CFTC
 - Manufactured home retailers
 - Accountants, tax preparers
 - Attorneys
- However, excluded persons can still be impacted by the Bureau's rules and guidance, even if those rules are enforced by someone else

CFPB: Rulemaking Authority

- CFPB has rulemaking authority over all covered persons and other entities covered by the 18 transferred enumerated consumer laws, including
 - Electronic Fund Transfer Act
 - Equal Credit Opportunity Act
 - Fair Credit Reporting Act
 - Fair Debt Collection Practices Act
 - Privacy provisions of the Gramm-Leach-Bliley Act
 - Real Estate Settlement Procedures Act
 - Truth in Lending Act

CFPB: Rulemaking Authority

- States can petition the Bureau for a rule, which the Bureau must then propose
 - Majority of states must request
 - Proposal must offer greater consumer protections
 - Benefits to consumers under the proposal must be greater than costs
 - Proposal should not threaten safety and soundness
- Bureau failure to propose rule requires explanation to the states and Congress

CFPB: Jurisdiction

- Parts of other laws are transferred
 - GLBA (privacy to Bureau; data security remains with FTC and functional regulators)
 - Federal Deposit Insurance Act (amended to require referral of consumer violations)
- What is not included:
 - Red flags
 - Data disposal
 - Community Reinvestment Act
 - FTC Act
 - But the Act was amended to remove rulemaking authority for bank agencies

CFPB: Unfair, Deceptive and Abusive Authority

- The Bureau has broad authority to issue regulations prohibiting “unfair, deceptive or abusive” acts or practices
- The Bureau must coordinate any such rulemaking with the FTC
- Unfairness: 3-part test – injury, unavoidable, cost/benefit analysis
- Deception: representation or omission that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer’s detriment

CFPB: Unfair, Deceptive and Abusive Authority

- “Abusive” is defined to include an act or practice that:
 - Materially interferes with the ability of a consumer to understand the terms or conditions of the product or service, or
 - Takes unreasonable advantage of:
 - A lack of consumer understanding of risks, costs, or conditions
 - The inability of the consumer to protect his or her own interests in selecting or using product or service
 - The reasonable reliance by the consumer on the Covered Person to act in the consumer’s interests
- Interaction with deception and unfairness:
 - No “reasonable consumer” standard?
 - Consumer’s ability to rely on a Covered Person to act in consumer’s best interests?
 - Suitability and/or fiduciary standards?
- Interaction of Abusive and definition of Fair Lending

CFPB: Limitations on Rulemaking Authority

- The Bureau may not impose usury limits
- Bureau is subject to the Administrative Procedure Act
- The Bureau must consider:
 - Costs and benefits and the potential reduction in access to credit
 - Impact on banks with less than \$10 billion in assets
 - Impact on rural consumers
- The Bureau must consult with prudential regulators
 - Must include written objections and responses in rulemaking notice

CFPB Supervision: Non-Depository Covered Persons

Persons specifically covered by Bureau authority:

- Mortgage brokers, originators and servicers
- Mortgage loan modification or foreclosure relief
- Private student loans
- Payday loans
- Any person engaging in conduct that presents risks to consumers
 - Bureau must issue an order specifying coverage and notify person
- “Larger participant of a market for consumer financial products or services”
 - As defined by the Bureau by rule, after consultation with the FTC
 - Again, Bureau has ability to expand own authority

CFPB Supervision: Non-Depository Covered Persons

- Risk-based supervision programs
- Bureau may require reports and conduct examinations
 - To assess compliance with Federal Consumer Financial Laws
 - Collect data to assess risks to consumers and markets
- Bureau is to coordinate with state and other federal regulators
- Memorandum of Understanding (“MOU”) with states
- MOU with FTC

CFPB Supervision: Large Depository Institutions

- Banks and Credit Unions with assets greater than \$10 billion (when combined with their affiliates)
 - Approximately 115 banks and 3 credit unions
- The Bureau may require reports and conduct examinations
 - To assess compliance with Federal Consumer Financial Laws
 - Collect data to assess risks to consumers and markets
- Coordination with state and federal prudential regulators
 - Conduct simultaneous exams (unless otherwise requested)
 - Share draft reports and coordinate supervisory action
 - Procedure to appeal to panel where there is conflict in supervision

CFPB Supervision: Other Depository Institutions

- Banks and Credit Unions with assets less than \$10 billion (when combined with their affiliates)
 - Approximately 7,700 banks and 7,500 credit unions
- Bureau may require reports
 - To support its role in implementing Federal Consumer Financial Laws
 - To support its examination activities of other depository institutions
 - To assess risks to consumers and markets
- Although the prudential regulator conducts examinations, the Bureau may include examiners on a “sampling” basis to assess compliance with Federal Consumer Financial Laws

CFPB Supervision: Service Providers to Covered Persons

- Supervision of service providers
 - Provides material service to a Covered Person in connection with offering a Consumer Financial Product or Service
- Subject to the Bureau's examination authority
 - To same extent as if the Bureau were “an appropriate federal banking agency” under section 7(c) of the Bank Service Company Act
 - Applies also to Service Providers to non-bank Covered Persons, as if the Covered Persons were banks
 - May only examine a Service Provider to depository institutions with assets less than \$10 billion if the entity is a Service Provider to a “substantial number” of such institutions

CFPB: Enforcement Authority of Bureau

- Unlawful for Covered Person or Service Provider to
 - Violate a Federal Consumer Financial Law
 - Existing authority and remedies
 - Engage in any unfair, deceptive or abusive act or practice
 - Fail to keep records, permit access, or make reports as required by Bureau
- Aider/Abettor Liability
 - Unlawful to “knowingly or recklessly provide substantial assistance to a Covered Person or Service Provider in violation of” unfair, deceptive or abusive acts or practices prohibition

CFPB: Enforcement Authority of Bureau

- Independent Litigating Authority
 - May bring cases administratively or in federal court
 - Same remedies, regardless of forum
- Remedies
 - Injunctions
 - Money damages
 - Costs
 - Penalties up to \$1 million per day
 - Civil Penalty Fund established
 - Can be used for redress and consumer education
 - Compare other federal agencies where penalties often go to U.S. Treasury

CFPB: Bureau Coordination with the States

- On January 4, 2011, the Bureau signed an MOU with the Conference of State Bank Supervisors
 - The Bureau and state bank regulators are required to jointly supervise and enforce consumer protection laws against banks with more than \$10 billion of assets, as well as covered nonbanks
 - The states will continue to have enforcement powers over smaller state-chartered banks
 - The states agreed to share supervisory information with the Bureau
 - The states will share with the Bureau information on the development and implementation of the examination process, including:
 - Exam manuals and on-site and off-site exam procedures
 - Standardized information requests
 - Confidential supervisory information and any enforcement demands or requests for nonpublic information

CFPB: Bureau and NAAG Principles

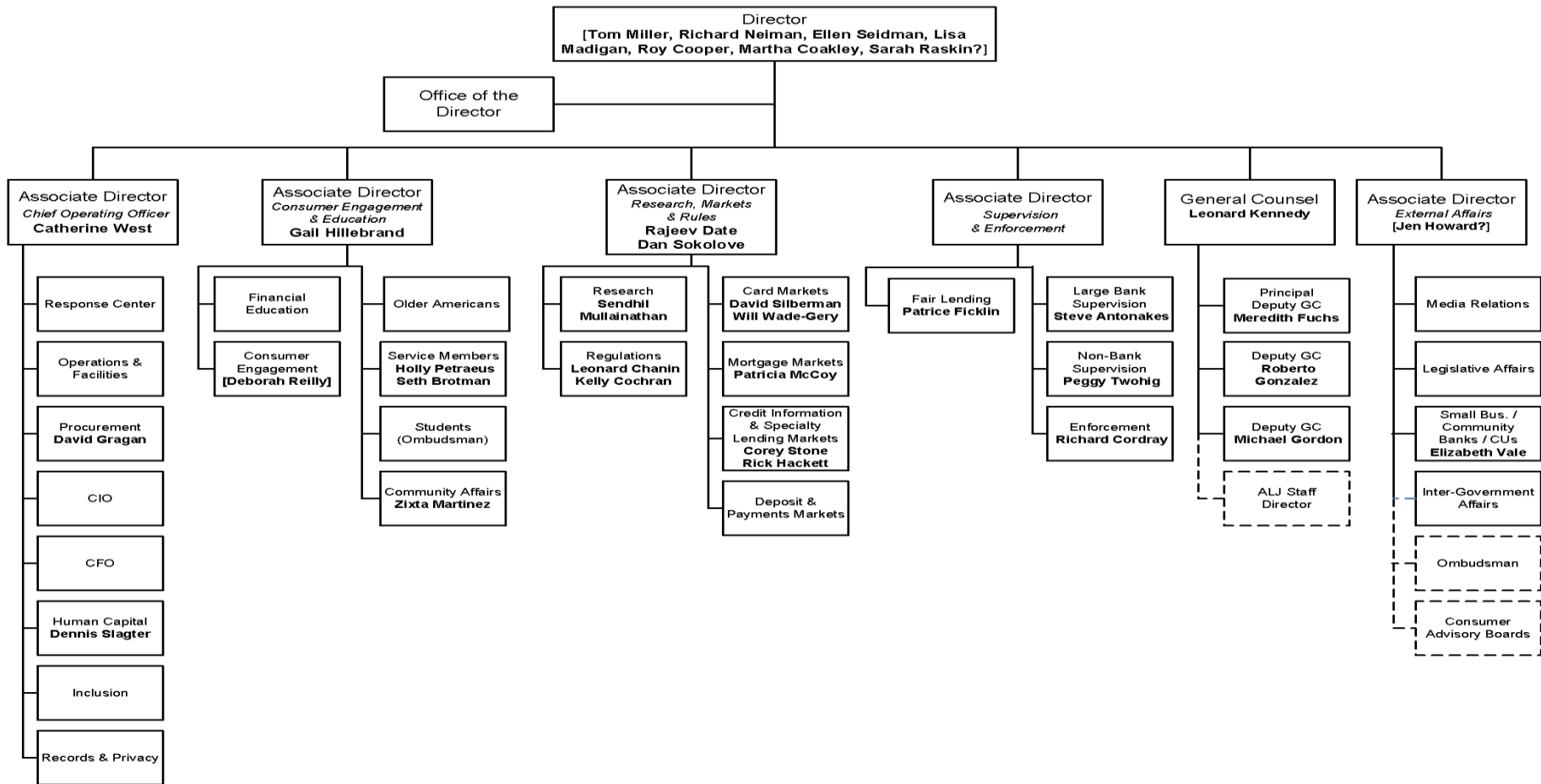
- On April 11, 2011, the Bureau and the National Association of Attorneys General announced agreement on a Joint Statement of Principles, including:
 - Developing joint training programs and sharing information about developments in relevant federal and state laws
 - Sharing information, data, and analysis about conduct and practices in the markets for consumer financial products or services
 - Regular consultation to identify mutual enforcement priorities
 - Supporting each other in enforcement of laws that protect consumers of financial products or services, including by joint or coordinated investigations and coordinated enforcement actions
 - Pursuing legal remedies to foster transparency, competition, and fairness in the markets for consumer financial products or services across state lines
 - Developing a consistent and enduring framework to share investigatory information and to coordinate enforcement activities to the extent practicable and consistent with governing law

CFPB: Bureau Coordination with the FTC

- The Dodd-Frank Act requires the FTC and the Bureau to coordinate certain law enforcement activities and to negotiate an MOU to do so by January 21, 2012
 - The timing and scope of the transfer of the enforcement authority to the Bureau is being discussed
 - Coordination on enforcement issues has not yet begun, although the Bureau implementation team intends to begin developing a specific coordination plan that will include the anticipated MOU
- In addition, development of the streamlined mortgage disclosures required by the Dodd-Frank Act is in progress

CFPB ORGANIZATION CHART

DRAFT
As of 6/17/11



CFPB: Transfer of Authority to the Bureau

- The Inspectors General of the Board and the Treasury Department have indicated that even if the Bureau does not have a Senate-confirmed director in place before the July 21, 2011 Designated Transfer Date, the Treasury will have authority to issue rules on behalf of the Bureau
- However, without a Senate-confirmed director, the Inspectors General believe that the Treasury would not be able to undertake certain other powers granted to the Bureau
 - Such as supervision and regulation of non-banks
 - Also may be limited in its ability to write rules to implement its authority over “abusive” practices

CFPB: Regulatory Activity

- On June 29, 2011, the Bureau issued a notice on the Dodd-Frank Act requirement to define who is a “larger participant” in certain consumer financial markets in preparation for drafting an initial rule
 - The notice identifies six markets for potential inclusion in an initial rule: debt collection, consumer reporting, consumer credit activities, money transmitting, check cashing, prepaid cards and debt relief services