

## Dodd-Frank Act Creates Powerful New Consumer Protection Agency

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*On July 15, 2010, the U.S. Senate approved the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act was approved by the U.S. House of Representatives on June 30, 2010 and is now expected to be signed into law by President Obama. Title X of the Dodd-Frank Act, also cited as the Consumer Financial Protection Act of 2010, establishes a powerful new consumer protection agency.*

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The Consumer Financial Protection Act of 2010 (Act) establishes a new consumer financial services regulating agency, the Bureau of Consumer Financial Protection (Bureau). The purpose of the Bureau is to “seek to implement, and where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial markets and services are fair, transparent and competitive.”

To that end, the Act transfers responsibility for most of the consumer financial laws previously enacted to the Bureau, including those under the purview of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, the National Credit Union Administration (NCUA), the Department of Housing and Urban Development (HUD), and the Federal Trade Commission (FTC).

In addition to establishing the Bureau and transferring responsibility for most consumer financial laws, the Act provides authority, subject to explicit exclusions, to issue rules applicable to all financial institutions offering consumer financial services or products, provides authority to supervise and examine certain covered persons, and establishes new programs and regulatory measures.

### **How is the Bureau structured and funded?**

The Bureau is within the Federal Reserve System, but is deemed to be an executive agency. The Director of the Bureau is to be appointed by the President by and with the advice and consent of the Senate. The Bureau has a dedicated budget, taken from the combined earnings of the Federal Reserve System, of up

to 10-12% of Federal Reserve's total operating expenses adjusted annually, with an additional \$200 million that can be appropriated upon request. The Act includes provisions to preserve the Bureau's independence from the Federal Reserve, including prohibiting the Federal Reserve from intervening in Bureau matters and from appointing or removing any Bureau officers or employees.

The Act provides that the Bureau shall have specific functional units for research, community affairs and collecting and tracking complaints. In addition, the Act provides for the establishment of the Offices of Fair Lending and Equal Opportunity, Financial Education, and Financial Protection for Older Americans, as well as for a consumer advisory board to advise and consult with the Bureau in the exercise of its functions.

### **What are the Bureau's functions and how are covered persons affected?**

The Bureau's functions include investigating consumer complaints, conducting market research, rulemaking, supervising and examining covered persons, promoting and conducting financial education, and enforcing rules related to consumer financial products and services.

A "covered person" is any person that engages in offering or providing a consumer financial product or service, as defined in the Act, and any affiliate of such person described, if such affiliate acts as a service provider to such person.

### **Rule Making**

The Bureau has authority to issue regulations, orders and guidance implementing consumer financial law, and, subject to explicit exclusions, may issue rules applicable to all financial institutions offering consumer financial services or products, including both non-depository and depository institutions. The Bureau also has the authority to exempt classes of covered persons, providers, and financial products or services. The Financial Stability Oversight Council (FSOC) may stay a Bureau regulation upon petition by a member agency of the FSOC, and may permanently set aside a Bureau regulation upon a 2/3 vote of the FSOC.

### **Supervising and Examining Covered Persons**

The extent of the Bureau's supervision and enforcement powers depends on the covered persons. If the covered person is a "very large" insured depository institution or credit union (having assets over \$10 billion) or an affiliate or service provider of such depository institution or credit union, they will be significantly affected by the Act because the Bureau has exclusive rulemaking and examination power, as well as primary enforcement authority, concerning federal consumer financial laws for "very large" covered persons. For smaller insured depository institutions and credit unions and their service providers, the Bureau has exclusive rulemaking authority only to the extent authorized by federal consumer financial law and no enforcement authority. As to non-depository institutions, the Bureau has exclusive rulemaking and enforcement powers for only those non-depository institutions engaged in specific activities defined in the Act and their service providers.

### **Exclusions**

Despite the Bureau's broad authority, the Act excludes from supervision and enforcement numerous financial service providers. These include merchants, retailers and sellers of nonfinancial goods or services; real estate brokerage activities; manufactured home retailers and modular home retailers; accountants and tax preparers; the practice of law; persons regulated by state insurance regulators; employee benefit and compensation plans and certain other arrangements under the Internal Revenue Code of 1986; persons regulated by state securities commissions; persons regulated by the Securities and

Exchange Commission; persons regulated by the Commodity Futures Trading Commission; persons regulated by the Farm Credit Administration; activities related to charitable contributions; auto dealers; the business of insurance; and electronic conduit services.

### When will the Act's provisions be effective?

The Bureau is established and gains general rulemaking and supervisory authority over covered persons on the date the Act is signed into law. The Bureau has authority over the transferred consumer financial laws at the "designated transfer date." The "designated transfer date" is to be determined within 60 days of enactment (possible extensions available) by the Treasury Secretary in consultation with the heads of the Federal Reserve, FDIC, FTC, NCUA Board, OCC, OTS, HUD and the Office of Management and Budget, and must be no less than six but no more than eighteen months (inclusive of extensions) after enactment of the Act.

### Additional Regulatory Measures

The Act includes several provisions intended to clarify its relationship with state law and to promote consumer protection, including:

- clarifying that the Act does not alter state law providing greater protection than the Act and that the enforcement powers of the states are preserved (that the attorney general or equivalent thereof may bring a civil action in the name of such state to enforce regulations under the Act);
- clarifying the state law preemption standards for national banks and subsidiaries, non-depository institution subsidiaries, federal savings associations and subsidiaries and visitorial standards for national banks and savings associations;
- restricting card issuers' interchange transaction fees (fees must be "reasonable and proportionate to the cost of the card network's expense for processing the transaction");
- expanding the application of the Truth in Lending Act to consumer credit transactions and consumer leases in an amount up to \$50,000 (increased from \$25,000);
- providing for a centralized consumer complaint hotline and website;
- establishing a Private Education Loan Ombudsman to provide timely assistance to borrowers of private education loans; and
- establishing a Victims Relief Fund where civil penalties collected by the Bureau are made available to victims of the related activities.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work or the authors below.

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