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Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the Consumer Financial Protection Bureau (CFPB) to implement and enforce federal consumer financial law while maintaining consumer access to financial products and services. Dodd-Frank consolidated in the CFPB certain regulatory authorities related to consumer finance that were previously held by other agencies and created new powers not previously held by federal regulators. Dodd-Frank authorizes the CFPB to exercise these powers with the goal of promoting fair, transparent, and competitive markets for consumer financial products and services.

Structure of the CFPB

Dodd-Frank established the CFPB as an independent bureau within the Federal Reserve System (Fed). The CFPB is headed by a single director, appointed by the President with the advice and consent of the Senate for a five-year term. The Fed's Board of Governors does not influence the CFPB's operations other than through the Fed chairman's role as a member of the Financial Stability Oversight Council (FSOC), which can overturn a CFPB rule with the consent of two-thirds of its members. (The CFPB director is also a voting member of FSOC.) Rather than being funded through regular appropriations, the CFPB funds its operations through monetary transfers from the Fed. The Fed must transfer amounts requested by the CFPB director based on the director's determination of need, subject only to a cap based on a statutory formula. For FY2022, the CFPB received approximately \$642 million, which was below its \$734 million limit.

CFPB Regulatory Authority

Dodd-Frank charges the CFPB to implement and enforce consumer protection laws, lead financial education initiatives, collect consumer complaints, and conduct consumer finance research. The CFPB has broad regulatory authority over providers of an array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, collection of consumer reporting data, and consumer debt collection. Although the scope of the CFPB's regulatory power is considerable, it is also subject to certain statutory exceptions and limitations. The CFPB's regulatory authorities fall into three broad categories: *supervision* (including the power to examine and impose reporting requirements on financial institutions), *enforcement* of various consumer protection laws, and *rulemaking*.

The CFPB may issue regulations to implement 19 federal consumer protection laws that largely predate Dodd-Frank. These "enumerated consumer laws" govern a broad and diverse set of consumer financial services and providers.

Dodd-Frank also empowers the CFPB with new authority to issue rules declaring acts or practices associated with consumer financial products and services to be unlawful because they are unfair, deceptive, or abusive. Other aspects of the CFPB's regulatory power—particularly the scope of its supervisory and enforcement authority—vary depending on an institution's size and whether it holds a bank charter.

Banks. Banks (i.e., institutions with bank, thrift, or credit union charters) are regulated for both *safety and soundness* and *consumer compliance*. Bank regulators conduct safety and soundness (*prudential*) regulation with the goal of ensuring that banks maintain profitability and avoid failure. Consumer compliance regulation is designed to ensure that banks comply with applicable consumer protection and fair-lending laws.

The CFPB and the federal banking regulators (i.e., the Fed, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and National Credit Union Administration) share consumer compliance regulation over banks, with their authorities varying depending on the bank's size. The CFPB holds primary consumer compliance regulatory authority over larger banks with more than \$10 billion in assets. Smaller "community" banks must comply with CFPB's rules on implementing enumerated consumer laws, but the bank regulators hold primary supervisory and enforcement authority for issuing consumer compliance regulation for smaller banks.

Nonbanks. Nonbank financial institutions provide financial services but do not have bank, thrift, or credit union charters. The CFPB may issue and enforce rules that affect these nonbank financial institutions, but the CFPB's supervisory authority over these institutions varies based on the nonbank's activities and size.

First, Dodd-Frank expressly authorizes the CFPB to supervise three categories of financial institutions regardless of size—mortgage companies (including lenders, brokers, and servicers); payday lenders; and private education lenders. Second, the CFPB may supervise nonbank institutions the CFPB determines are "larger participants" in consumer financial markets. Third, the CFPB may supervise a nonbank that, based on consumer complaints or other sources, the CFPB "has reasonable cause to determine ... is engaging, or has engaged in, conduct that poses risks to consumers...."

Exempted Institutions. Dodd-Frank exempts some industries from the CFPB's regulatory jurisdiction. The CFPB generally does not have rulemaking, supervisory, or

enforcement authority over automobile dealers; merchants, retailers, and sellers of nonfinancial goods and services; real estate brokers; real estate agents; sellers of manufactured and mobile homes; income tax preparers; insurance companies; or accountants. There are, however, certain business practices that could trigger CFPB regulatory authority, such as when the entity engages in an activity governed by an enumerated consumer law (e.g., debt collection activities subject to the Fair Debt Collection Practices Act (FDCPA, 15 U.S.C. §§1692-1692p)).

Selected Policy Issues

Debates involving consumer protection policymaking generally center on how to balance protecting consumers, credit access, and costs to industry. The following section addresses a selection of CFPB policy issues of interest to Congress.

Financial Technology. Financial technology, or *fintech*, refers to new technologies used in the provision of financial services or products, such as “peer to peer” payments, digital wallets, and “Buy Now, Pay Later” financing. The innovated use of technologies—including internet access, mobile technology, electronic payment improvements, alternative data, and artificial intelligence—to develop consumer financial products could potentially improve consumer experiences, lower costs, and expand access to underserved consumers. Fintech products could also pose consumer protection and data security risks. Related policy questions generally concern whether the current regulatory framework appropriately fosters the benefits of new technologies while mitigating potential risks to consumers.

The CFPB is developing a new rule to implement Dodd-Frank Section 1033 that would clarify standards regarding consumer-authorized access to financial data and could significantly affect the fintech industry. According to the CFPB, a goal of the rulemaking would be to enable consumers “to more easily and safely walk away from companies offering bad products and poor service and move towards companies competing for their business with alternative or innovative products and services.” The rulemaking has the potential to lead to more consumer-friendly innovation and choice, but it could also introduce new risks to consumers.

Agency Independence. The CFPB, much like the banking regulators, is funded outside the traditional congressional appropriations process. The agency is funded via a transfer from the Federal Reserve System’s combined earnings in an amount the CFPB director determines to be “reasonably necessary” to perform its statutory functions, subject to a cap. This nontraditional funding source limits congressional oversight of the agency and is the subject of legal challenges. A three-judge panel of the U.S. Court of Appeals for the Fifth Circuit, in *Community Financial Services Association of America v. CFPB*, ruled that the CFPB’s funding is unconstitutional in violation of the Constitution’s Appropriations Clause and separation of powers. The Department of Justice, on behalf of the CFPB, petitioned the Supreme Court for a writ of certiorari to review and reverse the Fifth Circuit’s decision.

Dodd-Frank also protected the CFPB director from presidential removal, except for cause; however, the Supreme Court in *Seila Law v. CFPB* held this statutory removal protection unconstitutional. As a result of *Seila Law*, the CFPB director now serves at the pleasure of and may be removed at will by the President.

Policymakers debate the degree of independence the CFPB should have from Congress and the President, with some arguing that the agency can operate more effectively when insulated from political pressures and others countering that such insulation decreases accountability and raises constitutional concerns. Some policymakers have called for legislation that would change the CFPB’s funding and leadership structure to increase congressional and presidential control over the agency.

Small Business Data Collection Rulemaking. Section 1071 of the Dodd-Frank Act requires financial institutions to compile, maintain, and report to the CFPB information concerning credit applications made by women-owned, minority-owned, and small businesses. This data collection is intended to “facilitate enforcement of fair lending laws” and to “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” In September 2021, the CFPB proposed a rule to implement this section of Dodd-Frank. Some have expressed concerns over the regulatory costs this proposed rule could impose on small financial institutions, which in turn could negatively affect their access to credit.

CRS Resources

CRS In Focus IF11682, *Introduction to Financial Services: Consumer Finance*

CRS Report R45813, *An Overview of Consumer Finance and Policy Issues*

CRS In Focus IF12079, *Digital Wallets and Selected Policy Issues*

CRS Insight IN11784, *Rapidly Growing “Buy Now, Pay Later” (BNPL) Financing: Market Developments and Policy Issues*

CRS Insight IN11745, *Open Banking, Data Sharing, and the CFPB’s 1033 Rulemaking*

CRS Legal Sidebar LSB10891, *Fifth Circuit: CFPB’s Funding Authority is Unconstitutional*

CRS Legal Sidebar LSB10507, *Supreme Court Rules CFPB Structure Unconstitutional: Implications for Congress*

CRS Report R45878, *Small Business Credit Markets and Selected Policy Issues*

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