

The Dodd-Frank Wall Street Reform and Consumer Protection Act and the Consumer Financial Protection Bureau

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Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Act”)¹ creates a new federal framework for regulating consumer financial products and services. Title X of the Act, known as the “Consumer Financial Protection Act of 2010” (“CFP Act”) creates a Consumer Financial Protection Bureau (“CFPB”) with wide ranging powers to regulate, supervise, and enforce federal consumer financial protection statutes. Although this article is not intended to provide a comprehensive review of the CFP Act, it provides a summary of some of the major provisions that will affect those other than “too big to fail” banks.

Although much of the Dodd-Frank Act focuses on the practices of large financial institutions, the Act applies to entities of all sizes that offer or provide financial products or services to consumers. The consumer protection provisions reach beyond banks and apply as well to many nondepository entities including, most significantly, mortgage brokers, payday lenders, and certain merchants.

The Dodd-Frank Act will usher in a new era of heightened consumer regulation and protection and signals a shift in scope for consumer financial regulation. The CFP Act gives the government a more direct role in regulating the terms of credit and other financial products. With the creation of the CFPB, the Act establishes an independent federal agency devoted exclusively to protecting consumers in financial transactions.

The Bureau of Consumer Financial Protection

Creation of the Bureau of Consumer Financial Protection

The CFPB is charged with ensuring that all consumers have access to markets for consumer financial products and services and

that these markets are fair, transparent, and competitive.² The CFPB has exclusive authority to issue regulations, orders, and guidance implementing the CFP Act, in addition to the Truth in Lending Act, the Truth in Savings Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and numerous other consumer statutes.³ The CFP Act refers to the statutes within the scope of the CFPB’s authority as “Federal Consumer Financial Law.”⁴

The CFP Act defines consumer financial products and services to include a financial product or service offered or provided for use by consumers primarily for personal, family, or household purposes.⁵ The term “financial product or service” includes extending credit and servicing loans, extending or brokering leases of personal or real property that are the functional equivalent of a purchasing finance arrangement, providing real estate settlement services, engaging in deposit-taking activities, selling, providing, or issuing stored value or payment instruments, providing payment or other financial data processing products or services to a consumer by any technological means, providing financial advisory services, collecting, analyzing, maintaining, or providing consumer report information or other account information, collecting debt related to any consumer financial product or services, and any other product or service that the CFPB may define as a consumer financial product or service by regulation.⁶

Goals of the CFPB

The CFPB’s charge is to implement and enforce Federal Consumer Financial Law consistently to ensure that all consumers have access to markets for consumer financial products and services and that the markets for consumer financial products and ser-

Although the CFPB has been established, it may yet take several months to appoint a director, and to put in place the agency's staffing and funding.

vices are fair, transparent, and competitive.⁷ The CFPB is further authorized to exercise its authority under the Federal Consumer Financial Law for the purposes of ensuring that, with respect to consumer financial products and services:

- Consumers are provided with timely and understandable information to make responsible decisions about financial transactions.
- Consumers are protected from unfair, deceptive, or abusive acts or practices.
- Consumers are protected from discrimination.
- Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed to reduce unwarranted regulatory burdens.
- Federal Consumer Financial Law is enforced consistently, without regard to the status of a person as a depository institution, to promote fair competition.
- Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.⁸

Organization of the CFPB

The CFPB is established within the Federal Reserve System, but the CFP Act makes clear that the bureau is to be independent of the Federal Reserve's authority.⁹ The CFP Act contains safeguards to prevent the Federal Reserve from interfering with the CFPB's rulemaking, examination, and enforcement actions. The Federal Reserve Board may not intervene in any matter or proceeding before the director of the CFPB. Nor may it appoint, direct, or remove any officer or employee of the CFPB or merge or consolidate the CFPB or any of its functions or responsibilities.¹⁰ Additionally, the Federal Reserve has no authority to review or approve any rule or order of the CFPB, and the Federal Reserve Board cannot delay or prevent the issuance of any CFPB rule or order.¹¹ The Federal Reserve is, however, permitted to delegate its authority to examine whether certain persons are in compliance with the Federal Consumer Financial Laws to the CFPB.¹²

Supervisory authority over Federal Consumer Financial Law will pass to the CFPB on the "Designated Transfer Date."¹³ The Designated Transfer Date will be defined by the Secretary of the Treasury, and is at least 180 days, but not more than 12 months after

the date the President signed the bill into law, July 21, 2010.¹⁴ The Secretary may extend the deadline by making a submission to Congress, but the Designated Transfer Date must occur within 18 months after enactment.¹⁵

The creation of the CFPB focuses the attention of one federal agency on consumer financial issues and regulation. Although the CFPB has been established, it may yet take several months to appoint a director, and to put in place the agency's staffing and funding. The agency will then need to begin the tedious process of drafting regulations and organizing its supervisory functions. Many people had anticipated that President Obama would appoint Elizabeth Warren as director of the CFPB. Warren is an attorney and Harvard University law professor who also led the Congressional Oversight Panel created to investigate the Troubled Assets Relief Program. She has supported having a consumer financial protection agency for several years. Many feared that Warren's appointment would lead to a contentious and lengthy confirmation process in Congress that would delay the creation of the CFPB. President Obama, however, seems to have avoided that by appointing Warren to serve as a Special Advisor to the Secretary of the Treasury on the CFPB and to "take on the job to get the new CFPB started—right now."¹⁶ Warren will proceed to organize the CFPB while the President and the Senate go through the process of selecting a director.

Functions of the CFPB

The primary functions of the CFPB are to:

- Conduct financial education programs.
- Collect, investigate, and respond to consumer complaints.
- Collect, research, monitor, and publish information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets.
- Supervise covered persons for compliance with Federal Consumer Financial Law, and take appropriate enforcement action to address violations of Federal Consumer Financial Law.
- Issue rules, orders, and guidance implementing Federal Consumer Financial Law.
- Perform support activities that are necessary or useful to facilitate the other functions of the CFPB.¹⁷

The CFPB is required to prepare and submit a report to the President, the Committee on Banking, Housing and Urban Affairs of the Senate, and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, beginning with the session after the Designated Transfer Date.¹⁸ The report must include: (i) discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services; (ii) justification of the budget requests in the preceding year; (iii) a list of significant rules and orders adopted by the CFPB, as well as the CFPB's significant initiatives; (iv) analysis of complaints about consumer financial products or services that the CFPB has received and collected in its central database on complaints; (v) a list, with a brief statement of the issues, of the CFPB's public supervisory and enforcement actions; (vi) the CFPB's actions taken regarding rules, orders and supervisory and enforcement actions; (vii) an assessment of significant actions by state regulators; (viii) an analysis of the CFPB's efforts to fulfill its fair lending mission; and (ix) an analysis of the CFPB's efforts to increase workforce and contracting diversity.¹⁹

The CFPB's Rulemaking Authority

The CFPB is given the authority to administer, enforce, and otherwise implement the Federal Consumer Financial Law through rulemaking, orders, and other guidance.²⁰ To support its rulemaking authority and other functions, the CFPB must monitor the risks of consumer financial products and services to consumers, including developments in markets for such products or services.²¹ The CFP Act contains a laundry list of factors that the CFPB should consider, although the list is not exclusive.²² The Bureau must also publish significant findings of its monitoring activities each calendar year, beginning with the second year after the Designated Transfer Date.²³

The CFPB is required to take a cost-benefit approach in its rulemaking. The CFPB must consider the potential benefits and costs of the regulations to consumers and those subject to the CFPB's authority. It must also consider the impact of the proposed rules on smaller depository institutions²⁴ and on consumers in rural areas.²⁵ The CFPB may exempt certain classes of persons from any rule, pursuant to enumerated factors in the statute.²⁶ Although

the CFPB has exclusive authority to prescribe rules regarding the Federal Consumer Financial Law, the CFPB is required to consult with the relevant prudential regulators²⁷ and other federal agencies during the comment process to ensure consistency with prudential, market or systematic objectives administered by such agencies.²⁸ Moreover, the CFPB may issue rules with respect to registration requirements for certain persons other than depository institutions, insured credit unions, or related persons.²⁹

The Act requires the CFPB to review its own regulations periodically.³⁰ The CFPB is required to conduct an assessment of each significant rule or order adopted by the CFPB under the Federal Consumer Financial Law within five years after the rule or order is issued.³¹ In doing so, the CFPB must address, among other things, the effectiveness of the rule or order.³² Before publishing a report with respect to its assessment, the CFPB is required to invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted rule or order.³³

Although the CFPB is insulated from the Federal Reserve, the Financial Stability Oversight Council, established in Title I of the Dodd-Frank Act (the "Council"), has the authority to override CFPB rules under extraordinary circumstances.³⁴ Any agency represented by a member of the Council may petition the Council, in writing, to stay the effectiveness of, or set aside, a CFPB regulation if: (i) it has in good faith attempted to work with the CFPB to resolve concerns regarding the effect of the rule on the safety and soundness of the U.S. banking system or the stability of the financial system of the United States; or (ii) it files the petition with the Council within ten days after the date on which the regulation was published in the Federal Register.³⁵ Upon petition, the Council may set aside a final regulation prescribed by the CFPB, if the Council determines that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.³⁶

Authority to Prohibit Unfair, Deceptive, and Abusive Practices

In addition to its rulemaking authority under Federal Consumer Financial Law, the CFPB is authorized to issue rules and take enforcement actions to prohibit unfair, deceptive, or

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abusive acts or practices in connection with the offering of a consumer financial product.³⁷ The CFPB may only issue such rules if it has a reasonable basis to conclude that an act or practice causes, or is likely to cause, substantial injury to consumers that cannot reasonably be avoided and the substantial injury to consumers is not outweighed by countervailing benefits to consumers or to competition.³⁸ In determining whether a practice is unfair, the CFPB must engage in a cost-benefit analysis, weighing the injury to consumers whom the regulation is aimed at protecting against the benefit of the practice to consumers or competition.³⁹

The authority of the CFPB over unfair and deceptive practices is not unlike the authority of the Federal Trade Commission. The CFP Act, however, broadens this authority to include abusive acts. “Abusive” is defined to include, among other things, taking unreasonable advantage of the reasonable reliance by the consumer that a provider of consumer financial products or services will act in the interests of the consumer.⁴⁰ The CFPB may not declare a practice abusive unless the practice: (i) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or services or (ii) takes unreasonable advantage of a consumer’s lack of understanding of the material risks, costs, or conditions of a product or service, the consumer’s inability to protect his or her interests in selecting or using a consumer financial product or service, or the consumer’s reasonable reliance upon the provider of the consumer financial product or service to act in the interests of the consumer.⁴¹ Additionally, in prescribing rules regarding unfair, deceptive, or abusive practices, the CFPB must consult with the prudential regulators and other federal agencies as appropriate to ensure the proposed rules are consistent with prudential, market or systemic objectives administered by such agencies.⁴² The effective date of this provision is the Designated Transfer Date.⁴³

Model Forms for Federal Consumer Financial Laws

The Act authorizes the CFPB to prepare model forms for the disclosures required under Federal Consumer Financial Law.⁴⁴ Before finalizing model forms, the CFPB must validate them through consumer testing.⁴⁵ Implementing new disclosures will, at least initially, result in increased compliance

costs to regulated entities. The Act creates a safe harbor for those who use the model forms.⁴⁶

For years, the Federal Reserve Board and the Department of Housing and Urban Development (“HUD”) have been trying to agree on a set of combined disclosures under the Federal Truth in Lending Act and the Real Estate Settlement Procedures Act. Perhaps out of frustration with their inability to do so, Congress has now assigned that task to the CFPB.⁴⁷ The CFPB is required to accomplish this within one year of the Designated Transfer Date.⁴⁸ If, however, the Federal Reserve Board and HUD complete or form an agreement upon a combined disclosure before the CFPB finalizes one, the CFPB will not need to complete its form.⁴⁹

Authority to Investigate Violations and Enforce Federal Consumer Financial Law

The CFP Act provides that it is unlawful for a person subject to the CFPB’s authority to act in contravention of the Federal Consumer Financial Law or to engage in unfair, deceptive, or abusive acts or practices.⁵⁰ The Act gives the CFPB broad powers to investigate violations of Federal Consumer Financial Law by depository institutions with assets over \$10 billion and nondepository institutions that are subject to the CFP Act.⁵¹ These include the power to issue subpoenas to compel testimony, to require the production of documents, and to issue cease and desist orders.⁵² The CFPB may also initiate civil lawsuits to enforce Federal Consumer Financial Law.⁵³

Among the remedies available to the CFPB is the power to require the rescission or reformation of contracts, the refund of moneys or return of real property, the payment of damages, and the payment of civil money penalties from \$5,000 to \$1,000,000 per day.⁵⁴ The CFPB does not have the authority to file criminal charges, but may make referrals to the Department of Justice.⁵⁵ In addition, the CFPB is required to make referrals to the Internal Revenue Service of potential violations of tax laws.⁵⁶ The effective date of these provisions is the Designated Transfer Date.⁵⁷

Consumer Complaint Unit

The Act requires the CFPB to establish a unit to receive consumer complaints and to provide a timely written response to each complaint.⁵⁸ The CFPB must establish a single toll-free telephone number, a Web site, and

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a database to collect, monitor, and respond to consumer complaints.⁵⁹ Although this is effective as of the Designated Transfer Date,⁶⁰ implementation of these activities will take time.

Protection for Whistleblowers

The CFP Act protects employees against retaliation for providing information to any local, state, or federal authority regarding violations of any law within the jurisdiction of the CFPB.⁶¹ The Act also protects an employee who testifies against a regulated entity or refuses to engage in activity the employee reasonably believes would violate any law within the jurisdiction of the CFPB.⁶² Whistleblower complaints are investigated by the Secretary of Labor.⁶³ In light of the new whistleblower protections, a company may wish to examine its policies and procedures to ensure that employees have an effective means of bringing violations of law to the attention of management. This is effective on the Designated Transfer Date.⁶⁴

Limitations on Federal Preemption

The Act limits federal preemption of state law to circumstances where the state law is inconsistent with federal law.⁶⁵ A state law that is more protective of the consumer is not inconsistent and therefore is not preempted.⁶⁶ The Act allows states to have laws that are more protective than Federal Consumer Financial Law.⁶⁷ The effective date is on the Designated Transfer Date.⁶⁸

Who is Regulated by the CFPB?

Overview

The CFP Act applies, subject to a number of exceptions, to any person who engages in offering or providing a consumer financial product or service and any affiliate that provides a service to such a person.⁶⁹ As such, it covers a broad array of entities from large money center banks to community banks, credit unions, and, in certain circumstances, retailers. The authority of the CFPB to regulate a covered person will vary depending on the size and type of business. This section will review that authority.

Very Large Depository Institutions

The CFPB has exclusive authority to supervise compliance with Federal Consumer Financial Law by insured depository institutions and insured credit unions with total assets of more than \$10 billion (“Very Large

Depository Institutions”).⁷⁰ The CFPB has the primary, but not the exclusive, authority to enforce Federal Consumer Financial Law against Very Large Depository Institutions. Other federal agencies may recommend to the CFPB in writing that the CFPB initiate an enforcement procedure against a Very Large Depository Institution.⁷¹ If the CFPB does not act within 120 days after it receives an enforcement recommendation, the referring agency may initiate its own enforcement proceeding.⁷² The CFPB may also require reports and conduct examinations with respect to Very Large Depository Institutions; however, the CFPB must coordinate its supervisory activities with those conducted by the applicable prudential regulators and the state bank regulatory authorities.⁷³

The CFP Act requires the CFPB and the prudential regulator of each Very Large Depository Institution to cooperate with each other by:

- Coordinating the scheduling of examinations.
- Conducting simultaneous examinations of each Very Large Depository Institution.
- Sharing each draft report of examination with the other agency and permitting the other agency's comment on the draft before the final report.
- Considering the concerns raised by the other agency before issuing the final report or taking supervisory action.⁷⁴

The CFP Act further requires that the CFPB report to the IRS any report of examination or related information identifying possible tax law noncompliance.⁷⁵ These provisions are effective on the Designated Transfer Date.⁷⁶

Smaller Depository Institutions

The CFPB has limited supervisory authority over insured depository institutions and credit unions with total assets of \$10 billion or less (“Smaller Depository Institutions”)⁷⁷ and their service providers.⁷⁸ The CFPB may require each Smaller Depository Institution to submit reports that support the CFPB's role in implementing Federal Consumer Financial Law, to support its examination activities, and to enable it to assess and detect risks to consumers and consumer financial markets.⁷⁹

The CFPB's authority to examine Smaller Depository Institutions is significantly limited. The CFPB may include examiners, on a “sampling basis” only, in the examina-

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tions performed by the prudential regulator to assess Smaller Depository Institutions' compliance with the requirements of Federal Consumer Financial Law.⁸⁰ Where the CFPB does include examiners, however, the prudential regulator must: (i) provide all reports, records, and documentation related to the examination process for any institution included in the sample; (ii) involve any CFPB examiner in the entire examination process for such Smaller Depository Institution; and (iii) consider input from the CFPB concerning the scope of the examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.⁸¹

The CFPB's authority to enforce Federal Consumer Financial Law against Smaller Depository Institutions is also extremely limited. The CFPB may only enforce its reporting requirements. The prudential regulators retain their authority to enforce the requirements of Federal Consumer Financial Laws with respect to Smaller Depository Institutions.⁸² Although the CFPB is required to notify the prudential regulator where the CFPB has reason to believe a Smaller Depository Institution has materially violated the Federal Consumer Financial Laws, the Act does not require the prudential regulator to take action. Upon receipt of such notice, the prudential regulator only need respond in writing within sixty days of receipt. No other action is required.⁸³

Nondepository Institutions

The CFP Act gives the CFPB the authority to supervise and enforce Federal Consumer Financial Laws against certain nondepository persons who offer or provide consumer financial products or services. This authority extends to any person who:

- Offers or provides origination, brokerage or servicing of residential mortgages, or residential mortgage modification or foreclosure relief services;
- The CFPB has reasonable cause to determine, by order, is engaging or has engaged in conduct that poses risk to consumers with regard to the offering or provision of consumer financial products or services;
- Offers or provides a private education loan; or
- Offers or provides to a consumer a payday loan.⁸⁴

In addition, the CFP Act permits the CFPB to extend its supervisory and enforcement authority over any person that it determines, by regulation, is a larger participant in a market for other consumer financial products or services. The CFPB must consult with the FTC before it issues such a regulation. The CFP Act requires the CFPB to issue such a regulation within one year after the Designated Transfer Date.⁸⁵ A service provider to a nondepository person within the CFPB's supervisory authority is also subject to the CFPB's authority.⁸⁶

The CFPB's authority with respect to these nondepository persons is exclusive, except where shared with the FTC.⁸⁷ The CFP Act also expressly reserves the authority of the Farm Credit Administration, providing that the Act does not modify, limit, or otherwise affect the Farm Credit Administration's authority.⁸⁸ Although the CFPB has exclusive authority to enforce the Federal Consumer Financial Law with respect to these nondepository persons, any federal agency authorized to enforce Federal Consumer Financial Law may recommend to the CFPB in writing that the CFPB initiate an enforcement proceeding.⁸⁹

The CFPB must require reports and conduct examinations of a nondepository person under its supervision on a periodic basis to assess its compliance with the requirements of the Federal Consumer Financial Law, to obtain information about the activities and compliance systems or procedures of such person, and to detect and assess risks to consumers and to markets for consumer financial products and services.⁹⁰ The CFPB's assessment must be based on the risks posed to consumers in the relevant product markets and geographic markets, taking into consideration a list of enumerated factors, including the asset size of the covered person, the risk posed to consumers, and state regulation.⁹¹ The CFPB is required to coordinate its supervisory activities with those conducted by prudential regulators and the state bank regulatory authorities, and must use existing reports and publicly reported information to the fullest extent possible.⁹² The CFPB is again required to provide the IRS with each report of examination or related information identifying possible tax law noncompliance.⁹³

The CFPB and the FTC must negotiate an agreement for coordinating enforcement actions by each agency regarding the offering or provision of consumer financial products

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or services by any covered nondepository person. This agreement must be completed within six months after the Designated Transfer Date.⁹⁴ The agreement must include procedures for notice to the other agency, where feasible, before initiating a civil action to enforce Federal Consumer Financial Law.⁹⁵ Although the CFPB and FTC cannot file a rival enforcement action after the other has initiated an action, the non-initiating agency may intervene as a party in the existing action.⁹⁶

Limitations on Authority of the CFPB; Preservation of Authority

The CFP Act provides a laundry list of activities that are exempted from the CFPB's authority entirely or in part.⁹⁷ The exemptions apply to the activities, not to the entities that perform those activities.⁹⁸ An entity engaged primarily in activities that are not subject to the CFPB's authority may also be engaged in activities that subject it to the authority of CFPB.⁹⁹

A merchant that sells nonfinancial goods or services is exempt from the coverage of the CFP Act except to the extent it offers or provides a consumer financial product or service or is otherwise subject to other consumer laws.¹⁰⁰ A merchant is not subject to the CFPB's supervisory and enforcement authority if it engages in any of the following activities that would otherwise be considered to be a financial good or service:

- Extending credit directly to a consumer exclusively for the purpose of engaging the consumer to purchase a nonfinancial product or service from the merchant, so long as the merchant does not sell the paper (unless the buyer is in default of the credit obligation);
- Collecting its own consumer credit receivables;
- Selling a merchant's consumer credit receivables that are delinquent or otherwise in default.

However, if the CFPB deems a merchant to be "engaged significantly" in offering or providing consumer financial products or services, this exclusion from coverage will not apply if the merchant sells consumer debt that is not in default, extends credit in an amount significantly greater than the value of the nonfinancial goods or services sold, or regularly extends credit that is subject to a finance charge.¹⁰¹ The CFP Act creates an exception from coverage for a small business that extends credit to customers who pur-

chase nonfinancial goods or services, even if the merchant charges a finance charge, so long as the merchant does not extend credit for other purposes, retains the credit for its own accounts (although it can sell debts that are delinquent or in default), and is a small business under section 3¹⁰² of the Small Business Act.¹⁰³

The CFP Act gives special treatment to one type of merchant, motor vehicle dealers. The Act broadly defines "motor vehicle" to include: (i) any self-propelled vehicle designed for transporting persons or property on a street, highway or other road; (ii) recreational boats and marine equipment; (iii) motorcycles; (iv) motor homes, recreational vehicle trailers, and slide-in campers; and (v) other vehicles.¹⁰⁴ A motor vehicle dealer is generally exempted from the Act if it is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.¹⁰⁵ This exception will not apply, however, if a motor vehicle dealer: (i) provides financial services related to residential or commercial mortgages; (ii) operates a line of business that involves the extension of retail motor vehicle credit or leases, provided directly to consumers and pursuant to a contract that it does not routinely assign to an unaffiliated third party; or (iii) offers or provides a consumer financial product or services unrelated to motor vehicles.¹⁰⁶

In addition to the exception for merchants, the CFP Act excludes a number of other industries and activities from the CFPB's authority, including:

- Licensed or registered real estate brokers and real estate agents.
- Manufactured home retailers and modular home retailers.
- Accountants and tax preparers.
- Attorneys engaged in the practice of law.
- Persons regulated by state insurance regulators.
- Employee benefit and compensation plans and certain other arrangements under the Internal Revenue Code.
- Persons regulated by the Securities and Exchange Commission or a state securities commission.
- Persons regulated by the Commodity Futures Trading Commission.
- Persons regulated by the Farm Credit Administration.
- Activities related to the making of vol-

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untary charitable contributions to tax-exempt organizations.

- Persons engaging in the business of insurance.¹⁰⁷

The powers of the Federal Trade Commission and Federal Reserve Board remain unchanged by the CFP Act, and both are directed to coordinate with the Office of Service Member Affairs to ensure that (i) service members and their families are educated and empowered to make better informed decision with respect to consumer financial products and services offered by motor vehicle dealers, and (ii) complaints are effectively monitored and responded to.¹⁰⁸

Although the CFPB may not exercise its rulemaking, supervisory, or enforcement authority with respect to any exempted persons under these exemptions, the CFP Act expressly reserves the CFPB's authority to request information from a large number of exempted persons.¹⁰⁹ These provisions are effective on the Designated Transfer Date, except for the provision regarding the CFPB's rulemaking authority, authority with respect to covered persons, and the provisions regarding simultaneous and coordinated supervisory actions with respect to Very Large Depository Institutions, which all became effective on the enactment date.¹¹⁰

Implementation of the Dodd-Frank Act

The consumer financial protection provisions in Title X of the Dodd-Frank Act signal a significant and unprecedented increase in consumer regulation and protection. The Act creates the CFPB for the purpose of protecting consumers in financial transactions and gives it broad rulemaking and supervisory authority. Although many of the provisions of the Act are already effective or will be effective on the Designated Transfer Date, implementation will not happen overnight. But over the next two years, we can anticipate a sweeping reform of the regulation of the consumer financial services industry.

NOTES

1. Pub L No 111-203, 124 Stat 1376. Subsequent endnotes refer to sections of this Act.

2. Section 1021(a).

3. Sections 1022(a) and (b); 1002(14).

4. Sections 1022(a) and (b); 1002(14).

5. Section 1002(5).

6. Section 1002(5).

7. Section 1021(a).

8. Section 1021(b).

9. Section 1011(a).

10. Section 1011(c)(2).

11. Section 1011(c)(3).

12. Section 1012(b).

13. Section 1029A.

14. Sections 1002(9) and 1062.

15. *Id.*

16. Elizabeth Warren, The White House Blog, *Fighting to Protect Consumers* (September 17, 2010), available at <http://www.whitehouse.gov/blog/2010/09/17/fighting-protect-consumers>.

17. Section 1021(c).

18. Section 1016(b).

19. Section 1016(c).

20. Section 1022(a)-(b).

21. Section 1022(c)(1)-(2).

22. Section 1023(c)(2).

23. Section 1022(c)(3)(A).

24. Insured depository institutions and credit unions with assets of \$10 billion or less. Section 1026(a).

25. Section 1022(b)(2).

26. Section 1022(b)(3).

27. "Prudential regulator" is defined, in the case of an insured depository institution and depository institution holding company, to mean its Federal bank regulatory agency. For insured credit unions, it is the National Credit Union Administration. Section 1002(24).

28. Section 1022 (b)(2)(B).

29. Section 1022(c)(7).

30. Section 1022(d)(1).

31. Section 1022(d)(2).

32. Section 1022(d)(1).

33. Section 1022(d)(3).

34. Section 1023(a). The charge of the Council is to identify risks to the financial stability of the United States, promote market discipline by eliminating expectations on the part of shareholders, creditors, and counterparties that the Government will shield them from losses in the event of failure, and respond to emerging threats to the stability of the United States financial system. Section 112(a)(1). The Council is composed of 10 voting members: (i) the Secretary of the Treasury (who will serve as Chairperson of the Council); (ii) the Chairman of the Board of Governors of the Federal Reserve; (iii) the Comptroller of the Currency; (iv) the Director of the CFPB; (v) the Chairman of the Securities and Exchange Commission; (vi) the Chairperson of the Federal Deposit Insurance Corporation; (vii) the Chairperson of the Commodity Futures Trading Commission; (viii) the Director of the Federal Housing Finance Agency; (ix) the Chairman of the National Credit Union Administration Board; and (x) an independent member appointed by the President by and with the advice and consent of the Senate. Section 111(b).

35. Section 1023(b)(1).

36. Section 1023(c).

37. Section 1031.

38. Section 1031(c)(1).

39. Section 1031(c)(2).

40. Section 1031(d).

41. *Id.*

42. Section 1031(e).

43. Section 1037.

44. Section 1032(b).

45. Section 1032(b)(3).

46. Section 1032(d).

47. 1032(f).

48. *Id.*

49. *Id.*
50. Section 1036.
51. The CFP Act gives the authority to enforce Federal Consumer Financial Law against a smaller depository institution to the institution's prudential regulator.
52. Section 1052.
53. Section 1054(a).
54. Section 1055(c).
55. Section 1056.
56. *See, e.g.*, Section 1025(b)(5).
57. Section 1058.
58. 1013(b)(3).
59. *Id.*
60. Section 1018.
61. Section 1057(a).
62. *Id.*
63. Section 1057(c)(1)(A).
64. Section 1058.
65. Section 1041(a)(1).
66. Section 1041(a)(2).
67. *Id.*
68. Section 1048.
69. Section 1002(6)
70. Section 1025(b)(1). The CFPB's authority extends to affiliates of Very Large Depository Institutions and service providers to Very Large Depository Institutions. Sections 1025(a) and (d).
71. Section 1025(c)(1)-(2).
72. Section 1025(c)(3).
73. Section 1025(b).
74. Section 1025(e).
75. Section 1025(b)(5).
76. Sections 1002(9) and 1062.
77. Section 1026.
78. Section 1026(e).
79. Section 1026(b).
80. Section 1026(c)(1).
81. Section 1026(c)(2).
82. Section 1026(d)(1).
83. Section 1025(d)(2).
84. Section 1024(a)(1).
85. Section 1024(b)
86. Section 1024(a)(2).
87. Section 1024(c)(1).
88. Section 1024(b)(5).
89. Section 1024(c)(2).
90. Section 1024(b)(1).
91. Section 1024(b)(2).
92. Section 1024(b)(3)-(4).
93. Section 1024(b)(6).
94. Section 1024(c)(3)(A).
95. *Id.*
96. Section 1024(c)(3)(B).
97. Section 1027(a).
98. *See id.*
99. *See id.*
100. Section 1027(a).
101. *See id.*
102. 15 U.S.C. § 632
103. Section 1027(a)(D)(ii)
104. Section 1029(f)(1).
105. Sections 1029.
106. Section 1029(b).
107. Sections 1027(b)-(m)
108. Section 1029(c)-(e).
109. Section 1027(n).
110. Section 1029A.



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