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Financial Regulatory Reform: The Consumer Financial Protection Bureau (CFPB) and Key Mortgage Provisions

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CFPB Overview

- **Structure:** Independent bureau at the Federal Reserve.

- **Director:** Appointed by President, Confirmed by Senate, 5-year term.

- **Funding:** Certain percentage of Federal Reserve's budget; additional funding may be made available through Congressional appropriations, at the option of the CFPB Director.

Three Areas of Regulatory Duties

- 1 - Rulemaking
- 2 - Supervision
- 3 - Enforcement

Rulemaking

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- Two sources of rulemaking authority:
  - 1 – “organic” authority: to prohibit unfair, deceptive or abusive practices with respect to consumer financial products and services
  - 2 – authority under existing federal consumer financial statutes (e.g.: Truth in Lending Act)
- Authority covers everyone: both banks and non-bank providers (subject to a few exemptions)

Supervision

Routine, on-going examination and monitoring for risks and new developments, as well as on-going compliance:

- Authority over depositories with more than $10 billion in assets.
- For smaller depositories, can require reports and send its examiners along on some examinations conducted by the banking regulators.
- Authority over non-bank providers subject to certain exemptions. One such exemption will be smaller providers – size is to be determined.
  - Note: Non-bank mortgage-related lenders and payday lenders are explicitly included, regardless of size.

Enforcement

- Primary enforcement authority over all “large depositories” – i.e., those with more than $10 billion in assets. (As to “small” depositories, CFPB has no enforcement authority at all; not even back-up authority.)

- Exclusive enforcement authority over non-banks that are either:
  - Payday lenders
  - Providers of mortgage-related services
  - “Larger market participants” (to be defined by rule)
  - Bad apples in the market

- Any gaps in CFPB’s non-bank enforcement authority will be filled by the FTC.

Exemptions

- Some partial exemptions, including merchants and auto dealers.
- Overall, not as many gaps as feared.

Relation to State Law

- CFPB rules do not preempt state law – except to the extent state laws conflict and are less protective of consumers.

- States can enforce CFPB rules, but must provide notice to CFPB, which can intervene.

Relation to State Law, cont'd.

As to National Banks and Thrifts:

- The law attempts to roll back the more aggressive preemption efforts of the OCC since 2004. Should be more difficult for prudential regulators to preempt state laws as applied to national banks and thrifts.
- States can enforce CFPB rules as to national banks and thrifts, and can enforce other federal consumer financial laws as provided therein.
- Overturns Supreme Court decision in *Watters v. Wachovia* (so that state-chartered national bank operating subsidiaries do not get the benefit of preemption).
- Reinforces the Supreme Court decision in *Cuomo v. Clearing House*--that states can enforce non-preempted state laws against national banks and thrifts.

Transition

- Substantive rulemaking authority (both “organic” and under existing statutes) begins on the Transfer Date, which is TBD but between 6-12 months out (with possible 6 month extension).

- In the meantime, Treasury has authorities of the agency that are immediately effective (includes organizational issues and rules relating to scope, e.g., defining “larger participant”).

Key Mortgage Provisions

- **Anti-Steering Provisions**
  - yield spread premium limitations
  - additional anti-steering regulatory authority
- **Ability to Repay Standards**
  - common sense requirement that lenders only sell mortgages consumers can afford to repay
  - qualified mortgage safe harbor provides incentive for lenders to make safer loans, without banning specific mortgage products
- **Prepayment Penalty Limitations**
  - banned on adjustable rate, subprime, and other risky mortgages
  - limited on all loans

Key Mortgage Provisions, cont'd

- **Effective Remedies**
  - damages for borrowers
  - defense to foreclosure
- **High-Cost Loan Protections**
  - the special protections for very high-cost loans have been updated to reflect current interest rates
- **Office of Housing Counseling**
  - new office to support to community organizations that assist homeowners facing foreclosure and future homeowners
- **Appraisal Reform**

Key Anti-Foreclosure Provisions

- **Assistance for Unemployed Homeowners**
  - $1 billion for low-cost bridge loans
- **Legal Aid Foreclosure Prevention**
  - $35 million to support these nonprofit programs
- **HAMP Improvements**
  - additional transparency with respect to the “net present value” test and servicer data
- **Neighborhood Stabilization Program**:
  - $1 billion for the NSP program in efforts to bring back affordable housing and healthy neighborhoods

For More Info: www.responsiblelending.org/cfpa