

Congress Should Provide Strong Oversight Over the CFPB

MBA Recommends

Congress and the administration should carefully monitor the development of the Consumer Financial Protection Bureau (CFPB) and the implementation of its authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to ensure that the CFPB carries out its functions in accordance with the law. Considering the breadth of the CFPB's authority, as well as its structure as an independent entity, Congress must ensure it carries out its functions within the requirements of Dodd-Frank and the laws for which it is responsible, without unduly burdening the availability of credit and harming the very people it is designed to protect. If necessary, Congress should move expeditiously to amend Dodd-Frank in order to subject the CFPB to the same ongoing oversight and review framework to which other regulatory agencies are subject.

Background

Title X of Dodd-Frank establishes the CFPB and its purpose of implementing and, where applicable, enforcing consumer financial law consistently to ensure that all consumers have access to markets for these financial products and services and that those markets for consumer financial products and services are fair, transparent and competitive.

To carry out this purpose, the law grants the CFPB several broad powers, including the power to prohibit unfair and deceptive acts or practices and to require disclosures for all financial products, as well as the power to examine and supervise lenders and mortgage brokers. It also is assigned several specific functions including integrating and simplifying the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) disclosures and establishing a system for responding to consumer complaints.

Notably, Title X reassigns the CFPB authority to carry out virtually all federal financial regulatory laws including TILA, RESPA, SAFE Mortgage Licensing Act (SAFE), Fair Credit Reporting Act (FCRA), Equal Credit Opportunity Act (ECOA) and Home Mortgage Disclosure Act (HMDA), to name a few. Responsibility for these laws is transferred to the CFPB by July 21, 2011.

Following the transfer date, the CFPB also assumes the Board of Governors of the Federal Reserve System's (Federal Reserve's) responsibilities for implementing the extensive provisions of Title XIV, including Dodd-Frank's "ability to repay" and loan officer compensation restrictions.

Dodd-Frank establishes the CFPB as an independent entity within the Federal Reserve. Its appointments are not subject to Federal Reserve review and its rulemakings are not subject to the Federal Reserve's or even the administration's Office

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of Management and Budget (OMB) review process. The CFPB's funding is an estimated \$400 million. It is derived from the Federal Reserve's earnings and is not subject to congressional oversight.

No one has been appointed yet by the President to serve as Director of the CFPB. In the absence of a director, the CFPB is being set up by the Treasury through an appointee who also serves on the White House staff.

While the CFPB has invited stakeholders to well-publicized public meetings, there is considerable apprehension, as the July 21, 2011 transfer date approaches, whether CFPB staff are working sufficiently with industry staff or other stakeholders to accomplish matters that the industry regards as particular priorities, where the industry has developed expertise that should be drawn on in shaping any proposal. This includes, for example, the RESPA and TILA integration effort and the forthcoming loan officer compensation rules. The design of a complaint system also warrants stakeholder involvement. Notably, to date, top appointments to the CFPB generally have not included persons with obvious lending industry experience.

Members of Congress have questioned whether the CFPB is subject to sufficient review and oversight.

Action Needed

MBA strongly supports the purpose of the CFPB and welcomes its consolidation of regulatory functions. Such consolidation should further consistency and reduce duplication and discord. Nevertheless, considering the largely unprecedented independence conferred on the CFPB and the wide reach of its authorities, congressional oversight is entirely important. Oversight should help ensure that the CFPB is set up effectively, appropriately carries out its functions and its money is well spent. At the same time, such oversight should also decrease the risk that the CFPB's efforts will unduly increase regulatory burden or hamper the availability of credit, harming the very people it is designed to protect.

If, during its review of the CFPB, Congress identifies a need for more enhanced oversight, corrective legislation should be enacted expeditiously to amend Dodd-Frank to ensure greater day-to-day supervision of and accountability for the CFPB. This could include the establishment of an oversight board for the CFPB, movement of the CFPB to the Department of Treasury, new requirements for OMB review and/or making the CFPB's budget subject to appropriations, provisions that currently are not included in Dodd-Frank.