



Financial Regulatory Reform: All the Nuts and Bolts

States' rights, the new agency's jurisdiction, rule-making and timelines

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Bureau of Consumer Financial Protection

- Independent Bureau within Federal Reserve
- Funded by formula from Federal Reserve's funds, with possibility of additional congressional appropriation
- Led by a Director with significant autonomy
 - Appointed by President, with advice and consent of Senate

General Powers

- *Purpose.* Ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.
- *General Objectives.* Ensure 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 and practices and from discrimination;
 - Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

General Powers (cont'd)

- *General Objectives (cont'd)*
 - Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, to promote fair competition; and
 - Markets for consumer financial products or services operate transparently and efficiently to facilitate access and innovation.
- *Effectuation of Purpose and Objectives.* The Bureau may prescribe rules and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of federal consumer financial laws, and to prevent evasions thereof.

Examination Authority

- Nonbanks
 - Mortgage industry
 - “Larger participants” in financial services (as defined by rule by the Bureau)
 - Payday lenders
 - Private education lenders
- Larger Banks
 - Assets of \$10B or more
- Smaller Banks
 - Assets of less than \$10B
 - “Ride along” authority only

Enforcement Authority

- Nonbanks
 - Significant overlap with FTC
- Larger Banks
 - Assets of \$10B or more
- Civil Penalties
 - Up to \$5,000 per day, per violation
 - Up to \$25,000 per day, per reckless violation
 - Up to \$1MM per day, per knowing violation
- Remedies
 - Restitution, reformation of contracts, disgorgement, public notification, etc.

Specific Grants of Authority

- Prohibition on unfair, deceptive, or abusive acts or practices
- UDAP rulemaking on mortgage loans (Sec. 626 of Approps. bill)
- Improved disclosures
- Restricting or prohibiting predispute binding arbitration
- Consumer rights to access of information
- Combined mortgage form disclosure
- No authority to set a federal usury limit

State Law Preemption

- Title X does not preempt state law
- Codification of Barnett standard for national banks and federal thrifts
 - Prevent or significantly interfere with bank powers
- OCC or court may make preemption finding on case-by-case basis
 - OCC finding must be part of a record with substantial evidence
- No federal preemption for non-bank operating subsidiaries
- Exportation doctrine is preserved

State Law Preemption (cont'd)

- Visitorial Powers and Related Issues
 - Codification of Cuomo
 - State AGs may enforce *regulations* issued under Title X against national banks and federal thrifts
 - State AGs and state regulators may enforce the *provisions* of Title X, in addition to the *regulations*, against state-chartered banks and nonbank entities
 - State AGs can bring suit against banks for violations of mortgage UDAP rules
- Majority of states may force Bureau into a rulemaking

Timelines

- “Designated Transfer Date”
 - Designated by Treasury within 60 days of date of enactment
 - Must be 180 days to 12 months from date of enactment
 - Can be 18 months from date of enactment if Treasury submits reasons to Congress

Questions

Thank You!

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