The Consumer Financial Protection Bureau

Will this new federal bureau provide meaningful change or just add another layer of bureaucracy?

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VIEWPOINT

On July 21, a new bureau created within the Federal Reserve System by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 will begin oversight of the consumer financial-services industry. Organizations that will fall under its jurisdiction include banks, savings associations, credit unions, bank and non-bank mortgage lenders, non-bank consumer financial-services companies such as payday lenders, private student-loan companies, credit-card issuers, credit bureaus, and debt collectors. The search for a director to head the Consumer Financial Protection Bureau (CFPB) is still under way.

According to Elizabeth Warren, Harvard Law professor, and long-time consumer advocate appointed by President Obama to oversee setup of the CFPB, the mission of the new bureau is to level the playing field for consumers without absolving individuals of their responsibility to make sound financial decisions.

The CFPB will have broad authority over the U.S. consumer financial system, including enforcement and oversight of 18 existing consumer-related financial regulations. Congress has also granted the bureau power to issue even more regulations of the consumer financial industry. And, the CFPB will directly enforce compliance for financial products and services at banks and credit unions with assets exceeding $10 billion. Existing federal regulators will continue to supervise smaller depository institutions.

Early focus on non-depository lenders

The new federal bureau will also serve as the supervisory entity for non-depository financial institutions (e.g., payday lenders, private student-loan providers, and non-depository mortgage lenders). These types of lenders were previously regulated only by the states in which they operate. Certain companies in this category have been blamed, whether rightly or wrongly, as the source of some of the more outrageous abuses of consumer naïveté during the decade just ended.

The CFPB's early efforts have focused on the non-depository area and forging cooperative relationships with state consumer-enforcement administrators. On Jan. 4, the CFPB announced an agreement with the Conference of State Banking Supervisors intended to streamline supervision of these industries. State regulators and the CFPB say they will share information and coordinate examinations and enforcement procedures with the goals of minimizing regulatory burden and increasing the efficiency of regulatory resources. The CFPB still needs to make similar agreements with other state agencies that regulate non-depository lenders in order to bring more of these widely dispersed government consumer-protection forces under its influence.

The result of some other prior attempts to protect consumers through federal regulation, such as the 2009 CARD Act (Card Accountability Responsibility and Disclosure), resulted in the negative, but unintended consequence that more people went to high-cost payday lenders and loan sharks because credit from traditional banks and credit-card companies became less available to those with lower credit scores.

Consumers presently receive no less than nine written disclosures required under federal regulations when they obtain a mortgage — four written disclosures for a personal loan, and five when they open a bank account. Most of these disclosures require the consumer to acknowledge receipt. It is doubtful that most consumers read and fully understand all of the multi-page notices of jargon and charts they acknowledge when they agree to borrow and pay back money. Warren has stated her desire to see the CFPB simplify the disclosures that consumers receive for credit transactions.

At this point, it is still unknown whether the CFPB's good intentions in creating new regulations and revamping existing consumer financial-protection regulations will yield the benefits of a fairer and more efficiently profitable financial-services industry. And, we don't know if instead, the new bureau's efforts will breed the next trap for the uninformed, desperate "Everyday Joe" and drive smaller, long-established lenders from the market.

Bigger bureaucracy

The CFPB will have within it seven new offices and units dedicated to consumer financial protection:

- Office of Financial Education
- Office of Fair Lending & Equal Opportunity
- Office of Financial Protection for Older Americans
- Office of Service Member Affairs
- Private Student Loan Ombudsman
- Community Affairs Unit
- Research Unit

The CFPB's legal mandate includes implementation of a toll-free telephone number, a website, and a database intended to

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facilitate the centralized collection, monitoring, and response to consumer complaints regarding financial products or services. The goal is to bring unfair or deceptive practices to the attention of government regulators quickly.

While the banking sector generally welcomes the prospect of curing the fragmented multi-agency system of addressing consumer complaints, it has also expressed concerns about potential misuse of the complaint database. The worry is that a representative of a particular company might make false accusations against a competitor and register multiple, unsubstantiated complaints. Another concern is that the public-complaint database containing consumers' personal information could be used by identity thieves.

In the months leading up to the CFPB's official date to take control, the existing five federal agencies that already regulate the financial industry continue to issue amendments of existing regulations, requiring more changes by banks and credit unions to lending procedures and consumer disclosures.

The American Bankers Association, Consumer Mortgage Coalition, and Mortgage Bankers Association have recently expressed to the Federal Reserve their joint support for improvements in the disclosure process, along with their frustration over the historical and continuing piecemeal approach to amending regulations. They stated that the result has been unnecessarily complex and sometimes, conflicting requirements, which are costly to implement, and have smaller community-based financial institutions re-evaluating the feasibility and pricing of products and services.

Financial institutions that have been making sound loans and credit extensions all along will welcome changes that would remove the "Wild West" atmosphere that infiltrated the consumer and residential mortgage-lending arena over the past few decades, but they may also be wary of examination by yet another government agency.

While there is no doubt that consumers and the nation's economy would benefit from easier-to-understand financial products, it remains to be seen whether the Consumer Financial Protection Bureau will provide meaningful positive change to the U.S. financial system. Or instead, will it just add another layer of bureaucracy and create more paperwork that goes unread by the consumer. ❑

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