The Consumer Financial Protection Bureau (CFPB): Purpose & Function

Federal Reserve Bank of Boston

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Susanna Montezemolo

Center for Responsible Lending

susanna.montezemolo@responsiblelending.org

What caused the financial crisis?

- Dangerous products and practices greatly inflated the housing bubble.
- Wall Street demand for the riskiest, highest-cost loans caused this dangerous lending.
- Federal regulators turned a blind eye to these abuses.
- Overly broad preemption prevented states from acting.

A failure of federal regulation

- Prudential regulators prioritized short-term profitability over consumer protection. In long term, consumer protection and safety and soundness are interdependent.
- OCC preemption doctrine took state regulation out of the picture for federally-regulated financial institutions.
- Enforcement actions were virtually non-existent.

The need for an independent consumer agency

- Federal regulatory failures directly led to enactment of the Consumer Financial Protection Bureau (CFPB) as part of the Dodd-Frank bill.
- Mission entirely consumer-oriented; no conflict with prudential regulation.
- Headed by a single presidentially-appointed director, rather than weaker commission structure.
- Funding independent of appropriations process will create less opportunity for regulated entities to weaken regulations.

Three Areas of Regulatory Work

- Rulewriting
- Consumer Protection Supervision
- Enforcement

Organic Rulewriting Authority

- Organic authority: Preventing "unfair, deceptive or abusive acts and practices" (UDAAP).
- Abusive (new): Sec. 1031(c)(1) Dodd Frank:

  "CFPB has no authority to declare an act or practice abusive unless it materially interferes with the ability of a consumer to understand a term or condition; or takes unreasonable advantage of:

  - "A lack of understanding of the material risks, costs, or conditions of the product or service;
  - "The inability of the consumer to protect his or her interests in selecting or using the product or service; or
  - "The reasonable reliance by the consumer on the covered person to act in the interests of the consumer."

Rulewriting Authority Con't

- Transferred statutes (TILA, FCRA, FDCPA, EFTA, RESPA, HMDA – but not CRA)
- Ability to regulate or ban forced arbitration
- Prohibition on setting usury cap
- Rulewriting covers almost every financial entity. Exceptions: Merchants partially exempted. Auto dealer rules mostly written by FTC (CFPB retains authority over auto dealers who keep loans in portfolio).

Rulewriting Process

- Traditional notice and comment with one more requirement: must convene small business panels to comment before proposing a rule.
- This small business requirement could add 4-6 months for some rules and give some actors (e.g., payday lenders) greater influence over what is proposed.
- Financial Stability Oversight Council (FSOC) may by a 2/3 vote veto CFPB regulations that create a risk to the safety and soundness of the U.S. banking system or put the stability of the U.S. financial system at risk.

Examination & Enforcement

- For consumer protection matters, CFPB will have exclusive supervisory authority and full enforcement authority over:
  - Depositories with more than $10B in assets.
  - Specified non-banks: Payday lenders, providers of mortgage-related companies (e.g., mortgage brokers and servicers), private student lenders, larger market participants (to be defined by rule).
  - Additional enforcement by state regulators and state AGs.

Impact on State Laws

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- CFPB rules are generally not preemptive. If a state law directly conflicts with CFPB:
  - Weaker state laws are preempted by CFPB
  - Stronger state laws stay in place
- States can enforce CFPB rules toward national banks and thrifts.
- OCC can preempt on a case-by-case basis only if a state law significantly interferes with the business of banking. This case-by-case preemption subject to less deferential judicial review.

CFPB Complaints Function

- CFPB's "primary functions" include "collecting, investigating, and responding to consumer complaints" (Sec. 1021(c) Dodd-Frank).
- Must set up a unit with a toll-free phone number, website, and database to "facilitate centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services" (Sec. 1013 Dodd-Frank).
- Complaints and inquiries database should inform the CFPB, other regulators, and the public.

CFPB Complaints Function Con't

- To date, no announcement on how this will be implemented.
- Two issues most important to consumer/civil rights groups:
  - Complaint resolution: CFPB should make concerted effort to resolve complaints in a timely manner when resolution is possible (in opposition to OCC, which simply forwards complaints to the banks)
  - Transparency: Complaints should be accessible through a searchable public online database. This makes it much more likely to find patterns in complaints and push for stronger regulation/enforcement.

CFPB Draft Organization Chart

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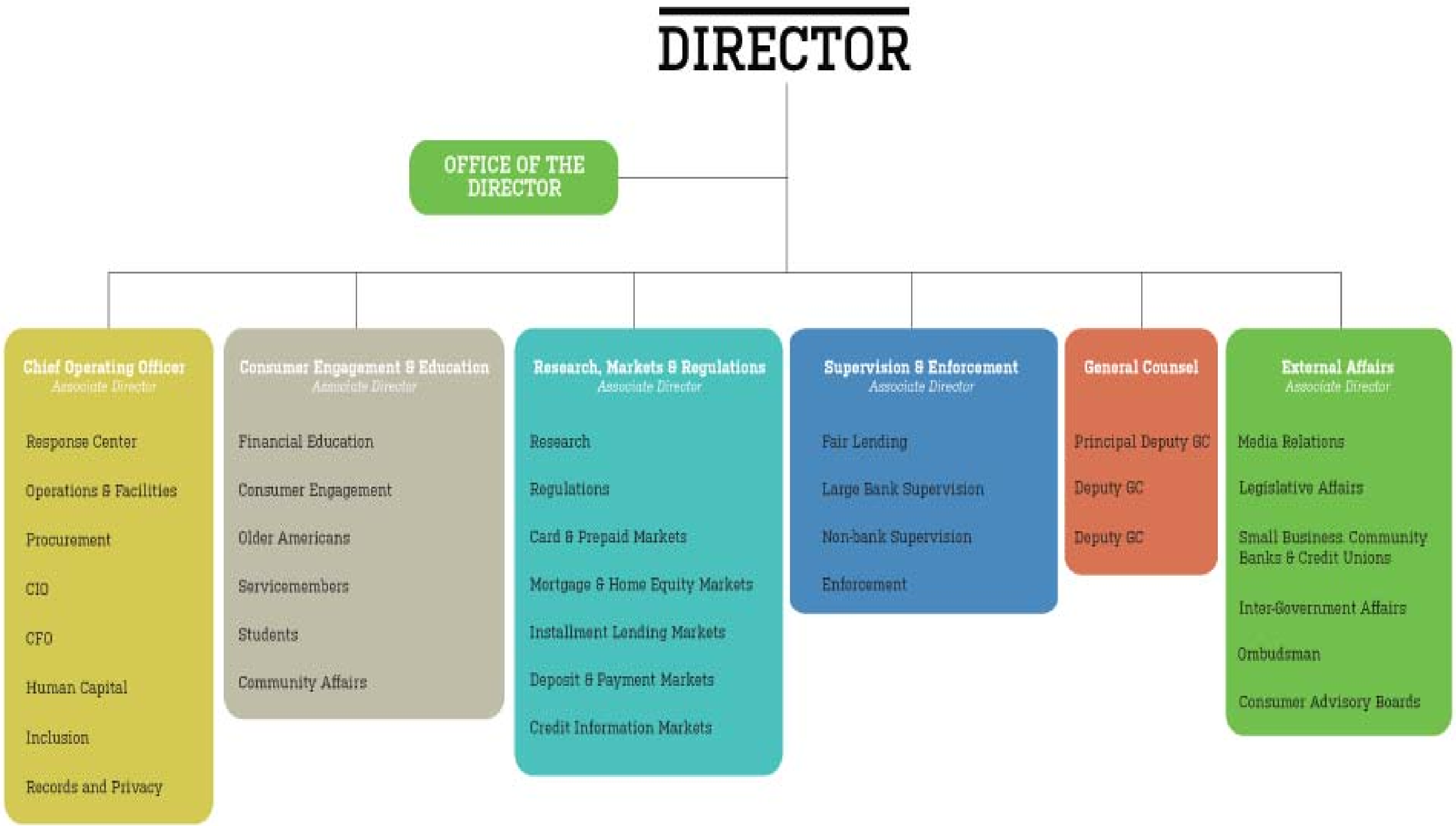

CFPB Implementation: Basics

- Transfer date: 21 July 2011. Substantive rulemaking authority begins on this date.
- Currently, approximately 150 employees.
- 700 employees expected by July.
- Office locations: DC, New York, Chicago, San Francisco; field offices focused on supervision and enforcement.

CFPB Implementation: Agency Director Status

- No nominee yet announced for Senate-confirmed Director position.
- If no director in place by the transfer date, CFPB can still move forward with most rulemakings (although perhaps not those involving UDAAP authority).
- CFPB can also use supervision & enforcement powers over covered banks (but not covered non-banks).

CFPB Implementation: Rulemaking

- After transfer date, CFPB is expected to have two rulemaking priorities:
  - rules required to operationalize the Bureau, e.g., definition of large non-bank participant, procedures for FSOC review of CFPB rules, etc.
  - Rules mandatory under Dodd-Frank, e.g., risk retention for asset-backed securities, implementation of mortgage provisions, etc.
- Discretionary rules that will likely move forward on a faster timeframe include TILA Regulation Z rulemakings transferred from the Federal Reserve Board. (One 2010 rescission/reverse mortgage rule and two 2009 proposals revamping mortgage disclosures generally.)
- UDAAP rulemakings are also discretionary and likely on a longer timeframe.

Congressional Threats to CFPB

- Some in Congress have called for repeal of CFPB or even all of Dodd Frank. No realistic political chance that this will happen. (Would not pass both houses, and President would veto if it did.)
- CFPB could, however, be weakened through smaller changes. Example: House has threatened to change funding from independent source (transfer from Fed) to appropriations process. This is still an unlikely possibility.
- Expectation is that CFPB will not be weakened.

CFPB's Expected Impact on Consumers

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- No "race to the bottom" in regulation, because everyone subject to same rules.
- Expectation that agency will use organic UDAAP authority to address abusive financial practices
- Greater research focus will lead way to evidence-based rulemaking, which will take place earlier (before all-out crisis)
- Better enforcement of federal rules, including by states
- States able to better protect their residents through new laws
- Complaints process that leads to resolution of problems when possible.