

BUREAU OF CONSUMER FINANCIAL PROTECTION
TRANSFER CLARIFICATION ACT

MAY 27, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1667]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1667) to postpone the date for the transfer of functions to the Bureau of Consumer Financial Protection if the Bureau does not yet have a Director in place, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act, amends Section 1062 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (P.L. 111-203). The Dodd-Frank Act shifts consumer protection functions to the Consumer Financial Protection Bureau (CFPB) from the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and the Department of Housing and Urban Development (HUD). Because certain powers have yet to be transferred and because a nominee for the director position has not even been named, H.R. 1667 would delay any further transfer of powers

until the later of the following: (1) July 21, 2011; or (2) the date on which the Director of the CFPB is confirmed by the Senate.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1667 was introduced by Financial Institutions and Consumer Credit Subcommittee Chairman Shelley Moore Capito to make the date for transferring regulatory authority to the CFPB contingent on whether the CFPB's Director has been nominated by the President and confirmed by the Senate. The CFPB was created under Title X of the Dodd-Frank Act. Under Title X, different authorities transfer to the CFPB on different dates: some authorities shift on July 21, 2011, while others will not move until a CFPB Director is in place.

Today, the Secretary of the Treasury has interim authority to carry out certain CFPB authorities under Section 1066 of the Dodd-Frank Act. The Treasury Secretary's authority under Section 1066(a) terminates when a CFPB Director is confirmed by the Senate rather than on the designated transfer date of July 21, 2011. Section 1066(a) states, "The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate." According to a joint report from the Inspectors General of the Treasury and the Federal Reserve Board, released January 10, 2011 (the IG Report), if the CFPB does not have a Senate-confirmed Director by July 21, 2011, it may continue to operate under the Treasury Secretary's 1066(a) authority. Under the Dodd-Frank Act, regulatory functions and authorities are to be transferred from the federal financial regulators that currently have those authorities to the CFPB on July 21, 2011. After July 21, 2011—and until a director is confirmed—the Treasury Secretary will be permitted to carry out the functions transferred from the current federal financial regulators to the CFPB. By contrast, the Treasury Secretary's authority under 1066(b) to provide administrative services necessary to support the Bureau terminates on July 21, 2011.

In addition to the transferred functions, the Dodd-Frank Act confers upon the CFPB newly-established federal consumer financial regulatory authorities, such as the authority to prohibit unfair, deceptive, or abusive practices in connection with consumer financial products or services. According to the IG Report, the Treasury Secretary's authority under Section 1066(a) does *not* extend to these newly-established authorities. Hence, if there is no Senate-confirmed director by the designated transfer date, the Treasury Secretary would not be permitted to exercise the CFPB's newly established authorities, including those established under Sections 1024 and 1022 of the Dodd-Frank Act.

Although the transfer date is fast approaching, the President has not even nominated the CFPB's first director, raising the prospect that regulatory authority will be transferred to an agency that cannot effectively exercise it. By staying that transfer until a Director has been appointed and confirmed, H.R. 1667 would reduce the confusion and uncertainty that would ensue if the CFPB inherits certain regulatory powers but not others because there is no leadership structure in place.

HEARING

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 16, 2011 entitled “Oversight of the Consumer Financial Protection Bureau.” There was one witness:

- Ms. Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau, Department of the Treasury

The Subcommittee on Financial Institutions and Consumer Credit held a legislative hearing on April 6, 2011 entitled, “Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau.” The following witnesses testified:

- Ms. Leslie R. Andersen, President and Chief Executive Officer, Bank of Bennington on behalf of the American Bankers Association
- Ms. Lynette W. Smith, President and Chief Executive Officer, Washington Gas Light FCU on behalf of the National Association of Federal Credit Unions
- Mr. Jess Sharp, Executive Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
- Mr. Hilary Shelton, Director, NAACP Washington Bureau and Senior VP for Advocacy and Policy, NAACP
- Mr. Noah H. Wilcox, President and Chief Executive Officer, Grand Rapids State Bank on behalf of the Independent Community Bankers of America
- Mr. Rod Staats, President and Chief Executive Officer, SECU of Maryland on behalf of the Credit Union National Association
- Mr. Richard Hunt, President, Consumer Bankers Association
- Prof. Adam J. Levitin, Georgetown University Law Center

COMMITTEE CONSIDERATION

The Subcommittee on Financial Institutions and Consumer Credit met in open session on May 4, 2011 and ordered H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act, favorably reported to the Full Committee by a record vote of 13 yeas and 8 nays (Record vote no. FI-6).

The Committee on Financial Services met in open session on May 12, 2011 and ordered H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act, favorably reported to the House by a record vote of 32 yeas and 26 nays (Record vote no. FC-39).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Bachus to report the bill to the House with a favorable recommendation was agreed to by a record vote of 32 yeas and 26 nays (Record vote no. FC-39). The names of Members voting for and against follow:

RECORD VOTE NO. FC-39

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling	X	.....	.....	Ms. Waters .....	.....	X	.....

RECORD VOTE NO. FC-39—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. King (NY)	X			Mrs. Maloney		X	
Mr. Royce	X			Mr. Gutierrez			
Mr. Lucas	X			Ms. Velázquez		X	
Mr. Paul				Mr. Watt		X	
Mr. Manzullo	X			Mr. Ackerman		X	
Mr. Jones		X		Mr. Sherman		X	
Mrs. Biggert	X			Mr. Meeks		X	
Mr. Gary G. Miller (CA)	X			Mr. Capuano		X	
Mrs. Capito	X			Mr. Hinojosa		X	
Mr. Garrett	X			Mr. Clay		X	
Mr. Neugebauer	X			Mrs. McCarthy (NY)			
Mr. McHenry	X			Mr. Baca		X	
Mr. Campbell	X			Mr. Lynch		X	
Mrs. Bachmann	X			Mr. Miller (NC)		X	
Mr. McCotter	X			Mr. David Scott (GA)		X	
Mr. McCarthy (CA)	X			Mr. Al Green (TX)		X	
Mr. Pearce	X			Mr. Cleaver		X	
Mr. Posey	X			Ms. Moore		X	
Mr. Fitzpatrick	X			Mr. Ellison		X	
Mr. Westmoreland	X			Mr. Perlmutter		X	
Mr. Luetkemeyer	X			Mr. Donnelly		X	
Mr. Huizenga	X			Mr. Carson		X	
Mr. Duffy	X			Mr. Himes		X	
Ms. Hayworth	X			Mr. Peters		X	
Mr. Renacci	X			Mr. Carney		X	
Mr. Hurt	X						
Mr. Dold	X						
Mr. Schweikert	X						
Mr. Grimm	X						
Mr. Canseco	X						
Mr. Stivers	X						
Mr. Fincher	X						

During consideration of H.R. 1667, the following amendments were considered:

1. An amendment offered by Mrs. Maloney, no. 1, to grant the Treasury Secretary certain interim powers designed for the CFPB until a CFPB director is confirmed, and that the powers could not be used by any regulator until a CFPB director is confirmed, was not agreed to by a record vote of 25 yeas and 33 nays (Record vote no. FC-37).

RECORD VOTE NO. FC-37

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)			
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		

RECORD VOTE NO. FC-37—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland		X		Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

2. An amendment offered by Mr. Miller of NC, no. 2, to change the date when certain powers are transferred to the CFPB to the earlier of when a Director is confirmed by the Senate or the date on which a vote on any procedural motion in the Senate prevents a vote on confirmation, was not agreed to by a record vote of 25 yeas and 33 nays (Record vote no. FC-38).

RECORD VOTE NO. FC-38

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)			
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland		X		Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

The following motion was also considered by the Committee:
 A motion offered by Mrs. Capito, to move the previous question on H.R. 1667, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance-related goals and objectives for this legislation:

The purpose of H.R. 1667 is to make the date for transferring regulatory authority to the CFPB from the Federal agencies contingent on the nomination of the Director for the CFPB by the President and confirmed by the Senate. H.R. 1667 would delay the transfer of powers until July 21, 2011 or the date on which the Director of the CFPB is confirmed by the Senate, whichever is later. The Dodd-Frank Act shifts the consumer protection functions to the CFPB from the Federal Reserve, the FDIC, the NCUA, the OCC, the OTS and HUD.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 20, 2011.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1667—Bureau of Consumer Financial Protection Transfer Clarification Act

H.R. 1667 could extend the date on which the authority of the Consumer Financial Protection Bureau (CFPB) to enforce rules and regulations related to consumer financial protection would be transferred from other financial regulatory agencies. Under current law, the transfer of authority to CFPB will take place on July 21, 2011. H.R. 1667 would set the transfer date as the later of July 21, 2011, or the date on which a director of the CFPB is confirmed by the Senate.

CBO assumes that H.R. 1667 will be enacted near the end of fiscal year 2011, after the July 21, 2011, transfer date. Therefore, CBO estimates that enacting H.R. 1667 would not affect direct spending or revenues. However, should H.R. 1667 be enacted before the transfer date, CBO estimates that costs for the CFPB would decrease because staffing levels would not need to increase as quickly as they would under current law. The magnitude of the potential decrease in direct spending would depend on when a director would be confirmed by the Senate. In 2011, we estimate that the CFPB will spend about \$114 million.

H.R. 1667 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1667 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the “Bureau of Consumer Financial Protection Transfer Clarification Act.”

Section 2. Director required before transfer

Section Two requires that consumer protection functions not be transferred from the Federal Reserve, the FDIC, the NCUA, the OCC, the OTS and HUD to the CFPB until the later of the following: (1) July 21, 2011; or (2) the date on which the Director of the CFPB is confirmed by the Senate.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

* * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

* * * * *

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

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SEC. 1062. DESIGNATED TRANSFER DATE.

(a) * * *

* * * * *

(d) *DIRECTOR REQUIRED BEFORE TRANSFER.*—*Notwithstanding the other provisions of this section, the single calendar date for the transfer of functions to the Bureau under section 1061 shall be the later of—*

(1) *the date that would have been designated, but for the application of this subsection; and*

(2) *the date on which the Director of the Bureau is confirmed by the Senate pursuant to section 1011(b).*

* * * * *

MINORITY VIEWS

The Consumer Financial Protection Bureau (CFPB) is a very important part of the Wall Street Reform and Consumer Protection Act, as the title of the bill makes clear. Until passage of that Act, consumer protection in financial matters was in the hands of regulators who consistently treated consumer protection as a second class concern. Creating an independent bureau was intended to ensure that consumer interests are fully considered on the merits and not relegated to an afterthought.

H.R. 1667 proposes to delay the transfer of authority to CFPB under existing consumer financial protection laws until a Director is confirmed. This legislation would leave the CFPB with no meaningful consumer protection authority when it officially opens its doors later this summer and would leave the authority with the prudential regulators—the very prudential regulators who failed to address the many problems in consumer finance that helped to cause the financial crisis. Strong consumer protections are necessary to help stabilize the economy, promote competition and transparency, and bring confidence back to the financial marketplace. Delaying the ability of the CFPB to begin its operations will significantly undermine this effort and we strongly oppose this legislation.

BARNEY FRANK.
LUIS V. GUTIERREZ.
GARY C. PETERS.
ANDRÉ CARSON.
WM. LACY CLAY.
EMANUEL CLEAVER.
GARY L. ACKERMAN.
CAROLYN MCCARTHY.
JOE BACA.
JOE DONNELLY.
BRAD SHERMAN.
MICHAEL E. CAPUANO.
MELVIN L. WATT.
MAXINE WATERS.
KEITH ELLISON.
CAROLYN B. MALONEY.
BRAD MILLER.
GREGORY W. MEEKS.
AL GREEN.
STEPHEN F. LYNCH.
RUBÉN HINOJOSA.

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