

## Controversial CFPB Opens for Business

One of the most controversial elements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (CFPB) opened for business on July 21, 2011, with limited authority as the Congressional battle over its scope and leadership continues to rage.

The last-minute nomination of former Ohio Attorney General Richard Cordray to head the CFPB did little to quell staunch opposition from Republicans — who immediately blocked the nomination — and much of the financial services industry. They charge that the bureau and its director are too powerful and lack accountability and transparency. As such, opponents are calling for, among other changes, the creation of a five-member commission to oversee the agency and giving other federal financial regulators the power to block its actions.

The CFPB, which was created to protect consumers against fraudulent and unfair financial business practices, is tasked with:

- Conducting rule-making, supervision and enforcement for federal consumer financial protection laws
- Restricting unfair, deceptive or abusive acts or practices
- Creating a center to receive consumer complaints
- Promoting financial education
- Researching consumer behavior
- Monitoring financial markets for new risks to consumers
- Enforcing laws that outlaw discrimination and other unfair treatment in consumer finance

For the banking industry, the primary issues with the CFPB are the substantial compliance burdens it will place upon banks of all sizes and the associated costs. The American Bankers Association (ABA) points out that all banks will be required to comply with rules and regulations set by the CFPB, and the bureau can require community banks to submit whatever information it decides it needs. It can also examine community banks at its discretion on a sampling basis.

The association also objects to the sweeping authority the CFPB is given to require whatever disclosures it thinks are necessary to permit consumers to understand “the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” Further, the ABA notes that all banks will have to gather and maintain information on the status of all business customers (e.g., women- or minority-owned businesses or small businesses) and report annually to the CFPB — all of which adds considerable compliance costs to every bank’s bottom line.

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“In addition to the weakening of any connection between the Bureau’s mission and safety and soundness concerns, Dodd-Frank gave the Bureau expansive new quasi-legislative powers and discretion to rewrite the rules of the consumer financial services industry based on its own initiative and conclusions about the needs of consumers,” said ABA Chairman-Elect Albert C. Kelly Jr. in his July 19, 2011, testimony before the Senate Committee on Banking, Housing and Urban Affairs. “The prerogative of Congress to decide the direction and parameters of the consumer financial product market has essentially been delegated to the Bureau. The resulting practically boundless grant of agency discretion is exacerbated by giving the head of the Bureau sole authority to make decisions that could fundamentally alter the financial choices available to customers.”

For now, however, much of the agency’s authority is in limbo. Without a confirmed director, the powers of the CFPB are limited. For example, it cannot restrict business practices or issue rules governing disclosures. Nor can it regulate financial firms outside the conventional banking industry, including payday lenders and debt collectors.

And while Cordray is considered a less-controversial nominee than Elizabeth Warren, the Harvard law professor who proposed the agency’s creation and spent the past year preparing it for operations, Senate Republicans are refusing to budge on confirmation until their demands for an overhaul are met.

“Until President Obama addresses our concerns by supporting a few reasonable structural changes, we will not confirm anyone to lead [the CFPB]. No accountability, no confirmation,” said Sen. Richard Shelby, R-Ala., ranking member on the Senate Banking Committee, in a statement issued immediately following Cordray’s nomination.