The Consumer Financial Protection Bureau

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

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In Response to the Financial Meltdown, Consumers Union and Many Other Groups Recommended Systemic Reforms

- Strong consumer protections to reduce household risk;
- A changed regulatory culture;
- A federal agency independent of the banking industry focused on the safety of consumer financial products;
- An active role for state consumer protection;
- Credit reform leading to suitable and sustainable credit;
- An approach to systemic risk that includes systemic oversight addressing more than large financial institutions, stronger prudential regulation for risk, and closing regulatory gaps; and
- Increased accountability of all who offer financial products.

Source: Hillebrand, Senate Banking Committee testimony, March 24, 2009.

Regulatory Failure Set the Stage for the Financial Crisis

- Consumer advocates highlighted predatory practices in subprime lending a decade before the financial crisis.
- Legal services advocates were warning of devastation of low income neighborhoods by predatory lenders in the 1990s.
- NCLC, Consumers Union, and other groups asked the Federal Reserve Board in 2000 to expand HOEPA to address predatory subprime loan practices.
- The **GAO** said in Jan. 2009: "**…the fragmented U.S. regulatory structure contributed to failures by the existing regulators to adequately protect consumers and ensure financial stability.**" GAO 09-216, p. 15, available at: http://www.gao.gov/new.items/d09314t.pdf

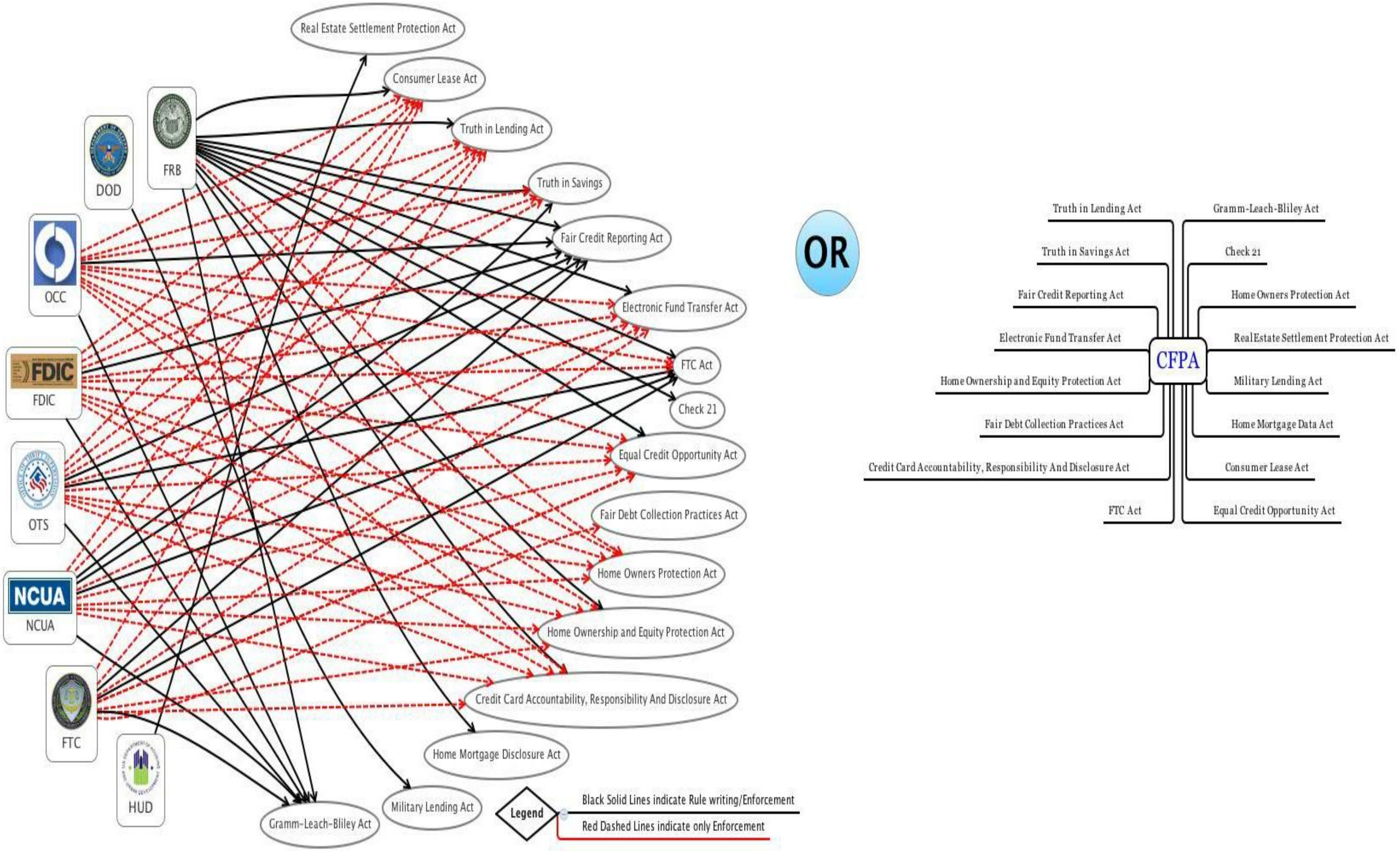
The Financial Crisis Started with a Lack of Consumer Protection in Mortgages

- The complex financial instruments that sparked the financial crisis were based on unsuitable, poorly underwritten, and often extremely complex loans sold to individual homeowners.
- “Keep the fee, pass the risk” rewarded bad underwriting.
- Slicing and dicing amplified and spread the risk of those bad loans throughout the global financial system.
- The crisis was magnified by highly leveraged, largely unregulated financial instruments and inadequate risk management.

The Dodd-Frank Solution for Consumer Protection in Financial Services

- The Consumer Financial Protection Bureau
- A single, accountable agency to oversee and police the marketplace for consumer financial services
- Independent director
- Secure budget through the Federal Reserve System
- Financial Stability Council veto by a 2/3rds vote if a regulation creates a risk to the safety and soundness of the U.S. banking system or puts the stability of the U.S. financial system at risk

Which is more efficient and effective?



Prepared by the Consumer Federation of America in early 2010, used with permission.

A 21st Century Federal Agency

- Protect consumers
- Protect law-abiding competitors
- Data-driven agency
- Transparent to the public and the industry
- Use the power of the states to augment the reach of the federal agency

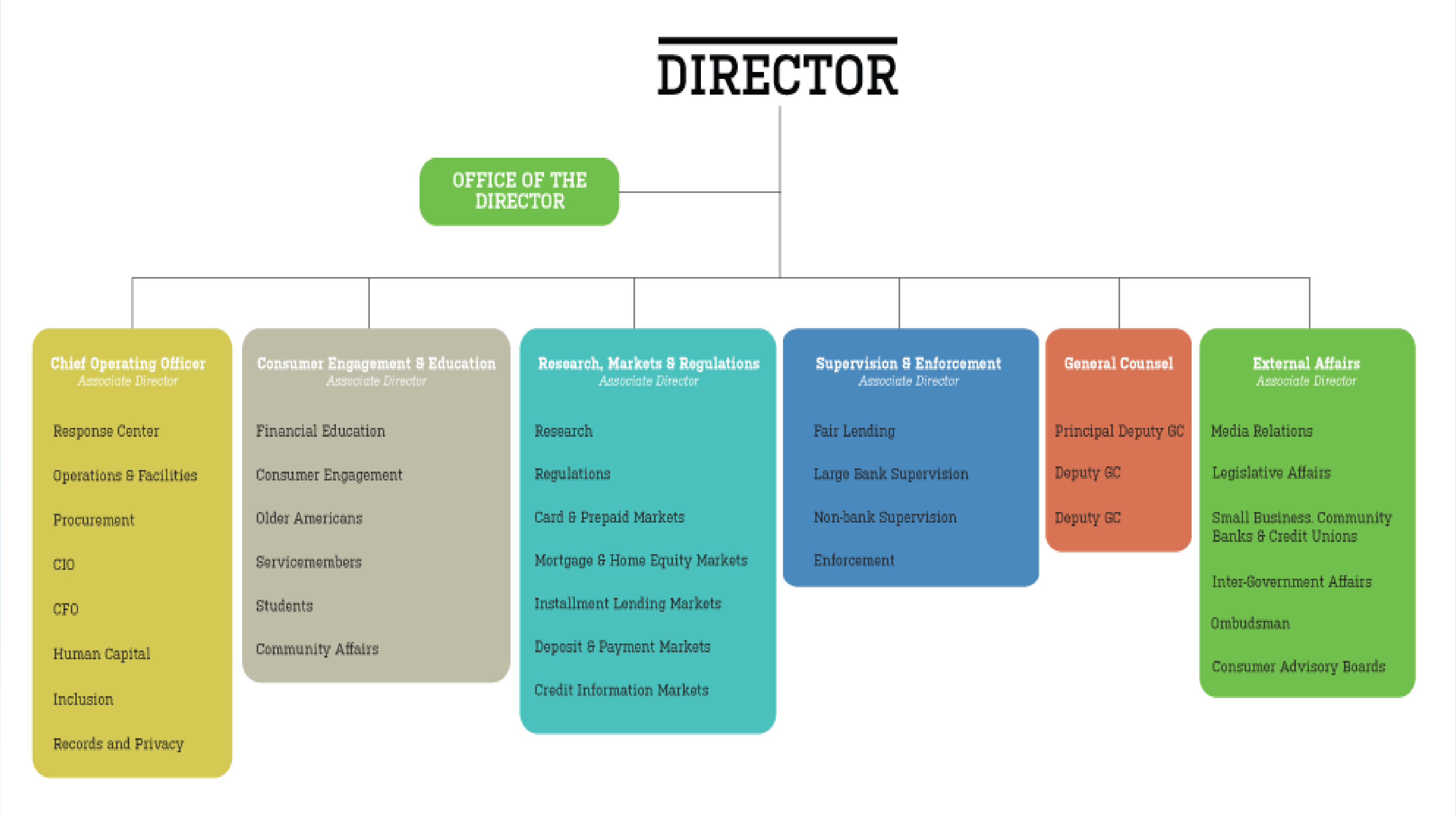
Basic Concepts for the CFPB

- Research, Rule Writing, Supervision, Enforcement, and Financial Education
- Covers most types of consumer financial products and services and providers.
- The same rules will apply to banks and non-banks of all sizes.
- Supervision depends on type of entity, size of bank, and for nonbanks, position in a market.
- Enforcement authority extends to Title X provisions, CFPB rules under Title X, and enumerated statutes and transferred authorities with associated regulations.
- Role for states preserved and enhanced.

Specific Units Described by the Statute

- Research
- Community Affairs
- Fair Lending and Equal Opportunity
- Financial Education
- Service Member Affairs
- Financial Protection for Older Americans
- Private Education Loan Ombudsman
- Consumer Advisory Board

CFPB's Draft Organization Chart



From: www.consumerfinance.gov

Fundamental Principles Evident in the CFPB Design

- Market-based teams
- Evidence-based approach
- Clear information about costs, benefits, and risks
  - Simplified contracts
  - End to “gotchas”
- Ban on unfair, deceptive, and abusive practices
- Cleaning up the market for law-abiding competitors through supervision and enforcement
- Transparency and responsiveness to the public

Consumer Financial Product or Service

Must be "offered or provided to consumers" for use primarily for personal, family, or household purposes, or certain things offered, delivered, or provided in connection with a consumer financial product or service.

- Extending credit and servicing loans, including selling and brokering loans
- Deposit taking, transmitting, or acting as a custodian of funds
- Payment instruments including stored value (but not 3rd party sellers lacking substantial control over the terms or conditions)
- Debt collection related to any consumer financial product or service
- Leases of 90 days or longer.
- Check cashing, check collection, and check guaranty services
- Debt management, settlement, loan modification, and debt counseling services
- Credit reporting for purposes of decisions regarding consumer financial products or services
- Certain financial advisory services
- Providing financial data processing products or services to a consumer
- Other products, by rule, if subterfuge, purpose to evade, or permissible for a bank or financial holding company to offer and likely will have a material impact on consumers

Read Section 1002(15) and 1002(5) for a variety of conditions and nuances.

Exemptions

Exemptions apply to:

- Motor vehicle dealers
- Merchants, retailers and other sellers of non-financial goods and services
- The business of insurance
- Persons regulated by SEC, CFTC, or a state securities commission to the extent that the person is acting in a regulated capacity

(for example, investment brokers, mutual funds)

Motor Vehicle Dealers

Simple concept: Motor vehicle dealers are not covered if they are primarily engaged in sale and servicing, or leasing and servicing, of motor vehicles.

- In general, motor vehicle dealers (selling, servicing, leasing) are exempt from CFPB authority.
- Dealers making “buy here/pay here” loans are covered.
- A lender who arranges or purchases a loan via an auto dealer is covered even where the dealer is not covered.
- Auto dealer exemption includes the enumerated statutes (Fed and FTC to address).
- NOTE: FTC given APA type rulemaking process for auto dealer rules.

Merchants, Retailers, and Other Sellers of Non-Financial Goods or Services

Simple concept - **Retailers are not covered when they are selling or brokering non-financial goods and services. Retailers are covered when they are selling or brokering credit, with a special rule for small businesses.**

- OUT: Generally *exempt* when the financial product is extended exclusively to enable the purchase of non-financial goods or services from the seller and either is not accompanied by a finance charge or the merchant is not significantly engaged in offering credit or other consumer financial services.
- IN: Generally merchants *are* covered if they offer credit: which is exclusively to enable the sale of goods or services; which significantly exceeds the market value of the goods or services; which is assigned before delinquency or default; or which includes a finance charge unless the merchant is not significantly engaged in offering financial products or services.
- OUT: Additional rule exempting small businesses meeting the SBA size threshold who extend credit only for the sale of nonfinancial goods or services and do not sell those accounts prior to delinquency or default.
- IN: Authority under enumerated statutes and transferred authorities applies.

Unfair, Deceptive, and Abusive Conduct Banned

Dodd-Frank Act Bans –

- Unfair
- Deceptive
- Abusive

These are illegal starting July 21, 2011

CFPB's Organic Rulemaking Powers

- Unfair: CFPB has no authority to declare an act or practice unlawful on the grounds that it is unfair unless it has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition. [Sec.1031(c)(1)]
- Deceptive
- Abusive: (taking advantage of the circumstances or the person's characteristics)

Abusive

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.

CFPB's Transferred Rulemaking Powers

Transferred authority under most of the existing consumer financial statutes, such as (partial list):

- Mortgages: TILA/HOEPA/HMDA/RESPA
- Electronic Fund Transfer Act (EFTA)
- Equal Credit Opportunity Act (ECOA)
- Credit: TILA, including CARD Act and Fair Credit Billing Act
- FDCPA/debt collection
- FCRA/credit reporting

CFPB's Direct Supervision Authority

- Insured depositories over $10 billion in assets (and their affiliates of any size)
- Sampling authority "for smaller depository institutions"
- Origination, brokerage and servicing of home-secured loans
- "Larger participants in a market" for non-mortgage consumer financial products or services (by rule)
- Private student lenders
- Payday lenders
- By order, covered persons who engage in conduct that poses risks to consumers in the offering or provision of consumer financial products or services

CFPB Enforcement

- Large banks and credit unions - over $10 billion in assets (and their affiliates of any size)
- Small banks and credit unions - Referral to the prudential regulator with a process for cooperation
- Nonbanks - CFPB and FTC must negotiate an agreement for coordinating enforcement actions, including procedures for notifying the other agency, where possible, prior to initiating a civil action. [Section 1024(c)(3)]
- State Attorneys General can enforce both state and federal law - but for national banks and federal thrifts, AGs may enforce the rules but not the statutory provisions of Title X (Unfair, deceptive, or abusive acts and practices)

Consumer Complaints

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

Significant Reduction in the Preemption of State Laws

- Complete end to special charter-based preemption for affiliates and subsidiaries of national banks and federally chartered thrifts
- "Field" preemption for federal thrifts eliminated
- A state consumer financial protection law is preempted only if it:
  - Discriminates against a national bank;
  - Prevents or significantly interferes with the exercise by the national bank or thrift of its powers (*Barnett* standard); or
  - Is expressly preempted by other federal law

Weakening of Federal Preemption

- The elimination of federal thrift field preemption applies to *all* state laws.
- The elimination of charter-based preemption for nondepository subsidiaries and affiliates applies to *all* state laws.
- The rest of the charter-based preemption standard applies to state laws which are "state consumer financial laws" that directly and specifically regulate the manner, content, or terms and conditions of any financial transaction or any account, with respect to a consumer.
- The general preemption rule of Title X is "inconsistency" preemption – stronger state consumer protections are not inconsistent.

CFPB Start Date

- Transfer date July 21, 2011
- Up to 90 days from transfer date to move employees
- Cut back in National Bank Act and HOLA (thrift) preemption starts on July 21, 2011
- Statutory ban on unfair, deceptive, and abusive practices starts on July 21, 2011
- New information about the market from the CFPB complaints database should begin to build up from July 21, 2011

Some of the Many Other Important Improvements in Dodd-Frank

- Safety and soundness oversight for all systemically important firms, including non-banks.
- Shining light into the “shadow” banking system.
- “Skin in the game” for mortgage securitizers, unless a portion of the risk is retained the originator or the loan is a qualified residential mortgage.
- Specific new rules on mortgage origination.

Resources

- Recommended Priorities for CFPB’s First Year and Beyond, Consumers Union, Oct. 5, 2010: http://www.defendyourdollars.org/pdf/Recommended-Priorities-for-the-CFPB.pdf

- Consumers Union's money topics page: http://www.DefendYourDollars.org/money_topics.html

Resources

- Summary of the Consumer Financial Protection Bureau Title of the Wall Street Reform and Consumer Protection Act of 2010, Center for Responsible Lending: http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2010/09/CRL-Dodd-Frank-Comprehensive-Summaryfinal.pdf

- The Role of the States Under the Wall Street Reform and Consumer Protection Act of 2010, National Consumer Law Center, http://www.nclc.org/images/pdf/legislation/dodd-frank-role-of-the-states.pdf