CFA Consumer Federation of America
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Consumer Financial Protection Bureau Oversight of Non-banks

The Dodd-Frank Wall Street Reform and Consumer Protection Act will improve the marketplace for consumers through the creation of the Consumer Financial Protection Bureau (CFPB), particularly for low and moderate income consumers. The Bureau will oversee credit and lending products, including, for the first time, providing federal oversight of non-bank loans and financial services. The CFPB is charged with ensuring that financial products and services are fair, transparent, and competitive.

The Dodd-Frank Act requires the CFPB to supervise non-banks, including:

- mortgage lenders
- loan modification, debt reduction, and foreclosure relief services
- private student loans
- payday lenders
- lenders whose products pose a risk to consumers, and
- "larger" non-bank lenders, to be defined by the CFPB in consultation with the Federal Trade Commission.

Supervision:

- CFPB will conduct examinations and require reports from non-banks to ensure that they comply with federal laws and rules, to obtain information about their activities, and to detect and assess risks to consumers and markets.
- CFPB has authority to supervise non-banks based on the risks they pose to consumers in the relevant product and geographic markets. The CFPB is required to take into consideration:
    - lender's asset size
    - volume of transactions
    - risks to consumers
    - extent institutions are overseen by state authorities and
    - anything else the CFPB deems relevant.
- CFPB must coordinate its supervision and examinations of non-banks with prudential and state bank regulators.
- CFPB can write rules requiring non-banks to register with the CFPB.
- CFPB is authorized to write rules to ensure that non-banks are legitimate entities and able to perform their obligations to consumers. Such rules may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements. The CFPB must consult with state agencies in developing and implementing these requirements or systems, where appropriate.

Enforcement:

- CFPB will enforce federal consumer financial laws and rules it issues prohibiting unfair, abusive or deceptive practices as they apply to non-banks. For federal law provisions that give both the FTC and the CFPB enforcement authority, such as over the Truth in Lending Act or the Fair Debt Collection Practices Act, the two agencies must negotiate an agreement for coordinating enforcement actions.
- State attorneys general have authority to enforce the Dodd-Frank Act's general prohibition against unfair, deceptive and abusive acts and practices regarding state chartered or licensed non-banks, as well as any CFPB rules covering non-banks.
- State attorneys general retain their authority to enforce other federal consumer protection laws transferred to the CFPB that apply to non-banks, such as the Truth in Lending Act and the Fair Credit Reporting Act, to the extent permitted by those laws.
- State financial regulators can enforce both the CFPB's general prohibitions against unfair and deceptive practices and CFPB rules covering state licensed entities.
- CFPB is required to coordinate its non-bank supervisory efforts with state regulators.

Rulemaking and Examination:

- CFPB has exclusive authority to write rules, issue guidance, conduct examinations, require reports, or issue exemptions for non-banks, to the extent that federal law authorizes the CFPB and another federal agency to take these actions.

Usury Limits Forbidden:

- CFPB is prohibited from imposing a usury limit on lenders.

CFPB Can Stop Unfair, Deceptive, and Abusive Acts and Practices by Non-Banks

- CFPB is authorized to take action to prevent unfair, deceptive, or abusive acts or practices and may write rules identifying such acts and practices as unlawful.
- The Dodd-Frank Act defines "unfairness" as an act or practice:
  - That causes or is likely to cause substantial injury which is not reasonably avoidable and the substantial injury is not outweighed by countervailing benefits to consumers or competition.
- The Dodd-Frank Act defines "abusive" as an act or practice that:
  - Materially interferes with the ability of a consumer to understand a term or condition of a product or service.
  - Takes unreasonable advantage of:
    - A lack of consumer understanding of the risks, costs, or conditions of the product or service,
    - Inability of the consumer to protect his or her interest in selecting or using the product or service,
    - Reasonable reliance by the consumer that the lender acts in the consumer's best interest.