

Comparison of Major Provisions of House Consumer Protection Agency Legislation

Issue	H.R. 3126 as Introduced (July 8, 2009)	H.R. 3126 as Reported 39-29 by the House Financial Service Committee (October 22, 2009)
New Consumer Protection Agency	Creates new federal agency, the Consumer Financial Protection Agency (CFPA).	Same.
1. Board	Five-person Board consisting of four members appointed by the President and the head of the agency responsible for regulating national banks.	<p>Single Director appointed by the President for a five-year term. Director has full authority to issue regulations and take other action to carry out the purposes of the Act and all other laws within CFPA's jurisdiction.</p> <p>The Director is advised by the Consumer Financial Protection Oversight Board consisting of the Fed, FDIC, head of agency responsible for national banks, NCUA, FTC, HUD and Chair of State Liaison Committee of the FFIEC. An amendment by Rep. Waters (D-CA) expands the Board to 12 people by directing the Director to appoint 5 private-sector experts on consumer protection, fair lending, and civil rights from depository institutions that primarily serve underserved communities or representatives from communities that have been significantly impacted by higher-priced mortgages.</p> <p>Board is advisory only with no executive authority.</p>
2. Powers	CFPA has sole supervisory, examination and enforcement authority over consumer financial services products and services. It can promulgate and interpret regulations under twelve "enumerated" consumer laws transferred to the agency (TILA/HOEPA, RESPA, HMDA, etc.). However, CRA oversight and enforcement remain with the prudential regulatory agencies. The CFPA has broad authority to require disclosures or other restrictions in contract terms to prevent "unfair, deceptive or abusive" practices.	The scope of the CFPA's powers remains essentially the same as the introduced bill except as set forth below in part 3 (covered entities), part 4 (specific exemptions) and part 7 (examinations).
3. Covered Entities	Banks and nonbanks that provide financial products and services to consumers. This does not include entities regulated by the SEC or CFTC. It also does not include entities that provide general insurance products.	The SEC, CFTC, and insurance exclusions remain basically the same, except as noted below. Also, several specific exclusions were added (see parts 4 and 7 below). An amendment by Rep. Moore (D-WI) specifically excluded credit, mortgage, and

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	<p>Entities that provide “material services” to, or that process transactions on behalf of, those providing retail consumer financial products are also included.</p>	<p>title insurance.</p> <p>The Manager’s amendment excluded the Federal Home Loan Banks.</p> <p>An amendment by Chairman Frank (D-MA) transfers FTC oversight of consumer reporting agencies to the CFPA.</p> <p>The Manager’s amendment modified the “material services” language to provide that a third party service provider is a “covered person” if the service provider: (i) provides for the marketing, solicitation, disclosure, delivery, account maintenance or loan servicing for a financial product or service sold to consumers; (ii) serves as the primary point of contact for resolving consumer questions or complaints; or (iii) is determined by the CFPA to have a significant impact on price, terms, or conditions of the financial product or service sold to consumers. The amendment states that <i>processing</i> transactions or <i>transmitting</i> funds or data that does not involve correspondence with consumers will not result in the service provider becoming a “covered person.”</p>
<p>4. Specific Exemptions from CFPA Oversight.</p>	<p>No specific exemptions, but CFPA can provide exceptions (conditional or unconditional) by rule or order for any consumer financial product or service or any class of covered persons.</p>	<p>Includes similar general exemption language.</p> <p>The Committee adopted an amendment by Chairman Frank that excludes <i>certain activities</i> of merchants, retailers, and sellers of nonfinancial products (“merchants”) from the regulatory and supervisory authority of the CFPA. In particular, the amendment provides that the CFPA shall not exercise authority over <i>credit</i> extended directly by a merchant or the collection of the debt arising from such credit. The exclusion applies only if the credit is made exclusively to enable the consumer to make a purchase directly from the merchant and it can be lost if the merchant sells or assigns the debt to another person, the debt exceeds the “market value” of the product or service, or if the CFPA finds the sale is a subterfuge to evade the provisions of the Act.</p>

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		<p>The amendment does not affect the regulatory authority of the FTC and other agencies.</p> <p>Also, to the extent they are <i>not engaging in financial activities</i>, specific exemptions are provided for accountants and tax preparation services, real estate brokers and agents, lawyers, auto dealers, telecom providers, retirement and pension plan providers, manufactured and modular home retailers, and any entity that provides strictly support services to financial institutions.</p>
5. Nonbanks	A nonbank that engages directly or indirectly in a financial activity in connection with the provision of a consumer financial product or service, or that provides a “material service” is a “covered person” under the bill.	Same and adds specific provisions that all nonbanks that provide consumer financial products and services are required to register with CFPA. Nonbanks are subject to “risk-based” supervision and examination by the CFPA.
6. Funding	CFPA to be paid for initially by appropriations. However, CFPA is to “recover” amounts expended through unspecified fees and other assessments on regulated entities or transactions.	<p>Fed is to transfer an amount equal to 10 percent of the Federal Reserve System’s total system expenses. In addition, the CFPA can assess fees on covered entities based on the size and complexity of the entity and its record of compliance on applicable consumer laws.</p> <p>Depository institutions (banks and credit unions) are subject to assessments, but CFPA must coordinate with the primary regulator to assure the combined total for the <i>implementation period</i> is not more than what they would be required to pay for 2009. The length of the implementation period is not specified. Depository institutions cannot be charged for supervision of nonbanks and vice versa.</p> <p>Nonbanks, which include bank holding companies, are subject to assessments.</p> <p>Separate funds are set up within Treasury to pay for the supervision of depository institutions and nonbanks.</p>
7. Examinations	Prudential regulators and CFPA can conduct examinations. CFPA has broad examination and information gathering authority.	<p>The Manager’s amendment clarifies that CFPA examination authority is only with respect to “any consumer financial product or service.”</p> <p>The Committee adopted an amendment by</p>

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		<p>Rep. Miller (D-NC) and Rep. Moore (D-KS) exempting banks and savings associations with \$10 billion or less in assets, and credit unions with \$1.5 billion or less in assets from CFPB examination and enforcement, subject to certain conditions. Bank regulators also would have primary enforcement authority.</p> <p>However, the amendment also gives CFPB significant immediate and potential oversight authority over exempted institutions:</p> <ul style="list-style-type: none"> -CFPB examiners can accompany the prudential regulators on their examinations and CFPB itself has back-up examination authority. -CFPB can take over examination and enforcement authority from other regulators for institutions that receive consumer complaints regarding non-compliance with the Act. -Another agency can also be “removed” from oversight by the CFPB if it finds that the agency has failed to conduct adequate compliance examinations or take appropriate enforcement actions. <p>CFPB can also delegate primary examination authority over larger institutions to the appropriate Federal regulator, but if it does so it retains enforcement authority.</p> <p>If it does not delegate authority over these institutions, they will have simultaneous safety and soundness and consumer protection exams (unless institutions request otherwise). Banking agencies and CFPB are to coordinate on timing, scope, and results.</p>
8. Enforcement	New and existing consumer protection laws would be enforced through a combination of private rights of action (as provided for in any of the “enumerated” consumer laws transferred), administrative action by the CFPB, the Department of Justice, the prudential regulatory agencies, and state Attorneys General and other state	<p>Same except that primary enforcement is by the prudential regulator for those banks, savings associations, and credit unions excluded from CFPB oversight unless taken away for one of the reasons set forth in part 7 above..</p> <p>The Manager’s amendment provides that with</p>

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	authorities. See part 12 below on preemption.	respect to any law for which both the FTC and CFPB have enforcement authority, the CFPB has “primary” enforcement authority.
9. Dispute Resolution	None.	Depository institutions that receive conflicting supervisory directives from the CFPB and a prudential regulator can request that the agencies coordinate and present a joint statement of supervisory action. If the agencies do not respond within 30 days or attempt to take supervisory action, the institution can appeal to a “governing panel.” The panel consists of representatives of the CFPB, the prudential regulator, and a regulator that is not directly involved – either the current head of the FFIEC or the next agency in line to head the FFIEC.
10. “Plain Vanilla” Products and Services	CFPB has the authority to define standard consumer financial products or services and could require them to be offered alongside similar products.	No requirement to offer standardized products or services. However, the CFPB has the authority to restrict contract terms.
11. “Reasonable” Communications	The new agency is authorized to issue rules to ensure “effective disclosure and communication to consumers of the costs, benefits, and risks associated with consumer financial product or service.”	No subjective standard for determining whether consumers understand the risks and benefits of the products and services offered. CFPB may prescribe regulations to ensure the “timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks” associated with any consumer financial product or service. CFPB can issue model disclosures and covered institutions that use them are considered to be in per se compliance.
12. Preemption	Eliminates federal law preemption of state consumer protection laws with respect to national banks and savings associations. States may adopt “stricter” consumer protections. State Attorneys General are authorized to bring actions in federal or state court to require the production of records relating to the investigation of a violation of state or federal consumer laws and to enforce applicable state and federal laws, including CFPB regulations.	The Committee adopted an amendment sponsored by Rep. Watt (D-NC) and Rep. Moore (D-KS) that protects state laws from preemption, unless the law discriminates against national banks or federal thrifts, or “prevents or significantly interferes” with a banking power. The OCC or OTS must issue a regulation or order finding that the state law is preempted. The amendment’s “prevent or significantly interfere” language is narrower than the <i>Barnett</i> standard and the rulemaking requirement is new and cumbersome. Also deference accorded by the courts to the OCC and OTS under the <i>Chevron</i> standard is not completely protected,

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		<p>and bank and savings association subsidiaries would not be able to take advantage of preemption.</p> <p>The amendment does not modify other provisions in the bill generally authorizing State consumer protection laws that are more stringent than Federal standards.</p> <p>The amendment will also have an impact on state banks that operate in states with “wildcard” statutes. Wildcard parity laws generally provide state chartered institutions with the same powers as federally chartered institutions to prevent competitive imbalances. Changing federal preemption standards will be likely to have an impact on what state laws apply to state banks in wildcard states.</p>
13. Arbitration	The CFPA has the authority to prohibit or impose restrictions on the use of mandatory pre-dispute arbitration in any agreement between a covered person and a consumer for a consumer financial product or service.	Same.
14. Remittances	No provision.	The Manager’s amendment added a new provision on remittances. Among other things, a remittance transfer provider must comply with new rules requiring numerous disclosures in English and other languages, rights to cancel a transaction, error resolution procedures, and the provision of a toll-free number and web access. A remittance transfer provider is any person, including a depository institution that originates a remittance transfer in the normal course of business.