



# The Dodd-Frank Wall Street Reform and Consumer Protection Act: Regulations to be Issued by the Consumer Financial Protection Bureau

**Curtis W. Copeland**  
Specialist in American National Government

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## Summary

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, July 21, 2010) consolidates many federal consumer protection responsibilities into a new Bureau of Consumer Financial Protection (often referred to as the Consumer Financial Protection Bureau, or CFPB) within the Federal Reserve System. The act transfers supervisory and enforcement authority over a number of consumer financial products and services to the Bureau on a still-to-be-determined transfer date during calendar year 2011. Title X and Title XIV of the act contain numerous provisions that require or permit the CFPB to issue regulations implementing the statute's provisions. This report describes those provisions, notes that certain regulatory oversight tools will not be available for CFPB rules, and discusses the authority of a council of bank regulators to "set aside" the Bureau's rules.

Section 1022 alone gives the CFPB broad rulemaking powers, authorizing it to prescribe such rules "as may be necessary or appropriate" to enable the Bureau to administer federal consumer financial protection laws. The act contains many other provisions that require or permit the Bureau to issue rules, most of which give the Bureau substantial discretion regarding whether rules need to be issued, the contents of those rules, and when they must be issued. The Bureau also assumes responsibility for certain transferor agencies' existing rules, proposed rules that have not been made final, and final rules that have not taken effect. Therefore, other than for about 20 rules that are specifically required in the statute, it is not currently possible to determine how many rules the Bureau will issue, or the contents of those rules. Although most of the Bureau's rulemaking authority and discretion is the same as it was before being transferred from the safety and soundness (prudential) regulators, it is not clear that those authorities and discretion will be exercised in the same way.

Like other independent regulatory agencies, some regulatory oversight methods will not be available for CFPB rules. The Bureau's significant rules will not be reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, and those rules will not be subject to the cost-benefit analysis requirements in the order. The Bureau may be able to void OMB disapprovals of its collections of information under the Paperwork Reduction Act. Because the CFPB might not receive appropriated funds, Congress may not be able to control the Bureau's rulemaking through appropriations restrictions. Also, the effectiveness of new requirements placed on the Bureau to examine its rules within five years, and to take certain actions under the Regulatory Flexibility Act, may depend on how the Bureau interprets key terms.

Congress did, however, empower the newly created Financial Stability Oversight Council (composed primarily of the heads of the prudential regulatory agencies from which the CFPB was formed) to "stay" or "set aside" all or part of a Bureau rule that it concludes would put the safety and soundness of the U.S. banking or financial systems at risk. No other executive branch entity (including OMB) has previously been given the authority to nullify an agency's rules, and the authority to set aside a portion of a rule is greater than the expedited authority Congress gave itself through the Congressional Review Act (CRA). However, several aspects of the Council review process are currently unclear (e.g., whether the Council must vote to stay a rule).

Although Congress may not be able to use appropriations restrictions to control CFPB rulemaking, Congress still has an array of oversight tools available, including confirmation hearings, oversight hearings, meetings between individual Members and the Bureau, and CRA resolutions of disapproval. This report will not be updated.

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## Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, July 21, 2010, hereafter, the “Dodd-Frank Act”) was enacted in the wake of what many believe was the worst U.S. financial crisis since the Great Depression. The legislation addresses a variety of issues that arose as a result of that crisis, one of which was the perception that the federal system of consumer protection was fragmented and, in some cases, inconsistent with other regulatory functions.<sup>1</sup> For example, safety and soundness (prudential) regulators and consumer protection regulators may look on the same activity differently. Therefore, some argued that separating prudential and consumer protection regulation into separate agencies is the best way to protect both consumers and financial institutions.

Until the Dodd-Frank Act fully goes into effect, the Board of Governors of the Federal Reserve System will continue to write rules to implement most of the consumer financial protection laws. Enforcement of these laws is shared by a variety of prudential regulators, including the Office of the Comptroller of the Currency for national banks; the Federal Reserve Board for domestic operations of foreign banks and for state-chartered banks that are members of the Federal Reserve System; the Federal Deposit Insurance Corporation for state-chartered banks and other state-chartered banking institutions that are not members of the Federal Reserve System; the National Credit Union Administration for federally insured credit unions; and the Office of Thrift Supervision for federal savings and loan associations and thrifts. The Federal Trade Commission is the primary federal regulator for non-depository financial institutions (e.g., payday lenders and mortgage brokers) and many other non-financial commercial enterprises.<sup>2</sup>

## Consumer Financial Protection Bureau

Title X of the Dodd-Frank Act, entitled the “Consumer Financial Protection Act of 2010,”<sup>3</sup> consolidates many federal consumer protection responsibilities into a new Bureau of Consumer Financial Protection (often referred to as the Consumer Financial Protection Bureau, CFPB, or Bureau) within the Federal Reserve System.<sup>4</sup> The act gives the CFPB rulemaking, enforcement, and supervisory authority over a variety of consumer financial products and services (and many of the entities that offer these products and services), and transfers to the Bureau rulemaking and enforcement authority over many previously enacted consumer protection laws. The Bureau’s authority varies according to the type of company,<sup>5</sup> and the act explicitly exempts certain entities and activities from the Bureau’s authority.<sup>6</sup>

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<sup>1</sup> For more information on the Dodd-Frank Act, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and Summary*, coordinated by Baird Webel.

<sup>2</sup> For more information, see CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by David H. Carpenter.

<sup>3</sup> Section 1001.

<sup>4</sup> For more detailed information on Title X of the act, see CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by David H. Carpenter.

<sup>5</sup> The relevant categories include “larger depositories” (those with more than \$10 billion in assets), “smaller depositories (those with \$10 billion or less in assets), and certain covered “nondepositories.”

<sup>6</sup> For example, the CFPB will not have primary supervisory and enforcement powers over smaller depositories, but will be able to participate in examinations conducted by the institutions’ prudential regulators, and can refer potential (continued...)

Congress created the CFPB as an independent regulatory agency within the Federal Reserve System (which is, itself, an independent regulatory agency).<sup>7</sup> Such agencies are intended to be more independent of the President than cabinet departments and other executive branch agencies.<sup>8</sup> The Bureau is to be headed by a director, who is appointed by the President, with the advice and consent of the Senate, to a five-year term of office. The director can only be removed from office for “inefficiency, neglect of duty, or malfeasance in office.”<sup>9</sup> Until a director is confirmed, the Secretary of the Treasury assumes all of the powers of the director. The CFPB is funded, up to certain caps, using proceeds from the combined earnings of the Federal Reserve System, which the Dodd-Frank Act says are not reviewable by either the House or the Senate appropriations committees.<sup>10</sup> Using the Federal Reserve System’s operating expenses as a baseline, the CFBP could receive up to about \$550 million for FY2011. However, if the director of the CFPB determines that these funds are insufficient, the act authorizes appropriations of up to \$200 million per year for FY2010 through FY2014.

Some portions of the Consumer Financial Protection Act went into effect on the date of enactment, while many other parts of the act go into effect on the “designated transfer date,” which the Secretary of the Treasury is required to establish not later than 60 days after the date of enactment (i.e., by September 19, 2010).<sup>11</sup> The act generally requires that the transfer date “be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act” (i.e., between January 17, 2011, and July 21, 2011).<sup>12</sup> Between the date of enactment and that transfer date, the Board of Governors of the Federal Reserve System (“Board of Governors”) is required to transfer to the Bureau “the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law.”<sup>13</sup>

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(...continued)

enforcement actions to their prudential regulators.

<sup>7</sup> Section 1100D. This section amended a statutory listing of independent regulatory agencies (44 U.S.C. 3502(5)), which includes such financial regulatory agencies as the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

<sup>8</sup> See, for example, Paul R. Verkuil, “The Purposes and Limits of Independent Agencies,” *Duke Law Journal*, vol. 37 (April-June 1988), pp. 257-279; and Marshall J. Breger and Gary J. Edles, “Established by Practice: The Theory and Operation of Independent Federal Agencies,” *Administrative Law Review*, vol. 52 (2000), pp. 1111-1294.

<sup>9</sup> Section 1011(c).

<sup>10</sup> Section 1017.

<sup>11</sup> See Section 1062 for more information on the designated transfer date. The Secretary is required to determine the transfer date “in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget.”

<sup>12</sup> Section 1062(c). The Secretary can designate a transfer date later than 12 months after the date of enactment if Congress is provided a written notice and explanation, but in no case can the date be later than 18 months after the date of enactment.

<sup>13</sup> Section 1017(a)(3). As noted later in this report, Section 1002(14) of the Dodd-Frank Act defines “Federal consumer financial law” as “the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.” The “enumerated consumer laws” are defined in subsection (12) as including the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.); the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that act; the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); the Fair Credit Billing Act (15 U.S.C. 1666 et seq.); the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that act (15 U.S.C. 1681m(e), 1681w); the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.); and the Fair Debt Collection (continued...)

Section 1063(i) of the Dodd-Frank Act requires the Bureau, no later than the designated transfer date, to consult with the head of each agency transferring consumer protection functions and “identify the rules and orders that will be enforced by the Bureau.” The agreed-upon list of rules and orders must be published in the *Federal Register*. Section 1063(j) states that “Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.” It also says that “any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.”<sup>14</sup>

## This Report

In addition to the above-mentioned general provisions making the CFPB responsible for transferor agencies’ existing and pending rules, Title X of the Dodd-Frank Act contains numerous specific provisions that require or permit the Bureau to issue new regulations implementing the act’s provisions. Title XIV of the act, entitled the “Mortgage Reform and Anti-Predatory Lending Act,”<sup>15</sup> also contains several provisions that require or permit the Bureau to issue rules. Commenters on the Dodd-Frank Act have expressed both concerns and hopes regarding the effects that these and other financial reform rules will have on the economy and on consumer protection,<sup>16</sup> with the operation of the CFPB a particular concern to some observers.<sup>17</sup> By one count, the legislation mentions a total of 243 “rulemakings” that are expected to occur pursuant to the act, with the Bureau accounting for 24 of those actions.<sup>18</sup> Others have placed the number of rules expected to be issued pursuant to the act even higher.<sup>19</sup>

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Practices Act (15 U.S.C. 1692 et seq.).

<sup>14</sup> Interim final rulemaking is a particular application of the “good cause” exception to the notice-and-comment requirements in the Administrative Procedure Act (5 U.S.C. 553) in which an agency publishes a final rule without a previous proposed rule, but with a post-promulgation opportunity for comment.

<sup>15</sup> Section 1400(a).

<sup>16</sup> See, for example, David Cho, “Geithner’s Realm Grows as Overhaul Nears Finish,” *Washington Post*, July 17, 2010, p. A1; Lorraine Mirabella, “Lawyers Await Regulations to Spring from Financial Reform,” *McClatchy-Tribune Business News*, July 27, 2010; and Eric Lichtblau, “Ex-Regulators Lobby to Shape Overhaul,” *New York Times*, July 28, 2010, p. B1.

<sup>17</sup> See, for example, Jim Puzzanghera, “Wall Street Nervous About Watchdog’s Bite; A Leading Candidate to Head a New Consumer Protection Agency Has Powerful Enemies,” *Los Angeles Times*, p. A1; and Eileen Mozinski Schmidt, “Finance Leaders Wary of New Law,” *Telegraph-Herald*, July 29, 2010, p. A-1, which said that “top of mind for many is how the new federal consumer-protection agency will develop and who will run it.”

<sup>18</sup> Davis Polk & Wardwell, LLP, “Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010,” available at [http://www.davispolk.com/files/Publication/7084f9fe-6580-413b-b870-b7c025ed2ecf/Presentation/PublicationAttachment/1d4495c7-0be0-4e9a-ba77-f786fb90464a/070910\\_Financial\\_Reform\\_Summary.pdf](http://www.davispolk.com/files/Publication/7084f9fe-6580-413b-b870-b7c025ed2ecf/Presentation/PublicationAttachment/1d4495c7-0be0-4e9a-ba77-f786fb90464a/070910_Financial_Reform_Summary.pdf).

<sup>19</sup> For example, the Chamber of Commerce’s Center for Capital Markets Competitiveness said that the Dodd-Frank Act “will lead to 520 rulemakings.” See Thomas Quaadman, “Dodd-Frank: Governance Issues Galore and Not Limited to Financial Institutions,” *the Metropolitan Corporate Counsel*, August 2010, p. 18, available at <http://www.metrocorpocounsel.com/current.php?artType=view&artMonth=August&artYear=2010&EntryNo=11258>.

This report describes the rulemaking provisions in Titles X and XIV of the Dodd-Frank Act that pertain to the CFPB.<sup>20</sup> To identify those provisions, CRS searched through the text of Titles X and XIV in the enrolled version of H.R. 4173 as passed by the House of Representatives and the Senate (because the text of the public law was not yet available) using certain words and terms (“regulation,” “final rule,” “proposed rule,” “rulemaking,” “prescribe rules,” “prescribe regulations,” “by rule,” and “such rules”). The results of that effort are provided in a table in the **Appendix** to this report. Although this process identified more than 50 CFPB-related rulemaking provisions, it is unclear whether the searches identified all such provisions in the legislation. (For example, other rulemaking provisions may have used other terms.) The report also notes that while some regulatory oversight procedures and requirements will not apply to CFPB rules, the Dodd-Frank Act gives a council composed primarily of prudential regulators substantial authority to dispose of the Bureau’s rules.

The table in the **Appendix** is organized into two groups: (1) provisions that require the CFPB to issue regulations (e.g., stating that the Bureau “shall prescribe regulations...”); and (2) provisions that permit, but do not require, the issuance of regulations (e.g., stating that the CFPB “may prescribe rules...”). For each such provision, the table provides the section number in the Dodd-Frank Act, the relevant text of the provision, whether the act requires the participation of other agencies in the development or issuance of the rule, and any deadlines delineated in the act regarding the issuance or implementation of the rules.

### **Provisions Not Included in the Table**

The table in the **Appendix** does not include some general regulatory provisions in Titles X and XIV, including certain wholesale transfers of rulemaking authority from one agency to the CFPB. For example, Section 1061(b)(5)(A) states that the “authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date.” While it is possible that the Bureau may issue regulations pursuant to these types of transferred authorities, cataloguing all of the rulemaking authorities covered by this provision is beyond the scope of this report. Also, as noted previously, the CFPB and the prudential regulators have until the designated transfer date to decide which existing rules the Bureau will enforce.

The table also does not include provisions in the Dodd-Frank Act that may result in regulations, but that do not specifically require or permit rulemaking. For example, Section 1463(a) of the act amended Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605), and states (in part) that

A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

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<sup>20</sup> Titles X and XIV also require other agencies to issue regulations.

Pursuant to this provision, the Bureau may issue regulations establishing written confirmation requirements. However, because the legislation did not specifically require or permit the issuance of rules, this provision is not included in the table.

Finally, the table does not include any rulemaking authorities involving the internal operation of the Bureau. For example, Section 1012(a)(1) of the Dodd-Frank Act authorizes the Bureau to establish general policies with respect to all executive and administrative functions, including “the establishment of rules for conducting the general business of the Bureau.” This provision is not included in the table.

## **CFPB, Like Transferor Agencies, Has Broad Rulemaking Authority**

In addition to the previously mentioned provisions in Section 1063 of the Dodd-Frank Act making the CFPB generally responsible for transferor agencies’ existing and pending rules, Titles X and XIV of the act contain more than 50 provisions that transfer certain rulemaking authorities to the CFPB, or that give the Bureau new rulemaking authority. These provisions sometimes require the Bureau to issue certain rules, but they more often give the agencies the discretion to decide whether to issue rules within a particular area, and if so, what those rules will contain. Although most of the Bureau’s legal rulemaking authority and discretion is the same as it was before being transferred from the prudential regulators, it is not clear that those authorities and discretion will be exercised in the same way.

### **Section 1022 and CFPB Rulemaking**

Section 1022 of the act alone (“Rulemaking Authority”) gives the CFPB broad rulemaking powers and responsibilities. For example, Section 1022(a) states that the Bureau is “authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.” Section 1022(b)(1) permits the director of the Bureau to “prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.”

The term “Federal consumer financial laws” is defined as including the new authorities provided in Title X, the authorities that were transferred to the Bureau under subtitles F and H, and the authorities in certain “enumerated consumer laws,”<sup>21</sup> which generally include<sup>22</sup>

- the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);
- the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);
- the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that act;

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<sup>21</sup> Section 1002(14).

<sup>22</sup> The definition of “enumerated consumer laws” is in Section 1002(12).



- the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);
- the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);
- the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that act (15 U.S.C. 1681m(e), 1681w);
- the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);
- the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);
- subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)-(f));
- Sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-6809) except for section 505 as it applies to section 501(b);
- the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);
- the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);
- the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);
- the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);
- the Truth in Lending Act (15 U.S.C. 1601 et seq.);
- the Truth in Savings Act (12 U.S.C. 4301 et seq.);
- Section 626 of the Omnibus Appropriations Act, 2009 (P.L. 111-8); and
- the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

As discussed in detail in the next section of this report, the CFPB's rulemaking activities are subject to all of the applicable government-wide requirements (e.g., the Administrative Procedure Act), as well as the specific requirement in the enumerated consumer laws being transferred to the Bureau. In addition, Section 1022(b)(2) of the Dodd-Frank Act says that, in prescribing a rule under the federal consumer financial laws, the Bureau must "consider...the potential benefits and costs to consumers and covered persons," "the impact of proposed rules on covered persons," and "the impact on consumers in rural areas."<sup>23</sup> It also requires the Bureau to "consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding (the rule's) consistency with prudential, market, or systemic objectives administered by such agencies." If a prudential regulator provides the CFPB with a written objection to all or part of a proposed rule, the Bureau is required to "include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection."<sup>24</sup> Notably, however, while these federal regulators and agencies can file objections to the Bureau's draft rules, Section 1022 does not permit them to prevent the rules from going forward.

Also, Section 1022(b)(4) states that, with one exception,<sup>25</sup>

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<sup>23</sup> Section 1022(b)(2)(A).

<sup>24</sup> Section 1022(b)(2)(B) and (C).

<sup>25</sup> The exception is in Section 1061(b)(5), involving the authority of the Federal Trade Commission under the Federal Trade Commission Act.

to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

It also says that “the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.”<sup>26</sup>

## **Related Authorities and Duties**

To support its rulemaking functions, the CFPB is required to “monitor for risks to consumers in the offering or provision of consumer financial products or services.”<sup>27</sup> As part of this monitoring effort, the Bureau is authorized to

require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.<sup>28</sup>

To determine whether a nondepository institution (e.g., a payday lender or a mortgage broker) is a “covered person,” the CFPB is authorized to require the nondepository “to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.”<sup>29</sup> In addition, Section 1022(c)(7) of the act permits the CFPB to prescribe rules regarding registration requirements applicable to “covered persons” (other than an insured depository institution, insured credit union, or related person). The section also permits the Bureau to issue rules regarding the disclosure of that registration information to the public.<sup>30</sup>

The Bureau is required to publish at least one report per year regarding the “significant findings of its monitoring,” with the first report required “beginning with the first calendar year that begins at least 1 year after the designated transfer date.”<sup>31</sup> However, the Bureau is also allowed to make public, through reports or “other appropriate formats,” any other information that it obtains from

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<sup>26</sup> Section 1022(b)(4).

<sup>27</sup> Section 1022(c).

<sup>28</sup> Section 1022(c)(4)(B)(ii).

<sup>29</sup> Section 1022(c)(5). If these reports or answers meet the definition of a “collection of information” in the Paperwork Reduction Act (PRA), then they will have to be reviewed by the Office of Management and Budget before the information can be collected. The PRA (44 U.S.C. 3502(3)) defines “collection of information” as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for...answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States.” For more information, see CRS Report R40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows.

<sup>30</sup> These registration and disclosures may also be covered by the PRA’s information collection and dissemination requirements. See 44 U.S.C. 3506(c) (for agency information collection requirements) and 44 U.S.C. 3506(d) (for agency information dissemination requirements).

<sup>31</sup> Section 1022(c)(3)(A).

its monitoring effort that it determines is “in the public interest,” provided that any confidential information that it collects is protected.<sup>32</sup> To the extent that the Bureau’s rulemaking is an outgrowth of such monitoring, the interested public may be able to review those reports and determine what CFPB rules could be forthcoming.<sup>33</sup>

## **Rule Effectiveness Reports**

Section 1022(d) of the act requires the CFPB to publish a report assessing the effectiveness of each “significant rule or order” within five years of it taking effect.<sup>34</sup> The act requires these assessments to address, among other things, “the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau.” Before publishing the required report, the CFPB is required to obtain comments from the public about any recommendations for modifying, expanding, or eliminating the significant rule or order.

## **Other Rulemaking Requirements and Authorities**

In addition to the broad rulemaking powers provided by Section 1022, Titles X and XIV of the Dodd-Frank Act also contain dozens of other provisions that require or permit the CFPB to issue regulations. Most of those provisions give the Bureau substantial discretion regarding whether, and if so, how rules should be crafted. Some sections are more specific, and describe what the rules should contain and/or how they should be promulgated. Most of the provisions in Title X authorize only the Bureau to issue rules, whereas almost all of the provisions in Title XIV require the rules to be issued jointly with a group of other agencies. Also, while a few of the rulemaking provisions in Title X indicate when the rules must be issued or implemented, in most cases the title is silent regarding the timing of the rules. Title XIV, on the other hand, contains a general provision stipulating when rules issued under the title must be published and take effect.

## **Most Provisions Provide Bureau Discretion**

The non-mandatory rulemaking provisions in the Dodd-Frank Act arguably provide the CFPB with the greatest amount of discretion, allowing the Bureau to decide whether any regulations will be developed at all, and if issued, what the rules will contain. For example:

- Section 1071(a) of the act (amending the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.)) states that the Bureau “shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section (on small business data collection).” Therefore, the Bureau can decide whether regulations or guidance in this area are “necessary,” and if so, what any such rules will require.

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<sup>32</sup> Section 1022(c)(6)(A) requires the Bureau to “prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.”

<sup>33</sup> The public may also be informed of upcoming rules through advance notices of proposed rulemaking, and through entries in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

<sup>34</sup> The act does not specify what types of rules are to be considered “significant,” presumably leaving these determinations to the Bureau.

- Section 1097(1) (amending Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note)) says the Bureau “shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.”<sup>35</sup> The Bureau can decide whether or not to use this rulemaking authority, and (within the parameters provided in this section) can determine the content of any rules that it decides to issue.

Although the mandatory provisions in the act require that certain rules be issued, they often give the Bureau substantial discretion regarding how the required rules will be crafted. For example:

- Section 1022(c)(6)(A) states that the Bureau “shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.” This provision does not prescribe either the content of the required rules or how they should be developed.
- Section 1024(b)(7)(A) requires the Bureau to “prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.” Section 1024 relates to “Supervision of Nondepository Covered Persons,” and subsection (a)(1) states that the section applies to any covered person who, among other things, “offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;” or “offers or provides to a consumer a payday loan.” The section does not indicate how the required rules should be crafted or what they should contain.
- Section 1042(c) requires the Bureau to “prescribe regulations to implement the requirements of this section” (on “Preservation of Enforcement Powers of the States”). Although Section 1042 prescribes certain legal authorities and consultation requirements, the section does not otherwise indicate what the required regulations must contain.
- Section 1053(e) states that the Bureau “shall prescribe rules establishing such procedures as may be necessary to carry out this section” (on “Hearings and Adjudication Proceedings”). Section 1053 delineates special rules for cease-and-desist proceedings and enforcement of orders, but does not otherwise prescribe the contents of those rules.
- Section 1100(6)(B) states that the Bureau “is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.” In issuing those regulations, the section

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<sup>35</sup> Section 553 of Title 5 generally requires federal agencies to publish a notice of proposed rulemaking, take comments on the proposed rule, develop a final rule taking those comments into consideration, and publish a final rule that cannot take effect until 30 days after the rule is published in the *Federal Register*. Even in the absence of this provision, these “notice and comment” requirements would generally apply to most of the rules that the Bureau is required or authorized to issue.

requires the Bureau to “take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.” Otherwise, the section does not indicate what those rules should contain.

As was the case with the discretionary provisions, some of the mandatory rulemaking provisions in Title X and Title XIV of the Dodd-Frank Act amend other statutes, and give the CFPB broad transferred authority within those amended statutes. For example, Section 1084 of the act amends the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and states that, with certain exceptions, the Bureau “shall prescribe rules to carry out the purposes of this title.” (This section transferred certain rulemaking authorities from the Board of Governors of the Federal Reserve System to the CFPB.)

Certain sections of the act appear to allow the Bureau to take other, non-rulemaking actions to satisfy the underlying requirement. For example, Section 1002(25) states that the definition of a “related person” includes “any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person.” Therefore, the Bureau could issue a rule defining these terms, or could adjudicate each case individually. Also, Section 1079(c) of the act requires the Bureau to “propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.” Therefore, the Bureau could issue a rule to protect consumers, or could do so by establishing a program.

### **Some Provisions Prescribe Rule Contents or Process**

In contrast to the previously mentioned broad grants of rulemaking authority, some CFPB-related rulemaking provisions in Titles X and XIV, or the statutes amended by those titles, prescribe the contents of the rules that the statute requires or permits the Bureau to issue. For example, Section 1473(f)(2) of the act requires the Bureau and other agencies to “jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies.” That provision also states the following:

Such requirements shall include a requirement that such companies—(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates; (2) verify that only licensed or certified appraisers are used for federally related transactions; (3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and (4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

Section 1094(3)(B) of the act (amending the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.)) also specifies the content of the required rule. That section requires the Bureau to

develop regulations that (A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public; (B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title; (C) require disclosure of the class of the purchaser of such loans; (D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional

data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and (E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

Some of the rulemaking authorities transferred to the Bureau also contain specific requirements. For example, Section 1088(a)(9) of the act amended the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and states that the Bureau “shall prescribe rules to carry out this subsection.” (Previously, this rulemaking authority had been jointly provided to the Federal Trade Commission and the Board of Governors.) As had been the case with regard to the agencies who were previously required to issue these rules, the Bureau’s rules are required to address

(i) the form, content, time, and manner of delivery of any notice under this subsection; (ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable; (iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers; (iv) a model notice that may be used to comply with this subsection; and (v) the timing of the notice required under paragraph (1), including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.<sup>36</sup>

### *Procedural Requirements*

Some provisions in Titles X and XIV specify the process by which CFPB rules should be developed or issued. For example, Section 1041(c)(1) of the act requires the Bureau to “issue a notice of proposed rulemaking whenever a majority of states has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.” The next paragraph states that

Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether (A) the proposed regulation would afford greater protection to consumers than any existing regulation; (B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and (C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

The section goes on to require the Bureau to include a discussion of these considerations in the *Federal Register* notice of any final regulation. If the Bureau decides not to issue a final regulation, the statute requires it to “publish an explanation of such determination in the *Federal Register*, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.”<sup>37</sup>

Other provisions also establish certain procedural requirements for rulemaking. For example:

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<sup>36</sup> 15 U.S.C. 1681m(h)(6)(B).

<sup>37</sup> Section 1041(c)(3).

- Section 1024(a)(2) states that the Bureau “shall consult with the Federal Trade Commission prior to issuing a rule...to define covered persons subject to this section” (on “Supervision of Nondepository Covered Persons”).
- Section 1094 requires the Bureau to issue certain rules “in consultation with other appropriate agencies.”

As noted previously in this report, although these and other provisions require the CFPB to consult with other agencies before issuing their rules, the act does not permit those agencies to prevent the issuance of the rules.

Most of the provisions in Title X require or permit the CFPB alone to issue the required or permitted rules. Exceptions include (1) Section 1025(e)(4)(E), which requires the Bureau to prescribe certain rules with the “prudential regulators;” and (2) Section 1088(b)(3), which requires the Bureau, the Commodity Futures Trading Commission, and the Securities and Exchange Commission to each issue regulations carrying out Section 624 of the Fair Credit Reporting Act. In contrast, the provisions in Title XIV of the act almost always require that the Bureau issue the required rules jointly with the Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency.<sup>38</sup>

## **Publication and Effective Dates**

Most of the individual provisions in Titles X and XIV of the Dodd-Frank Act that require or permit CFPB to issue rules do not specify when those rules must be published or take effect. To the extent that the timing of the rules is mentioned in those provisions, the issuance is always keyed to the designated transfer date. For example:

- Section 1024(a)(2) states that the “initial rule” must be issued within one year of the transfer date.
- Section 1079(c) requires that a proposed rule be issued (or a program be established) within two years after the submission of a report, which is required within one year of the transfer date.
- Section 1083(a) of the act (amending the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.)) requires that regulations be promulgated “after the designated transfer date.”

In contrast to the timing discretion given to the Bureau in Title X, Section 1400(c) of the legislation states that all of the regulations required under Title XIV must “(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and (B) take effect not later than 12 months after the date of issuance of the regulations in final form.” It goes on to say that sections or provisions in that title “shall take effect on the date on which the final regulations implementing such section, or provision, take effect.” Sections for which regulations have not been issued are required to take effect 18 months after the designated transfer date.

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<sup>38</sup> The only Title XIV provision that does not require that regulations be jointly issued is in Section 1463(a) (amending Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605)).

## Rulemaking Authority and Discretion Generally the Same

Although the Dodd-Frank Act gives the CFPB some new responsibilities, most of its rulemaking authority and discretion was transferred to the Bureau through the enumerated consumer laws. With regard to those laws, the Bureau has the same amount of rulemaking authority and discretion as the prudential regulators that previously were responsible for them. What is different, however, is that the consumer protection powers provided by those laws are now vested in a single agency, and that agency now has as its primary mission to “regulate the offering and provision of consumer financial products or services.”<sup>39</sup> Whether those contextual differences will result in different regulations, or different application of existing rules, is currently unclear.

## Some Federal Rulemaking Requirements Not Applicable to CFPB Rules

During the past 65 years, Congress and various presidents have developed an elaborate set of procedures and requirements to guide and oversee the federal rulemaking process. Statutory requirements include the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Congressional Review Act—each of which requires that certain procedural and/or analytical requirements be addressed before agencies’ rules can be published and take effect.<sup>40</sup> The scope and effectiveness of these and other congressional efforts to control the rulemaking process vary. For example, although Congress has used the Congressional Review Act (5 U.S.C. 801-808) to disapprove only one final rule in more than 14 years,<sup>41</sup> every year Congress adds a number of provisions to agencies’ appropriations bills stating that “none of the funds” provided through the legislation can be used to initiate rulemaking in certain areas, to make certain proposed rules final, or to implement certain final rules.<sup>42</sup>

Presidential review of agency rulemaking is currently centered in Executive Order 12866, which requires covered agencies to submit their “significant” regulatory actions to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management (OMB) before they are published in the *Federal Register*.<sup>43</sup> OIRA reviews the rules to determine their consistency

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<sup>39</sup> Section 1011.

<sup>40</sup> For more information on these and other rulemaking statutes, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, by Curtis W. Copeland.

<sup>41</sup> For more information on the operation of the Congressional Review Act, see CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg. See also CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

<sup>42</sup> See CRS Report RL 34354, *Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions*, by Curtis W. Copeland.

<sup>43</sup> The President, Executive Order 12866, “Regulatory Planning and Review,” 58 *Federal Register* 51735, October 4, 1993, Section 6(a). A “significant” regulatory action is defined in Section 3(f) as “Any regulatory action that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order.” For more (continued...)



with the analytic requirements in the executive order, the statutes under which they are issued, the President's priorities, and the rules issued by other agencies. The executive order requires that the agencies "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."<sup>44</sup> Covered agencies are required to estimate the costs and benefits of their "significant" rules, and to conduct a full cost-benefit analysis before issuing any "economically significant" rule (e.g., one that is expected to have a \$100 million annual impact on the economy).<sup>45</sup> That analysis is required to include an assessment of not only the underlying benefits and costs, but also the costs and benefits of "potentially effective and reasonably feasible alternatives to the planned regulation."<sup>46</sup>

OIRA also plays a key role in implementing the requirements of the Paperwork Reduction Act (PRA, 44 U.S.C. 3501-3520). The PRA created OIRA, and generally requires that agencies receive OIRA approval for certain information collection requests before they are conducted. Before approving a proposed collection of information, OIRA must determine whether the collection is "necessary for the proper performance of the functions of the agency."<sup>47</sup> OIRA's information collection approvals must be renewed at least every three years if the agency wishes to continue collecting the information.

## **Many Rulemaking Requirements, and Exceptions, Apply to CFPB Rules**

Many of the government-wide rulemaking requirements appear to apply to rulemaking by the CFPB, but the exceptions and exemptions to those requirements also apply. For example, the Administrative Procedure Act (APA, 5 U.S.C. 551 *et seq.*) generally requires that federal agencies publish a notice of proposed rulemaking in the *Federal Register*, give "interested persons" an opportunity to comment on the rule, consider those comments and publish a final rule with a general statement of its basis and purpose, and make the final rule effective no less than 30 days after its publication.<sup>48</sup> However, the APA also says that these "notice and comment" procedures do not apply when the agency finds, for "good cause," that those procedures are "impracticable, unnecessary, or contrary to the public interest."<sup>49</sup> Also, agencies can make their rules take effect less than 30 days after they are published if there is "good cause."<sup>50</sup> Therefore, for example, if the CFPB concludes that time constraints or other factors make public comments "impracticable," the agency can publish the final rule without a prior proposed rule or comment period. Agencies' use of the APA's good cause exceptions are subject to judicial review.

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information on OIRA and its review process, see CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, by Curtis W. Copeland.

<sup>44</sup> Section 1(b)(6) of Executive Order 12866. As the executive order and OMB Circular A-4 make clear, even under this standard, the monetized benefits of a rule are not required to exceed the monetized costs of the rule before the agency can issue the rule, only that the costs of the rule be "justified" by the benefits (quantitative or non-quantitative).

<sup>45</sup> Section 6(a)(3)(C) of Executive Order 12866.

<sup>46</sup> Section 6(a)(3)(C)(iii) of Executive Order 12866.

<sup>47</sup> 44 U.S.C. 3508.

<sup>48</sup> 5 U.S.C. 553.

<sup>49</sup> 5 U.S.C. 553(b)(3)(B). These requirements also do not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice (5 U.S.C. 553(b)(A)).

<sup>50</sup> 5 U.S.C. 553(d).

Also, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601-612) requires federal agencies to assess the impact of their forthcoming rules on “small entities,” which includes small businesses, small governmental jurisdictions, and small not-for-profit organizations.<sup>51</sup> Under the RFA, federal agencies must prepare a regulatory flexibility analysis at the time that proposed and certain final rules are published in the *Federal Register*. The act requires the analyses to describe, among other things, (1) why the regulatory action is being considered and its objectives; (2) the small entities to which the rule will apply and, where feasible, an estimate of their number; (3) the projected reporting, recordkeeping, and other compliance requirements of the rule; and, for final rules, (4) steps the agency has taken to minimize the impact of the rule on small entities. However, these requirements are not triggered if the head of the issuing agency certifies that the rule would not have a “significant economic impact on a substantial number of small entities.” The RFA does not define “significant economic impact” or “substantial number of small entities,” thereby giving federal agencies substantial discretion regarding when the act’s analytical requirements are initiated.<sup>52</sup> Also, the RFA’s analytical requirements do not apply when an agency publishes a final rule without publishing a prior proposed rule.<sup>53</sup> Therefore, if the CFPB publishes a final rule using the APA’s “good cause” exception, the RFA’s analytical requirements do not apply.

## **Some Rulemaking Requirements and Controls Are Not Applicable to the CFPB**

In addition to these exceptions and exclusions, some notable regulatory oversight mechanisms do not appear to apply to the CFPB’s rules at all, or may be able to be voided by the Bureau. These requirements are also not applicable to most, if not all, of the independent regulatory agencies from whom rulemaking authorities were transferred.

### **Executive Order 12866**

For example, most of the requirements in Executive Order 12866 do not apply to independent regulatory agencies like the CFPB.<sup>54</sup> Therefore, the Bureau does not have to submit its proposed or final significant rules to OIRA for review before they are published. Also, CFPB does not have to conduct cost-benefit analyses for its economically significant rules, and does not have to show that the benefits of its significant rules “justify” the costs. Although Sections 1022 and 1041(c)(1) of the Dodd-Frank Act require the Bureau to “consider” and “take into account” the potential benefits and costs of its rules, these provisions appear to establish somewhat lower analytical thresholds than the requirement in Executive Order 12866 that the benefits of agencies’ rules “justify” the costs.

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<sup>51</sup> For more information on the RFA, see CRS Report RL34355, *The Regulatory Flexibility Act: Implementation Issues and Proposed Reforms*, by Curtis W. Copeland.

<sup>52</sup> Agencies’ interpretations of these phrases are, however, subject to judicial review (5 U.S.C. 611).

<sup>53</sup> See 5 U.S.C. 603(a), which states that agencies must prepare initial regulatory flexibility analyses “whenever an agency is required...to publish a general notice of proposed rulemaking for any proposed rule.” See also 5 U.S.C. 604(a), which requires agencies to prepare a final regulatory flexibility analysis when an agency publishes a final rule “after being required...to publish a general notice of proposed rulemaking.”

<sup>54</sup> Certain planning requirements in Section 4(b) and Section 4(c) regarding the “unified regulatory agenda” and the “regulatory plan” apply to independent regulatory agencies. Generally, however, the executive order does not apply to independent regulatory agencies.

## **Paperwork Reduction Act**

Also, although the Paperwork Reduction Act covers independent regulatory agencies like the CFPB, and permits OIRA to disapprove their proposed collections of information, the Bureau may be able to collect the information even if OIRA objects. The PRA states that

An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void (A) any disapproval by the Director (of OMB), in whole or in part, of a proposed collection of information of that agency; or (B) an exercise of authority under subsection (d) of section 3507 concerning that agency (regarding information collections that are part of a proposed rule).<sup>55</sup>

Although the CFPB is an independent regulatory agency, it is headed by a single director, not a multi-member body. Therefore, this provision would not appear to apply to the Bureau. However, Section 1100D(c) of the Dodd-Frank Act amends the PRA, and states that

Notwithstanding any other provision of law, the Director (of OMB) shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.

Applying this subsection, because the Board of Governors, a multi-member board, is authorized to void OIRA disapprovals of its information collections, the director of the CFPB may arguably be authorized to do so as well.

## **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act (UMRA) of 1995 was enacted in an effort to reduce the costs associated with federal imposition of responsibilities, duties, and regulations upon state, local, and tribal governments and the private sector without providing the funding appropriate to the costs imposed by those responsibilities. Title II of UMRA (2 U.S.C. 1532-1538) generally requires cabinet departments and other agencies to prepare a written statement containing specific descriptions and estimates for any proposed rule that is expected to result in the expenditure of \$100 million or more in any year to state, local, or tribal governments, or to the private sector.

However, UMRA does not apply to independent regulatory agencies, and therefore does not apply to any of the CFPB's rules. Even if UMRA did apply to the CFPB, UMRA contains so many other exceptions and exclusions that its requirements might not apply to most of the agency's rules.<sup>56</sup>

## **Appropriations Restrictions**

Appropriations restrictions may also be unavailable as a way for Congress to control the Bureau's rulemaking. As noted earlier in this report, the CFPB is funded (up to certain caps) using money from the combined earnings of the Federal Reserve System, and the Dodd-Frank Act states that

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<sup>55</sup> 44 U.S.C. 3507(f)(1).

<sup>56</sup> See, for example, U.S. General Accounting Office, *Unfunded Mandates: Analysis of Reform Act Coverage*, GAO-04-637, May 12, 2004.

those funds are not reviewable by either the House or the Senate appropriations committees.<sup>57</sup> Therefore, since the Bureau might not receive appropriated funds, Congress may not be able to encourage or restrict rulemaking through the kinds of appropriations restrictions that it has frequently used with regard to other agencies' rules.

## **Effectiveness of New Rulemaking Requirements Depends on How the Bureau Interprets Key Terms**

The Dodd-Frank Act made three amendments to the Regulatory Flexibility Act, adding requirements that are particular to the CFPB. Also, as noted previously, the Dodd-Frank Act requires the Bureau to examine certain rules within five years of their issuance. The effectiveness of these new rulemaking requirements may depend on how the CFPB interprets certain key terms.

### **Regulatory Flexibility Act Amendments**

As noted previously in this report, the RFA requires all covered federal agencies (including independent regulatory agencies like the CFPB) to conduct a “regulatory flexibility analysis” before publishing any proposed or final rule that is expected to have a “significant economic impact on a substantial number of small entities.” Section 1100G(b) of the Dodd-Frank Act adds a Bureau-specific provision to the government-wide requirements for proposed rule analyses, stating that the CFPB must also describe

(A) any projected increase in the cost of credit for small entities; (B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and (C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and (the initial regulatory flexibility analysis).

Also, Section 1100G(c) of the Dodd-Frank Act adds a Bureau-specific requirement to the existing requirements for a final rule analysis, stipulating that the Bureau must include “a description of the steps the agency has taken to minimize any additional cost of credit for small entities.”

Since 1996, the RFA has required the Environmental Protection Agency and the Occupational Safety and Health administration to hold “advocacy review panels” before developing proposed rules that are expected to have a “significant economic impact on a substantial number of small entities.”<sup>58</sup> Section 1100G(a) of the Dodd-Frank Act amended the RFA and requires the CFPB to hold such panels as well.

However, the CFPB does not have to convene an advocacy review panel or conduct an RFA analysis if it issues a final rule without a prior notice of proposed rulemaking (e.g., by using the APA’s “good cause” exception), or if it certifies that the rule is not expected to have a “significant economic impact on a substantial number of small entities.” Because the RFA does not define the terms “significant economic impact” or “substantial number of small entities,” the CFPB, like

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<sup>57</sup> Section 1017. However, if the director of the CFPB determines that these unappropriated funds are insufficient, the Dodd-Frank Act authorizes appropriations of up to \$200 million per year for FY2010 through FY2014. Appropriations restrictions could be added to any such appropriated funds.

<sup>58</sup> 5 U.S.C. 609.

other federal agencies, will have a substantial amount of discretion regarding when the act's requirements are triggered.

### **“Lookback” Requirement**

The previously mentioned “lookback” provision in Section 1022(d) of the Dodd-Frank Act requires that the CFPB examine and report on the effectiveness of its “significant” rules and orders within five years of their issuance. However, Section 1022(d) does not define what rules should be considered “significant,” and does not indicate how “effectiveness” should be measured. Therefore, the Bureau appears to have considerable discretion in determining which rules will have to be reviewed, and whether they will be considered “effective” or not.

Also, although the Dodd-Frank Act requires the Bureau to allow the public to comment before publishing its report, those comments are only required regarding any recommendations for modifying, expanding, or eliminating a rule or order. Thus, if the Bureau determines that a rule is effective, and therefore decides not to change the rule, the act does not appear to require public comments.

## **Oversight Council is Permitted to “Stay” or “Set Aside” CFPB Regulations**

Although certain regulatory oversight mechanisms appear to be inapplicable or subject to interpretation by the CFPB, the Dodd-Frank Act establishes a new oversight mechanism that is arguably more powerful than any that had previously existed. Section 1023 of the act (“Review of Bureau Regulations”) puts in place a procedure by which a Bureau rule, or a provision thereof, can be stayed or “set aside” by the newly-established Financial Stability Oversight Council if the Council concludes that the regulation or provision would “put the safety and soundness of the United States banking system or the ability of the financial system of the United States at risk.”<sup>59</sup>

The Financial Stability Oversight Council was established by Section 111 of the Dodd-Frank Act. Voting members of the Council are (1) the Secretary of the Treasury, who serves as Chairperson of the Council; (2) the Chairman of the Board of Governors; (3) the Comptroller of the Currency; (4) the Director of the Bureau; (5) the Chairman of the Securities and Exchange Commission; (6) the Chairperson of the Federal Deposit Insurance Corporation; (7) the Chairperson of the Commodity Futures Trading Commission; (7) the Director of the Federal Housing Finance Agency; (8) the Chairman of the National Credit Union Administration Board; and (9) “an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.” Nonvoting members are (A) the Director of the Office of Financial Research within the Department of the Treasury;<sup>60</sup> (B) the Director of the Federal Insurance Office within the Department of the Treasury;<sup>61</sup> (C) “a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners”; (D) “a State banking supervisor, to be designated by a selection process determined by the State banking

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<sup>59</sup> Section 1023(a).

<sup>60</sup> The Office of Financial Research was established by Section 152 of the Dodd-Frank Act.

<sup>61</sup> The Federal Insurance Office was established by Section 502 of the Dodd-Frank Act.

supervisors”; and (E) “a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.”

Section 1023(b) states that an “agency represented by a member of the Council” may petition the Council in writing to stay the effectiveness or set aside a Bureau regulation.<sup>62</sup> First, however, the agency must have, “in good faith,” attempted to work with the Bureau to resolve its concerns regarding the effect of the rule on the banking or financial systems. Also, the petition must have been filed within 10 days after the rule was published in the *Federal Register*, and the petition must be published in the *Federal Register* and transmitted “contemporaneously” to the Senate Committee on Banking, Housing, and Urban Affairs, and to the House Committee on Financial Services.

If any “member agency” of the Council so requests, the Chairperson is permitted to stay the effectiveness of a CFPB rule for up to 90 days to permit the Council to consider the petition.<sup>63</sup> A decision to issue a stay of, or to set aside, a Bureau rule requires an affirmative vote by two-thirds “of the Members of the Council then serving,” and must be taken within 45 days following the date the petition is filed, or by the expiration of a stay issued by the Council, whichever is later.<sup>64</sup> A decision by the Council to set aside a rule (or a provision therein) renders it “unenforceable,” and the Council must publish that decision and its reasoning in the *Federal Register* “as soon as practicable after the decision.”<sup>65</sup> The Council’s decision to set aside a rule or a provision thereof is subject to judicial review under Chapter 7 of Title 5, *United States Code*.<sup>66</sup>

## Unique Authority

The authority of the Financial Stability Oversight Council to stay or “set aside” final rules issued by the CFPB is unique. No other agency or organization in the executive branch of the federal government is currently permitted to unilaterally stop or nullify another agency’s published final rule. Executive Order 12866 allows OIRA within OMB to return a covered agency’s draft rule to the agency for “reconsideration” before it is published, but the executive order does not permit OIRA to simply “set aside” an agency’s published final rule.

Also, Section 1023 permits the Council to revoke either an entire final rule or a “provision thereof.” In this respect, the Council’s authority is greater than the expedited disapproval authority that Congress granted to itself through the Congressional Review Act, which only permits revocation of final rules in their entirety.<sup>67</sup> (Congress could, of course, use its regular legislative authority to disapprove all or part of a CFPB rule.)

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<sup>62</sup> Because only agencies who are “represented by members of the Council” can file petitions to stay or set aside rules, the member appointed by the President does not appear able to file a petition, since this member is supposed to be “independent” and does not represent an agency on the Council.

<sup>63</sup> Section 1023(c)(1). Section 102(a)(3) defines a “member agency” as a voting member of the Council

<sup>64</sup> Section 1023(c)(3).

<sup>65</sup> Section 1023(c)(4).

<sup>66</sup> Section 1023(c)(8).

<sup>67</sup> For more information on the operation of the Congressional Review Act, see CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

The Dodd-Frank Act does not provide any procedure by which the actions of the Council can be checked by the President or Congress. Nevertheless, if Congress and the President wanted a revoked Bureau rule to go into effect, legislation could be enacted that would reverse the Council's decision and/or place the rule in statute. Also, Section 1023(c)(8) of the Dodd-Frank Act subjects a Council revocation to judicial review.

It is notable that the voting members of the Financial Stability Oversight Council are the heads of the agencies from which the CFPB's consumer protection rulemaking and enforcement authorities were drawn. Therefore, these prudential regulatory agencies, relieved of most of their consumer protection functions, will potentially be able to stop the Bureau's consumer protection regulations if they conclude, by a two-thirds vote, that those regulations would put the banking or financial systems "at risk."

There are several aspects of the Council's revocation procedures that are currently unclear. For example:

- Before filing a petition, an agency must have acted "in good faith" to resolve its concerns regarding the effect of the rule on the banking or financial systems. It is unclear who determines whether the agency has, in fact, acted "in good faith," or what types of actions will be considered to meet that standard.
- The act states that the chairperson of the Council is permitted to stay the effectiveness of any rule for up to 90 days, upon a request by a "member agency." However, the statute also says that a decision to stay a rule requires an affirmative vote by two-thirds of the Council. It is unclear whether the chairperson can stay a rule for 90 days without such a vote.
- The act states that the Council can void a CFPB final rule if it concludes that it would put the safety and soundness of the banking or financial systems "at risk," but it is not clear what types of rules would meet that standard.
- Also, as discussed in the final section of this report on "Oversight Options," it is unclear whether the Council's decision to set aside a CFPB rule is, itself, a "rule" that must be submitted to Congress under the Congressional Review Act, and that can be disapproved by Congress using the expedited procedures contained therein.

## **Concluding Observations**

Although Titles X and XIV of the Dodd-Frank Act contain more than 50 provisions that specifically require or permit the CFPB to issue regulations, the actual number of rules that will be issued by the Bureau pursuant to the act's authority is currently unknowable. For example:

- About 20 sections in the act specifically require that the CFPB issue rules, but the agency may issue multiple rules under a single provision.
- Other sections of the act allow the Bureau to promulgate such rules "as may be necessary" to implement those sections, including the broad rulemaking authority provided in Section 1022(b)(1). Therefore, subject to the consultation and considerations attendant to this provision (as well as the constraints of applicable government-wide rulemaking requirements), the CFPB will arguably be able to

issue whatever rules it decides are “necessary or appropriate,” even if no other sections of the statute provided specific rulemaking authority. On the other hand, the Bureau may decide to issue no new rules under these types of authorities.

- Still other sections of the Dodd-Frank Act do not mention rulemaking at all, but may be implemented through CFPB rules.<sup>68</sup>
- Section 1063 of the Dodd-Frank Act makes the CFPB responsible for certain rules that have been issued by an agency transferring consumer protection functions to the Bureau, any proposed rule that a transferor agency has not made final as of the designated transfer date, and any final rule issued by a transferor agency that has not taken effect. It is currently unclear how many rules that the Bureau will assume pursuant to these provisions, or how many amendments to those transferred rules that the Bureau will issue in the future.

Because of these and other factors, efforts to determine with precision how many rulemaking provisions are in the statute seem misplaced, for they will not necessarily provide useful clues as to how many or what type of rules the Bureau is likely to issue.

## **Congressional Oversight Options**

Even though it is impossible to predict with any certainty what rules the CFPB will issue, it is clear that the Bureau has been given significant rulemaking authority. However, several of the mechanisms that have been used for decades to oversee and control rulemaking do not appear to be available with regard to the CFPB. The substance of the Bureau’s significant rules will not be reviewed by OIRA under Executive Order 12866, it appears that the Bureau can void OIRA disapprovals of its collections of information under the PRA, and Congress may not be able to require or restrict rulemaking in particular areas through appropriation restrictions (because the Bureau, at least initially, may not receive appropriated funds). Also, the effectiveness of provisions in the Dodd-Frank Act that increased the Bureau’s requirements under the RFA, as well as a provision requiring an evaluation of the Bureau’s rules within five years of their issuance, appear dependent on how the CFPB interprets those provisions.

Nevertheless, Congress still has a number of oversight tools available to affect the nature of CFPB rulemaking, including

- confirmation hearings for the still-to-be-selected director of the Bureau;
- oversight hearings on the Bureau’s implementation of the act; and
- meetings between individual Members and representatives of the Bureau regarding pending rules, and filing comments on the rules.<sup>69</sup>

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<sup>68</sup> The recent experience of rules issued pursuant to the recent health care reform legislation is instructive in this regard. The Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, March 23, 2010) contained more than 40 provisions that required, permitted, or otherwise mentioned rulemaking. However, of the 10 final rules issued during the first four months of PPACA’s implementation, 7 of them were not specifically required or mentioned in the act. See CRS Report R41346, *PPACA Regulations Issued During the First Four Months of the Act’s Implementation*, by Curtis W. Copeland.

<sup>69</sup> In *Sierra Club v. Costle* (657 F.2d 298, D.C. Cir. 1981), the D.C. Circuit concluded (at 409) that it was “entirely proper for congressional representatives vigorously to represent the interests of their constituents before administrative agencies engaged in informal, general policy rulemaking, so long as the individual Members of Congress do not (continued...)”



As one author indicated,

[I]nvestigations conducted by congressional committees constitute another powerful device of formal political supervision.... The public legislative hearings, in which administrative action is carefully scrutinized and a commissioner or staff member is plied with questions, symbolizes the unparalleled sophistication of American congressional control over administrative action, in general and by [independent regulatory agencies], in particular. Individual oversight by representatives or senators also takes place. Through correspondence or meetings, the latter convey the concerns of their constituents.<sup>70</sup>

## **Congressional Review Act**

Another congressional oversight option regarding the Bureau's rules is the Congressional Review Act, which was enacted in 1996 in an attempt to reestablish a measure of congressional authority over rulemaking "without at the same time requiring Congress to become a super regulatory agency."<sup>71</sup> The act generally requires all federal agencies (including independent regulatory agencies) to submit all of their covered final rules to both houses of Congress and GAO before they can take effect.<sup>72</sup> It also established expedited legislative procedures (primarily in the Senate) by which Congress may disapprove agencies' final rules by enacting a joint resolution of disapproval.<sup>73</sup> The definition of a covered rule in the CRA is quite broad, arguably including any type of document (e.g., legislative rules, policy statements, guidance, manuals, and memoranda) that the agency wishes to make binding on the affected public.<sup>74</sup> After a rule is submitted, Congress can use the expedited procedures specified in the CRA (particularly in the Senate) to disapprove of the rule. CRA resolutions of disapproval must be presented to the President for signature or veto.

For a variety of reasons, however, the CRA has been used to disapprove only one rule in the more than 14 years since it was enacted.<sup>75</sup> Perhaps most notably, it is likely that a President would veto a resolution of disapproval to protect rules developed under his own administration, and it may be difficult for Congress to muster the two-thirds vote in both houses needed to overturn the veto. Congress can also use regular (i.e., non-CRA) legislative procedures to disapprove agencies'

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(...continued)

frustrate the intent of Congress as a whole as expressed in statute, nor undermine applicable rules of procedure."

<sup>70</sup> Dominique Custos, "The Rulemaking Power of Independent Regulatory Agencies," *The American Journal of Comparative Law*, vol. 54 (Fall 2006), p. 633.

<sup>71</sup> Joint statement of House and Senate Sponsors, 142 *Cong. Rec.* E571, at E571 (daily ed. April 19, 1996); 142 *Cong. Rec.* S3683, at S3683 (daily ed. April 18, 1996).

<sup>72</sup> If a rule is considered "major" (e.g., has a \$100 million annual effect on the economy), then the CRA generally prohibits it from taking effect until 60 days after the date that it is submitted to Congress.

<sup>73</sup> For a detailed discussion of CRA procedures, see CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

<sup>74</sup> For more on the potential scope of the definition of a "rule" under the CRA, see CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

<sup>75</sup> The rule overturned in March 2001 was the Occupational Safety and Health Administration's ergonomics standard. This reversal was the result of a unique set of circumstances in which the incoming President (George W. Bush) did not veto the resolution disapproving the outgoing President's (William J. Clinton's) rule. See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg, for a description of several possible factors affecting the CRA's use, and for other effects that the act may have on agency rulemaking.

rules, but such legislation may prove even more difficult to enact than a CRA resolution of disapproval (primarily because of the lack of expedited procedures in the Senate), and if enacted may also be vetoed by the President. These difficulties notwithstanding, even if the use of the CRA does not result in the disapproval of a rule, just the threat of filing of a resolution of disapproval can sometimes exert pressure on agencies to modify or withdraw their rules.<sup>76</sup>

### *Are Council Decisions “Rules” Under the CRA?*

Although it is clear that the Bureau’s rules are subject to the CRA, it is not clear whether a decision by the Financial Stability Oversight Council to “set aside” a Bureau rule is, itself, a “rule” under the CRA. Section 1023(c)(6) of the Dodd-Frank Act requires the Council’s decisions to stay or set aside a rule be published in the *Federal Register*, and Section 1023(c)(7) states that the APA’s notice and comment rulemaking procedures (5 U.S.C. 553) “shall not apply” to such decisions. Notably, however, the act does not state that the Council’s decisions are not rules under Section 551 of the APA, and says that a Council decision to set aside a Bureau regulation is subject to judicial review (i.e., in the same manner as an agency rule would be). On the other hand, it is not clear that Congress intended the Council’s actions to be considered “rules” that could be disapproved using CRA procedures. The Council itself appears to have been delegated no specific rulemaking authority.

If the Council’s action to stay or set aside a Bureau rule is itself a rule, then it would have to be submitted to GAO and both houses of Congress before it could take effect, and Congress could use the expedited procedures in the CRA to disapprove of the Council’s action. On the other hand, if the Council’s action is not a rule, then Congress would have to use regular legislative procedures to revoke the Council’s action, or to put the Bureau’s revoked rule into law.

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<sup>76</sup> See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg, for a description of instances in which the filing of a resolution of disapproval had an effect on agencies’ decisions.

## Appendix. Regulations to Be Issued by the Consumer Financial Protection Bureau

Section	Text of the Provision	Other Agencies	Deadlines for Rules
<b>Mandatory Regulations (e.g., “shall prescribe rules ... ”)</b>			
Section 1022(c)(6)(A)	“...shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.”	None	None
Section 1024(a)(2)	“...shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section...” (on “Supervision of Nondepository Covered Persons”).	Consultation with the Federal Trade Commission	“Initial rule” required within one year after the designated transfer date.
Section 1024(b)(7)(A)	“ ... shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.”	None	None
Section 1025(e)(4)(E)	“...shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.”	Rules to be issued with the “prudential regulators.”	None
Section 1033(d)	“...by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section” (on “Consumer Rights to Access Information”).	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1035(c)	“The Ombudsman designated under this subsection (re private education loans) shall...in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs.”	None	None
Section 1041(c)(1)	“The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.”	Impetus for rulemaking is the enactment of resolutions by a majority of the States.	None
Section 1042(c)	“...shall prescribe regulations to implement the requirements of this section...” (on “Preservation of Enforcement Powers of the States”).	None	None
Section 1053(e)	“...shall prescribe rules establishing such procedures as may be necessary to carry out this section” (on “Hearings and Adjudication Proceedings”).	None	None
Section 1071(a) (amending the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.))	“Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).”	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1071(a) (amending the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.))	“Information compiled and maintained under this section (“Small Business Loan Data Collection”) shall be—(A) retained for not less than 3 years after the date of preparation; (B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau; (C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.”	None	None
Section 1079(c)	“...shall, consistent with subtitle B (“General Powers of the Bureau”), propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.”	None	Rule or program must be established within two years after the submission of a report (which is required within one year of the transfer date).
Section 1083(a) (amending the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.))	Bureau is required to determine whether the existing regulations applicable under paragraphs (1) through (3) of subsection (a) are “fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010,” and “(3) promulgate regulations under subsection (a)(4)...”	None	Regulations to be promulgated “after the designated transfer date.”
Section 1084 (amending the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.))	“... shall prescribe rules to carry out the purposes of this title” (with certain exceptions).	None	None
Section 1088(a)(9) (amending the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.))	“...shall prescribe rules to carry out this subsection” (on amendments to the Fair Credit Reporting Act).	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1088(a)(1)(C) (amending the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.))	“...shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621...prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).”	None	None
Section 1088(b)(3)	“Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s-3), shall be prescribed, as described in paragraph (2), by....”	Rules to be issued by (1) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities; (2) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; (3) the Bureau, with respect to other entities subject to this legislation.	None
Section 1094(3)(B) (amending the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.))	“... shall develop regulations that (A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public; (B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title; (C) require disclosure of the class of the purchaser of such loans; (D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and (E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.”	Rule to be developed in consultation with “appropriate banking agencies,” the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Secretary of Housing and Urban Development.	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1094(3)(F) (amending the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.))	“The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau.”	None	None
Section 1463(a) (amending Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605))	“A servicer of a federally related mortgage shall not...charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section” (or) “fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.”	None	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.
Section 1471 (amending Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.))	“...shall jointly prescribe regulations to implement this section” (“Property Appraisal Requirements”). It goes on to say that the agencies “may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.”	Rule to be issued jointly with the Board of Governors, Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration Board, and the Federal Housing Finance Agency	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.
Section 1473(f)(2) (amending Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.))	“...shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies.”	Rule to be issued jointly with the Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1473(f)(2) (amending Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.))	“...shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.”	Rule to be issued jointly with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.
Section 1473(q) (amending Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.))	“...shall promulgate regulations to implement the quality control standards required under this section” (on automated valuation models used to estimate collateral value for mortgage lending purposes).	Rule to be issued jointly with the Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.
<b>Discretionary Regulations (e.g., “may prescribe rules...”)</b>			
Section 1002(9)	The term “deposit-taking activity” includes “the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.”	None	None



Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1002(15)(A)	The definition of the term “financial product or service” includes “...such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or (II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.”	None	None
Section 1002(25)	The definition of a “related person” includes “any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person.”	None	None
Section 1022(b)(1)	“...may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.”	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1022(b)(3)(A)	“...by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).”	None	None
Section 1022(c)(4)(B)	“...may...require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.”	None	None
Section 1022(c)(5)	“In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.”	None	None
Section 1022(c)(7)(A)	“...may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.”	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1024(b)(7)(C)	<p>“...may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.”</p>	None	None
Section 1027(b)(2)	<p>“...may exercise rulemaking, supervisory, enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is (A) engaged in an activity of offering or providing any consumer financial product or service...or (B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H....”</p>	None	None
Section 1027(g)(3)(B)(iii)	<p>“Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph (Departments of the Treasury and Labor), the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title.”</p>	None	None
Section 1031(b)	<p>“...may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.”</p>	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1032(a)	“...may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.”	None	None
Section 1057(d)(3)	“...an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.”	None	None
Section 1071(a) (amending the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.))	“...shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section” (on small business data collection).	None	None
Section 1071(a) (amending the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.))	“...by rule or order, may adopt exceptions to any requirement of this section (on small business data collection) and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.”	None	None
Section 1076(b)	The Bureau should issue rules if it “determines through the study required under subsection (a) (on reverse mortgage transactions) that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title....”	None	Study must be conducted within one year of enactment (i.e., by July 21, 2011), but no deadline established for possible regulations.

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1088(a) (amending the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.))	Prohibits the treatment of information as a consumer report if it is disclosed as “...determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).”	Rule to be issued by the Bureau or applicable state insurance authorities	None
Section 1088(a)(4)(B) (amending the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.))	“...may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs...”	None	None
Section 1088(a)(10)(E) (amending the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.))	“...shall prescribe such regulations as are necessary to carry out the purposes of this title, except with respect to sections 615(e) and 628. The Bureau may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this title, and to prevent evasions thereof or to facilitate compliance therewith.”	None	None
Section 1089(4) (amending the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.))	“Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title.”	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1093 (amending Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.))	“...shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 501.”	Bureau and the Securities and Exchange Commission authorized to issue rules	None
Section 1094 (amending the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.))	“...may, by regulation, exempt from the requirements of this title any State-chartered repository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement.”	None	None
Section 1097(1) (amending Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note)).	“...shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.”	None	None
Section 1100(6)(B) (amending the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.))	“...is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.”	None	None

Section	Text of the Provision	Other Agencies	Deadlines for Rules
Section 1472(a) (amending Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.))	“...may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).”	Rule to be issued jointly with the Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency.	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.
Section 1472(a) (amending Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.))	“...may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.”	Rule to be issued jointly with the Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency.	Per Section 1400(c), final rule to be published within 18 months after designated transfer date, and to take effect within 12 months after issuance.

**Source:** CRS.

## **Author Contact Information**

Curtis W. Copeland  
Specialist in American National Government  
cwcopeland@crs.loc.gov, 7-0632