



Consumer Financial Protection Agency (CFPA) Act and Expedited CARD Act Adopted by Committee

October 22, 2009

CFPA Act (HR 3126)

The House Financial Services Committee today, by a vote of 39-29, adopted and sent to the House floor a bill creating a massive new federal government agency to regulate consumer financial services. The Consumer Financial Protection Agency (CFPA) Act, as approved by the Committee under the chairmanship of Barney Frank (D-MA), would have rule-writing, enforcement and supervisory authority for designated banks and nonbanks. The bill would also diminish the existing preemption of state laws for consumer protection provided under the National Bank Act and the Home Owners Loan Act.

After considering the CFPA Act for four days, the Committee, in a procedural maneuver, voted this morning to close the debate and not allow any additional amendments to be offered. In what would have otherwise been a party-line vote in favor of passage, two Democrats - Rep. Walt Minnick (D-ID) and Rep. Travis Childers (D-MS) – voted **against** final passage, and one Republican – Rep. Mike Castle (R-DE) voted **for** final passage of the bill.

A total of 8 Republican amendments were adopted. A handful of amendments passed exempting certain special interest groups, like manufactured housing and auto dealers. Of primary concern to CBA members were two major changes made to the bill – a preemption amendment offered by Rep. Mel Watt (D-NC) and Rep. Dennis Moore (D-KS), and a small bank and credit union exam carve out, offered by Rep. Brad Miller (D-NC) and Rep. Moore.

Watt-Moore Preemption Amendment, Adopted 40-28

In brief, the amendment appears intended to have the following effect on the current preemption of the National Bank Act and Home Owners Loan Act:

- For the most part, the federal regulator (OCC or OTS) would need to issue an order or regulation to preempt state law.
- To issue a regulation, it would have to find that there is already a substantive provision in federal law that conflicts.
- In addition, it would have to find that there is substantial evidence that the provision prevents or significantly interferes with a power explicitly granted by Congress.
- The preemption determination would sunset after 5 years and need to be re instituted by OCC
- Operating subsidiaries would not be subject to preemption.

There was agreement in the Committee to work on this issue further as it moves to the House floor.

Miller-Moore Small Bank and Credit Union Amendment, Adopted by voice vote

The amendment exempts banks with under \$10 Billion in assets and credit unions with under \$1.5 Billion in assets from primary CFPB supervision; though the new consumer agency would still write all regulations and retain enforcement authority. According to Chairman Barney Frank (D-MA) that would mean fewer than 2% of banks would be subject to the new CFPB exams, but they would hold 77% of the assets and 74% of the deposits.

- CFPB would continue to have rule-writing and enforcement authority for all financial institutions, but supervision only of the larger institutions (and non-depositaries). The CFPB would have the discretion to let larger institutions retain consumer compliance enforcement with their primary regulators.
- CFPB would have secondary authority to supervise smaller institutions: It could send an examiner to participate in any consumer compliance exam and could review exams by the prudential regulators.
- The CFPB would also have the authority to remove the prudential regulator's right to conduct consumer compliance exams on a bank-by-bank basis if it determines that the regulator has failed to adequately conduct consumer compliance exams. Before the CFPB could remove the prudential regulator, it would have to place the institution on a "heightened" exam period for at least one exam cycle. Treasury would have the power to overrule the decision of the CFPB.
- CFPB could evaluate the prudential regulator's nonpublic actions and decide to take public enforcement actions, but it would need to first petition the prudential regulator for additional enforcement action. The CFPB could also take enforcement actions arising from the consumer complaints.

Next Steps

We believe CFPB legislation will be considered on the House floor the week of November 16, 2009. Additional amendments may be offered on the House floor. In the Senate, Chairman Chris Dodd (D-CT) and Sen. Richard Shelby (R-AL) continue to discuss a comprehensive regulatory reform bill, but no language has been introduced to date.

Expedited CARD Act (HR 3639)

The House Financial Services Committee also approved a bill by voice vote to expedite the enactment dates remaining under the CARD Act, making the act effective on December 1, 2009. Several amendments were added to the bill including an amendment to exempt small card issuers (card issuers with fewer than 10 million cards in circulation), and pre-paid cards (otherwise known as gift cards).

Next Steps

We believe the Expedited CARD Act will proceed to the House floor possibly as early as next week. Additional amendments may be offered on the House floor. In the Senate, it is not expected that a companion bill will be introduced.

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