



Regulatory: The Consumer Financial Protection Bureau

Definitional interlude – What’s in; what’s not.

By [Martin Bishop](#)

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This column is the second in a series of articles on the coming of the Consumer Financial Protection Bureau and the direction it is likely to take in the regulation of consumer financial products and services.

We know that the Consumer Financial Protection Bureau is a big, new, powerful federal agency that is set to open its doors in just a few short months. But what subject matter will the bureau cover? And who falls within its sphere of power? To get to the bottom of this, we need to spend a little time examining some of the critical definitions in Title X of the Dodd-Frank Act.

Before we do that, however, it may be helpful (and a relief to some) to set forth what types of entities Congress saw fit to exclude from the bureau’s powers and the coverage of Title X. Title X specifically excludes from the bureau’s coverage:

- Merchants, retailers, and other sellers of nonfinancial goods or services;
- Real estate brokerage activities;
- Manufactured home retailers and modular home retailers;
- Accountant and tax preparers;
- Legal practitioners;
- Employee benefit and compensation plans;
- Persons regulated by the SEC, the CFTC, a state securities commission, a state insurance regulator, or the Farm Credit Administration;
- Motor vehicle dealers, unless they provide mortgages or extend consumer retail credit without assigning it to third parties; and
- Tax-exempt organizations.

To put all of this another way, if you do not fall within one of these exempt categories, then you need to know that the bureau will have expansive authority to adopt and enforce new regulations that will apply to “covered persons” offering any “consumer financial product or service.” What do these terms mean?

A covered person is “any person that engages in offering or providing a consumer financial product or service” and “any affiliate of [such person] if such affiliate acts as a service provider to such person.” A consumer financial product or service, in turn, is very broadly defined to include, among a variety of other things:

- Extending credit and servicing loans;
- Extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements (subject to certain requirements);
- Providing real estate settlement services (subject to certain exceptions);
- Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a customer;
- Selling, providing, or issuing stored value or payment instruments (subject to certain exceptions);

- Providing check cashing, check collection, or check guaranty services;
- Providing payments or other financial data processing products or services to a consumer by any technological means, or through any payments systems or network used for processing payments data (subject to certain exceptions);
- Providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services (subject to significant exceptions);
- Collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service (subject to certain exceptions); and
- Collecting debt related to any consumer financial product or service.

To put all of this another way, if you are dealing in consumer credit in any meaningful way and not otherwise expressly excluded, you are likely to find yourself in the bureau's purview in July. But what does *that* mean?

It means that the bureau will have complete rulemaking authority over the alphabet soup of consumer financial laws that govern much of your behavior as a covered person. These are the so-called "enumerated consumer laws" and include the following statutes:

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act
- Electronic Fund Transfer Act (with certain exceptions)
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act (with certain exceptions)
- Home Owners Protection Act
- Fair Debt Collection Practices Act
- Federal Deposit Insurance Act (only section 43(b)-(f))
- Gramm-Leach-Bliley Act (only section 502 through 509, except section 505 as it applies to section 501(b))
- Home Mortgage Disclosure Act
- Home Ownership and Equity Protection Act
- Real Estate Settlement Procedures Act
- S.A.F.E. Mortgage Licensing Act of 2008
- Truth in Lending Act
- Truth in Savings Act
- Omnibus Appropriations Act of 2009 (only section 626)
- Interstate Land Sales Full Disclosure Act

These statutes were around long-before Dodd-Frank, of course, but were enforced and had rules adopted in their name by a variety of different federal regulators. Come July, this will be the province of the bureau.

Interestingly, the bureau has the power to pass regulations to exempt from coverage under Title X any class of covered persons or any consumer financial product or service. In making an exemption, the bureau has to take into account the total assets of the class of covered persons, the volume of transactions involving consumer financial products or services in which the class of covered persons engages, and existing laws applicable to the product or service and the extent to which such provisions provide consumers with adequate protections. We will have to wait and see how this power is exercised, if at all.

In coming articles, we will explore some of the bureau's other significant powers, Title X's preemption provisions, and the big new gap filler: UDAAP.

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