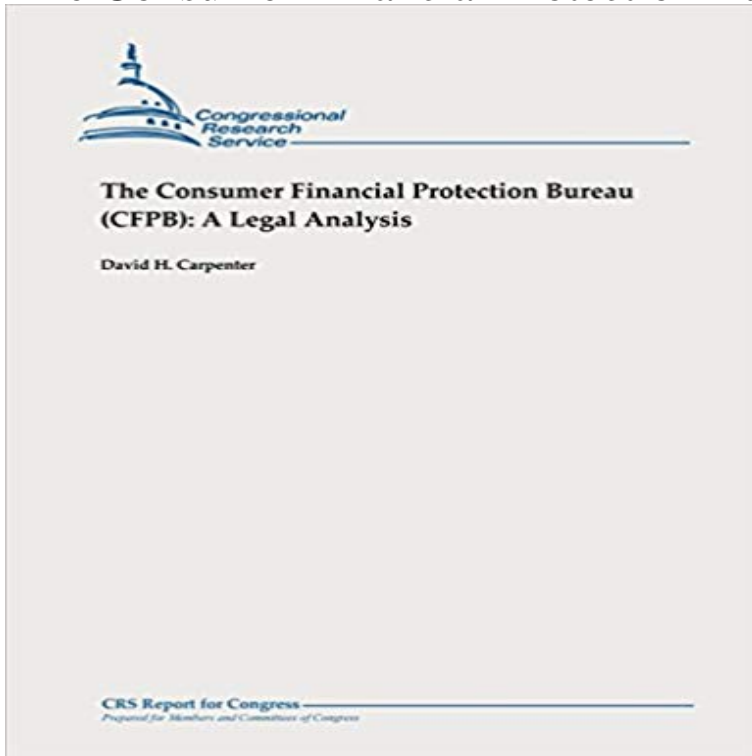


The Consumer Financial Protection Bureau (CFPB): A Legal Analysis



In the wake of the worst U.S. financial crisis since the Great Depression, Congress passed and the President signed into law sweeping reforms of the financial services regulatory system through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), P.L. 111-203. Title X of the Dodd-Frank Act is entitled the Consumer Financial Protection Act of 2010 (CFP Act). The CFP Act establishes the Bureau of Consumer Financial Protection (CFPB or Bureau) within the Federal Reserve System (FRS) with rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. The CFP Act significantly enhances federal consumer protection regulatory authority over nondepository financial institutions, potentially subjecting them to analogous supervisory, examination, and enforcement standards that have been applicable to depository institutions in the past. The act also transfers to the Bureau much of the consumer compliance authority over larger depositories that previously had been held by banking regulators. Additionally, the Bureau acquired the authority to write rules to implement most federal consumer financial protection laws that previously was held by a number of other federal agencies. Although the powers that the CFPB has at its disposal are largely the same or analogous to those that other federal regulators have held for decades, there is a great deal of uncertainty in how the new agency will exercise these broad and flexible authorities, especially in light of its almost exclusive focus on consumer protection. As a result, the CFP Act has proven to be one of the more controversial portions of the financial reform legislation. The 112th Congress is actively involved in conducting oversight of the implementation of the CFP Act. Additionally, the 112th Congress has considered a number of bills

that would significantly alter the structure of the Bureau. For example, H.R. 2434, the Financial Services and General Government Appropriations Act, 2012, would make the CFPBs primary funding subject to the traditional appropriations process, and H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act, would convert the CFPBs leadership structure from a sole directorship to a commission and would allow the newly established Financial Stability Oversight Council (FSOC) to overturn CFPB-issued regulations with a simple majority vote, as opposed to the current super majority requirement. H.R. 2434 was reported favorably out of the House Committee on Appropriations, and H.R. 1315 was referred to the Senate Committee on Banking, Housing, and Urban Affairs after passing the full House by a vote of 241 to 173. Additionally, 44 Senators signed a letter to the President expressing support for the Bureau-related objectives of H.R. 2434 and H.R. 1315. This report provides an overview of the regulatory structure of consumer finance under existing federal law before the Dodd-Frank Act went into effect and examines arguments for modifying the regime in order to more effectively regulate consumer financial markets. It then analyzes how the CFP Act changes that legal structure, with a focus on the Bureaus organization; the entities and activities that fall (and do not fall) under the Bureaus supervisory, enforcement, and rulemaking authorities; the Bureaus general and specific rulemaking powers and procedures; and the Bureaus funding.

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