

## What to expect from financial reform

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After more than one year of legislative wrangling, Congress has passed and President Obama has signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Those who follow the crafting of legislation have witnessed quite a show. While the Democrats have had a firm hold on both the House and the Senate since January 2009, the unique cloture rules of the **U.S. Senate** have forced the Democratic majority to come up with 60 votes in favor of legislation rather than a simple majority. With the deaths of Senators Edward Kennedy and Robert Byrd, the ascension of Sen. Scott Brown and the impact of the Tea Party movement, this reform law has had a most interesting odyssey.

The Dodd-Frank Act is a mammoth piece of legislation. Its reach is remarkable. It will impact financial services providers from money center banks and investment houses, to payday and title pawn lenders. The act's proponents argue that the new law will rein in Wall Street, forever end the bail-out by U.S. taxpayers of companies allegedly "too big to fail," and bring about a new regimen of consumer protection – all for the purpose of preventing future financial crises.

While Congress used 2,315 pages to address these issues, the result is little more than a "road map" for existing agencies and a to-be-formed, new federal agency to issue new rules and regulations. The new agency will be known as the **Consumer Financial Protection Bureau**. This agency will probably have the most immediate impact on those of us who live and work on Main Street, as opposed to Wall Street.

The purpose of the bureau is to implement and enforce consumer financial law for the stated purpose of ensuring that markets for consumer financial products and services are fair, transparent and competitive.

The bureau is granted broad and in most cases, exclusive rulemaking authority over the consumer financial products and service providers, and the body of federal consumer financial laws that are already in existence. Further, the bureau's authority extends to the determination of unfair, deceptive and abusive acts and practices, and establishes civil penalties and fines. This authority and enforcement power greatly concerns creditors because of the perceived unchecked power of a largely autonomous regulator.

The bureau will have primary enforcement and examination authority over the providers of consumer financial loans and products. It can create and require new "disclosures" to be given by providers.

The true power of the bureau comes because the act makes it unlawful for any person to offer or provide to a consumer, any financial product or service not in conformity with federal consumer financial law, or to engage in any unfair, deceptive or abusive act or practice. The enforcement powers of the bureau are also wide ranging.

The head of this new agency of government, the director, will be a presidential appointee, subject to approval by the Senate, and whose term will be for five years. The director's powers are fairly unique when compared to other agency directors; and the decisions of the bureau will largely stand, unless a combination of other federal agencies determine by a two-thirds vote to overturn a decision of the bureau.

So, what can we, the consumers living on Main Street, expect from this new bureau?

- The first thing we will see is the elimination of mandatory, pre-dispute arbitration in consumer credit contracts. Liberal members of Congress have sought the elimination of arbitration in consumer contracts for years. The new law specifically grants authority to the bureau to investigate and restrict what has become a common provision in consumer contracts.
- We will see more, and perhaps more meaningful, disclosures with consumer products and services.
- Certain loan products are going to be restricted or even eliminated. It remains to be seen how broad the bureau will cast the net; but I wouldn't be surprised to see new federal restrictions on real estate mortgage loans, payday loans, title pawn transactions, tax preparation services and check cashing transactions.
- Some merchants who currently finance their sales may choose to eliminate that practice.
- As a result of the real estate mortgage reform provisions, it may be tougher for marginal borrowers to get a loan.
- Finally, investors may get more "guarded" advice from their brokers as a result of a higher standard of fiduciary care that stock brokers will be charged with observing.

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