

**List of Businesses and other Entities
Within CFPB Jurisdiction
H.R. 4173**

Responding to concerns about the unprecedented jurisdictional reach of the Consumer Financial Protection Agency (CFPA) as proposed by the Obama Administration, H.R. 4173 excludes certain businesses and other entities from CFPB jurisdiction. A review of the statutory language, however, demonstrates that to the extent that excluded entities engage in “financial activities” as that term is defined in the bill, they are subject to CFPB jurisdiction. Thus, the jurisdictional reach of the proposed new agency remains quite broad, encompassing at least 36 different businesses and entities.

The definitions in the revised bill (found in Section 4002) are virtually unchanged; the definitions that set the boundaries for the jurisdiction of the new consumer regulator remain written in sweeping language. Here are six key terms (*italics added*):

Paragraph (8): Consumer financial product or service: “*any* financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.”

Paragraph (19): Financial product or service: “*any* product or service that, directly, or *indirectly*, results from or is related to engaging in one or more financial activities.”

Paragraph (10): Credit: the right to “defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.”

Paragraph (13): Deposit-taking activities: “(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of other services *related to* the acceptance of deposits . . . ; (B) the acceptance of *money*, the provision of other services *related to* the acceptance of money . . . ; or (C) the receipt of money or *its equivalent* . . . for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.”

Paragraph (9): Covered person: “(A) *any* person who engages directly or *indirectly* in a financial activity, in *connection with* the provision of a consumer financial product or service.

Paragraph (31): Provision of a Consumer Financial Product or Service: “the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.”

Finally, Paragraph (19) contains an expansive enumeration of what constitute “financial activities” that would be brought within the purview of the new consumer regulator.

The operation of these definitions means that the following extensive, but by no means exhaustive, list of individuals and entities would be subject to CFPB jurisdiction.

List of Businesses and Other Entities Within CFPA Jurisdiction

1. Banks
2. Thrifts
3. Credit unions
4. Finance companies
5. Pay day lenders
6. Pawn shops
7. Currency exchanges
8. **Retail stores offering in-house credit or deferred payments**
Section 4205 excludes “merchants, retailers, and sellers of nonfinancial services” from the CFPA’s jurisdiction with respect to credit extended directly by the merchant, retailer, or seller of nonfinancial services... for the purpose of enabling that consumer to purchase goods or services directly from the merchant...” However, section 4205(2) states that the CFPA retains authority to regulate these entities pursuant to any of the 13 laws transferred to its jurisdiction. In addition, section 4205(4)(B) expressly permits the CFPA to exercise jurisdiction if the “credit provided significantly exceeds the market value of the product or service provided...and is done as a subterfuge so as to evade or circumvent the provisions of this title.”
9. Mortgage loan servicers
10. Mortgage loan brokers
11. **Real estate appraisers, real estate appraisal companies, and real estate appraisal management companies**
19(A)(ii)(II) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property.
12. **Automobile dealers and leasing companies**
Section 4205(i) excludes from CFPA jurisdiction automobile dealers “that are primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” However, it retains jurisdiction over auto dealers that provide consumers with any services related to residential mortgages; or (B) operate a line of business that involves the extension of retail credit or retail leases ... provided directly to consumers and the contract is not routinely assigned to a third-party finance or leasing source.
13. **Automobile appraisers, if the car appraisal is made for purposes of evaluating collateral for a loan.**
See 19(A)(ii)(II), above.
14. **Jewelry/art/antiques appraisers, if the personal property appraisal is made for purposes of evaluating collateral for a loan**
See 19(A)(ii)(II), above.

- 15. Check guaranty services, e.g., TeleCheck, CrossCheck**
19(A)(iii) check guarantee services, including—(I) authorizing a subscribing merchant to accept personal checks tendered by the merchant’s customers in payment for goods and services and (II) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored”
- 16. Consumer credit reporting agencies**
19(A)(iv)
- 17. Debt collectors, not limited to debt collection companies, but rather including any firm that collects debt “related to any consumer financial product or service”**
19(A)(v)
- 18. Real estate settlement companies**
19(A)(vi)
- 19. Real estate agents and brokers**
Section 4205(h) excludes from CFPA jurisdiction all activities of a licensed or registered real estate agent or broker except “to the extent such person is engaged in any financial activity described in Section 4002(19).”
- 20. Investment advisors (not subject to regulation by or required to register with the CFTC, SEC, or any state agency performing like functions)**
19(A)(viii)
- 21. Financial advisors**
19(A)(ix)(I) providing financial and other related advisory services
- 22. Broker-dealers**
19(A)(i) deposit taking; (ii) extending credit
- 23. Non-depository trust companies**
19(A)(xv) acting as a custodian of money or any financial instrument; 19(A)(ix)(I) acting as a financial advisor to any person
- 24. Family trust offices**
19(A)(ix)(I) acting as a financial advisor to any person, including-(I) providing financial and other related advisory services
- 25. Deposit intermediation services, e.g., Promontory and others**
19(A)(i) and 13(A) deposit taking activity means the acceptance of deposits, the provision of other services related to the acceptance of deposits; 19(A)(ix)(I) acting as a financial advisor to any person, including (I) providing financial and other related advisory services.
- 26. Debt settlement companies**
19(a)(ix)(IV) providing services to assist a consumer with debt management or debt settlement
- 27. For-profit and not-for-profit credit counselors**
19(A)(ix)(II) providing educational courses, and instructional materials to consumers on individual financial management matters and (III) providing credit counseling
- 28. Financial literacy programs, including school or university-based financial education programs and other financial literacy programs**

19(A)(ix)(II) providing educational courses, and instructional materials to consumers on individual financial management matters

29. Tax preparers

Section 4205(g) excludes tax preparers “except to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19).” In addition, the CFPA retains authority to regulate these entities pursuant to any of the 13 laws transferred to its jurisdiction.

30. Accountants

Section 4205(g) excludes state licensed or certified accountants “except to the extent such person is engaged in any activity which is not a “customary and usual accounting activity ... but which is a financial activity described in any subparagraph of section 4002(19).” In addition, the CFPA retains authority to regulate these entities pursuant to any of the 13 laws transferred to its jurisdiction.

31. Attorneys

Section 124(e) excludes state licensed attorneys providing advice or services within the scope of the attorney-client privilege “except to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19).” In addition, the CFPA retains authority to regulate these entities pursuant to any of the 13 laws transferred to its jurisdiction.

32. Money transmitters/wire transmitters, e.g., Western Union, PayPal, and others

19(A)(xii)

33. Sellers or issuers of stored value cards, e.g., retail stores, as well as the major card companies

19(A)(xiii) Note: sellers of stored value cards are included only if the “seller influences the terms or conditions of the stored value provided to the consumer.”

34. Money services businesses

19(A)(xiv)

35. Financial data processors

19(A)(xi) defines as a financial activity “financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, **except** that it shall not be considered a “financial activity” if with respect to financial data processing the person—

- Unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;
- Does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and
- Does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.”

The addition of this language was presumably intended to exclude entities that provide only “back office” data processing, data transmission, or storage services to financial institutions, but the language quoted above clearly provides the Agency the flexibility to assert jurisdiction over these entities. To fall within the exception, the service provided must satisfy each of the listed criteria, a difficult hurdle considering the range of services provided to both the consumer and the financial institution. As a result, depending on the nature of the services provided to a covered person, the following entities may remain subject to CFPA jurisdiction:

- Core processors, such as EDS, Fidelity, Metavante, Jack Henry, and others
- Data storage providers, e.g., Iron Mountain and others
- Data transmission service providers, including providers of check imaging services and ATM network providers, e.g., Fiserv, EFT, First Data, Fidelity, and others
- Data transmission software and hardware designers, including manufacturers of ATMs and remote capture machines, e.g., Diebold, NCR, Fujitsu, Microsoft, and others
- Third-party software and hardware providers, e.g., BSA/AML monitoring software and hardware; OFAC screening software/service; disaster recovery software and hardware, etc.
- Third-party IT advisors and systems providers
- Network security advisors and systems providers

36. And the catchall –19(A)(xvi)(I) any other activity that the Director defines, by regulation, as a financial activity after finding that—

- *The activity has, or there is a substantial likelihood that the activity will have, a material adverse impact on creditworthiness or financial well being of consumers;*
- *The activity is incidental or complimentary to any other financial activity regulated by the Agency; or*
- *The activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.*