

Partial List of Businesses and other Entities Within CFPA Jurisdiction

The jurisdictional reach of the new Consumer Financial Protection Agency (CFPA), proposed by the Obama Administration as part of its regulatory reorganization plan, would be broader than that of any other federal financial agency. Indeed, it may exceed the jurisdictional reach of all of the existing federal financial agencies combined.

The definitions in the proposed bill (found in Section 1002) that set the boundaries for the jurisdiction of the new consumer regulator are written in sweeping language. Here are six key terms (*italics added*):

Paragraph (8): Consumer financial product or service: “*any* financial product 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 . . . , or purchase property or services and defer payment therefor.”

Paragraph (13): Deposit-taking activities: “(A) the acceptance of deposits, 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; or (B) *any* person who, in *connection with* the provision of a consumer financial product or service, provides a material service to, or processes a transaction on behalf of, a person described in subparagraph (A).”

Finally, Paragraph (18) 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 CFPA 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, perhaps extending to layaway programs
9. Mortgage loan servicers
10. Mortgage loan brokers
11. **Mortgage insurance companies and sales people**
18(B) (ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property and selling or servicing credit insurance or mortgage insurance
12. **Real estate appraisers, real estate appraisal companies, and real estate appraisal management companies**
See 18(B) (ii), above.
13. **Automobile appraisers, if the car appraisal is made for purposes of evaluating collateral for a loan. Automobile dealers would also be covered if they on their own provide any deferred payment terms, whether for sales or service**
See 18(B) (ii), above.
14. **Jewelry/art/antiques appraisers, if the personal property appraisal is made for purposes of evaluating collateral for a loan**
See 18(B) (ii), above.
15. **Companies/individuals that sell or “service” credit insurance**
See 18(B) (ii), above.
16. **Check guaranty services, e.g., TeleCheck, CrossCheck**
18(C) 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”
17. Consumer credit reporting agencies

- 18. 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. Real estate settlement companies**
- 20. Title insurance companies**
- 21. Real estate agents who assist with the leasing of real property**
18(G) leasing personal or real property or acting as agent, broker, or advisor in leasing such property if—(i) the lease is on a non-operating basis; (ii) the initial term of the lease is at least 90 days; and (iii) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Agency
- 22. Automobile leasing companies**
See 18(G) above.
- 23. Investment advisors (not subject to regulation by or required to register with the CFTC or the SEC), e.g., state-registered investment advisers**
18(H)
- 24. Financial advisors**
18(I)(i) providing financial and other related advisory services
- 25. Broker-dealers**
18(A) deposit taking; 18(B) extending credit
- 26. Non-depository trust companies**
18(N) acting as a custodian of money or any financial instrument; 18(H) acting as an investment advisor to any person
- 27. Family trust offices**
18(I) acting as a financial advisor to any person, including-(i) providing financial and other related advisory services
- 28. Retirement plan service providers**
18(B) extending credit (administering plan loans):18(I) acting as a financial advisor to any person, including--(i) providing financial and other related advisory services and (iii) providing...tax preparation services
- 29. Custodians, including IRA and 529 plan custodians, e.g., T Rowe Price, Vanguard, Fidelity and others**
18(N) acting as a custodian of money or any financial instrument
- 30. Deposit intermediation services, e.g., Promontory and others**
13(A) deposit taking activity means the acceptance of deposits, the provision of other services related to the acceptance of deposits; 18(I) acting as a financial advisor to any person, including (i) providing financial and other related advisory services.
- 31. Debt settlement companies**
18(I)(i) providing financial and other related advisory services and (iii) providing credit counseling

- 32. For-profit and not-for-profit credit counselors**
18(I)(ii) providing educational courses, and instructional materials to consumers on individual financial management matters and (iii) providing credit counseling
- 33. Financial literacy programs, including school or university-based financial education programs and other financial literacy programs**
18(I)(ii) providing educational courses, and instructional materials to consumers on individual financial management matters
- 34. Tax planners, tax preparers, tax attorneys**
18(I) (iii) providing credit counseling, tax planning or tax preparation services to any person
- 35. Financial data processors, e.g., core processors, such as EDS, Fidelity, Metavante, Jack Henry, and others**
18(J) financial data processing, including providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or databases by any technological means
- 36. Data storage providers, e.g., Iron Mountain and others**
See 18(J) above.
- 37. Data transmission service providers, including providers of check imaging services and ATM network providers, e.g., Fiserv, EFT, First Data, Fidelity, and others**
See 18(J) above.
- 38. Data transmission software and hardware designers, including manufacturers of ATMs and remote capture machines, e.g., Diebold, NCR, Fujitsu, Microsoft, and others**
See 18(J) above.
- 39. Third-party IT advisors and systems providers**
See 18(J) above.
- 40. Network security advisors and systems providers**
See 18(J) above.
- 41. Third-party software and hardware providers, e.g., BSA/AML monitoring software and hardware; OFAC screening software/service; disaster recovery software and hardware, etc.**
See 18(J) above.
- 42. Money transmitters/wire transmitters, e.g., Western Union, PayPal, and others**
18(K)
- 43. Sellers or issuers of stored value cards, e.g., retail stores, as well as the major card companies**
18(L)
- 44. Money services businesses—The USA PATRIOT Act’s definition includes five distinct types of financial services providers and the U.S. Postal service: currency**

dealers or exchangers; check cashers; issuers of travelers checks, money orders, or stored value; sellers or redeemers of travelers checks; and money transmitters.
18(M)

45. Attorneys holding client funds in escrow

18(N) acting as a custodian of money or any financial instrument

46. Funeral providers offering pre-paid or payment plans for funeral services

10 defining credit as the right granted by a person ... to purchase property or services and defer payment therefor

47. Cable television and internet access providers

10 defining credit as the right granted by a person ... to purchase property or services and defer payment therefor

48. Telephone service providers

10 defining credit as the right granted by a person ... to purchase property or services and defer payment therefor

49. Utilities

10 defining credit as the right granted by a person ... to purchase property or services and defer payment therefor

50. And the catchall – 18 (0) any other activity that the Agency defines, by rule, as a financial activity for purposes of this title

The entities listed above clearly fall within the CFPA's jurisdiction by virtue of Section 1002's plain statutory language. However, the potential reach of the Agency could extend significantly further. For example, Section 1002's definition of "credit," "the right granted by a person to a consumer to defer payment of a debt, incur debt, and defer its payment, or purchase property or services and defer payment there for" parallels the definition of credit under the Fair Credit Reporting Act. The Federal Trade Commission (FTC) has interpreted the law so broadly as to encompass landlords, telecommunications companies, utilities, attorneys, and other professions. Thus, following the FTC's precedent, the CFPA could assert jurisdiction over *any* entity, service provider, or individual that permits a consumer to defer payment and/or accepts installment payments for goods or services rendered. Similarly, a broad, but not implausible, interpretation of the statutory language could result in the CFPA asserting jurisdiction over faith-based and charitable organizations that extend credit assistance and/or credit counseling, such as to individuals facing financial hardship.