



## CFPB IDENTIFIES PRELIMINARY LIST OF TRANSFERRED RULES

The Secretary of the Treasury, on behalf of the Consumer Financial Protection Bureau (“CFPB” or “Bureau”), recently published a notice titled “Identification of Enforceable Rules and Orders” (the “Notice”) seeking comment on a preliminary list of 47 rules that will be transferred to the Bureau’s authority on July 21, 2011, the Dodd-Frank Transfer Date. Although the Dodd-Frank Act transfers enforcement of certain consumer financial protection rules to the Bureau as of the Transfer Date, the Dodd-Frank Act requires the Bureau to publish in the Federal Register a final list of the rules and orders that it will enforce. The Bureau, however, does not appear to consider the publication requirement as definitive of its enforcement authority after the Transfer Date. Rather, the Bureau’s list of rules merely confirms its stated priority enforcement areas.

### OVERVIEW OF THE RULES TRANSFER

Dodd-Frank divests regulatory and enforcement authority for certain consumer financial protection functions from multiple agencies, including the Federal Reserve Board and Federal Trade Commission (“FTC”), and gives it to the CFPB. Before July 21, 2011, the Bureau is required by Dodd-Frank to consult with the head of each transferor agency and publish a list of the rules and orders that will be transferred to the CFPB. Many assumed this list would be the authority on the rules and orders the Bureau will enforce and on the rules remaining with the respective transferor agencies after the Transfer Date. In its Notice, however, the Bureau sets forth its position that the required list will not limit its enforcement of any consumer financial protection rules transferred to it under Dodd-Frank, whether or not they appear on the final list. The Notice states that “[t]he inclusion

or exclusion of any rule on or from these lists will not alter the CFPB's authority, as Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other applicable law defines CFPB's authority. Thus, neither this preliminary list nor the final list will have a substantive effect on any rules of the parties who may be subject to them. They merely provide a convenient reference source." But the Bureau views the Dodd-Frank Act as requiring no update, correction, or maintenance of this "reference source."

According to the Notice, the Bureau will take over nine rules from the Federal Reserve, four from the Office of the Controller of the Currency, and five from the Office of Thrift Supervision. Most of these rules deal with mortgages and, in particular, mortgage disclosures under the Truth-in-Lending Act ("TILA"), the regulation of the adjustable-rate mortgage industry (at least with respect to ARMs originating from non-National Bank creditors), and the registration of mortgage loan originators. The Bureau will also take oversight of mortgage relief services from the FTC and will take over the Real Estate Settlement Procedures Act and related investigations from HUD.

A majority of the rules, 13 in total, will be transferred from the FTC, the nation's consumer protection agency. The Bureau's Notice identifies FTC rules related to mortgage relief services, the telemarketing sales rule, disclosures related to depository institutions that lack federally insured status, and certain credit practices. In transferring certain consumer protection duties to the Bureau, Dodd-Frank also requires the CFPB and FTC to negotiate a Memorandum of Understanding identifying enforcement responsibilities for the various aspects of Section 5 of the FTC Act. The Notice, however, does not identify any agreement between the Bureau and FTC, nor does it attempt to identify those areas of Section 5 that the CFPB will seek to enforce.

The Notice also does not identify for transfer any agency rules that will not be final or effective as of the Transfer Date. Dodd-Frank, however, mandates that any regulations proposed by the transferor agencies that are within the Bureau's authority, but not made final prior to the July 21 Transfer Date, are deemed to be proposed rules of the Bureau. In addition, any interim or final rules published by a

transferor agency before July 21 that are not yet effective will become effective as a rule of the CFPB. Thus, for example, the recent "Ability to Repay" amendments under TILA will transfer to the Bureau on July 21.

## WHAT THE LIST REVEALS

The Notice, published more than a month prior to the July 21 Transfer Date, is somewhat curious in that it seeks public comment on the preliminary set of rules. The topic most likely to receive comment is whether the Bureau's interpretation of the list as a "convenient reference source" that does not limit its enforcement authority is correct. The language of Dodd-Frank does not appear to limit the Bureau's enforcement powers to only those rules appearing in a published list, however.

While the Bureau's motivation in seeking comment is unknown, the preliminary rules identified in the Notice confirm the Bureau's stated priorities. Most of the identified rules deal with regulating the mortgage and lending industry and reflect the CFPB's focus on disclosure. Indeed, Elizabeth Warren, in "standing up" the Bureau, and her appointed head of the Bureau's enforcement efforts, Richard Cordray, repeatedly have stated that the CFPB would aim to make mortgage disclosure forms clearer, with more focused information for consumers. And, on May 18, 2011, the CFPB did release two proposed model mortgage disclosure forms for public comment.

## CONCLUSION

By the CFPB's own words, the list of rule transfers matter little to the question of the CFPB's ultimate authority over consumer financial protection come the July 21 Transfer Date. The Bureau's Notice, and the rules included in the preliminary list, serve as a confirmation of those areas the Bureau will seek to enforce after the Transfer Date.

Jones Day's Consumer Financial Products & Services team advises clients regarding the issues addressed in this Alert, including counseling clients regarding the Consumer Financial Protection Bureau's priority enforcement issues.

## LAWYER CONTACTS

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