

## Appendix A

### SUMMARY OF TITLE III OF FINANCIAL CHOICE ACT OF 2016 (HR 5983)

#### Subtitle A

**Section 311:** Converts the Director to a five-member commission. Commissioners have staggered five-year terms, and no more than three can be from the same political party. CFPB becomes the “Consumer Financial Opportunity Commission” (CFOC). Commissioners can only be removed for “inefficiency, neglect of duty or malfeasance” (same as pre-PHH rule for CFPB).

**Section 312:** CFOC is funded by annual appropriations by Congress, and the current funding level for FY2017 is set at 2015 levels.

**Section 313:** Creates a beefed-up outside Inspector General for CFOC, reporting directly to Congress as well as participating in the unified IG system in the federal government.

**Section 314:** Allows any defendant in an administrative proceeding brought by CFOC to unilaterally dismiss it and force CFOC to sue in federal court. This is a major curb on CFPB use of administrative enforcement.

**Section 315:** Requires that any CID state “with specificity” the suspected federal law violation being investigated and allows the defendant (CID target) to immediately petition a federal court to modify or set aside the CID (as opposed to current procedure of waiting to be sued by CFPB after first going through an administrative proceeding). Again, this brings the courts into CFPB enforcement much faster than current process.

#### Section 316:

- (a) Modifies the overall mandate of the Bureau in enforcing federal law from promoting “fair transparent and competitive markets” to promoting fairness and transparency “for the purpose of strengthening participation in markets by covered persons, without Government interference or subsidies, to increase competition and enhance consumer choice.”
- (b) Adds the “Office of Economic Analysis” to the agency. The office will analyze existing rules on a frequent periodic basis, including measuring success of the rules in solving the specific problem to which they were addressed. For each new rule proposal, the Office must conduct and publish a study of the impact of the rule on choice, price and access to financial products. When adopting a rule, the Commissioners must publish the basis of any disagreement with the Report. Each new Commission rule must include metrics for measuring the success of the rule in solving the problem to which it is addressed.

**Section 317:** Eliminates *Chevron* deference to Bureau interpretations of federal consumer financial laws.

#### Subtitle B

**Section 321:** Adds a new section 1014A of the CFPA, creating:

Small Business Advisory Board (think SBREFA Panel within the Bureau)

Credit Union Advisory Council (codifies existing practice at the Bureau that is not required by statute)

## Community Bank Advisory Council (same)

**Section 322:** Requires the Bureau to provide advisory opinions to industry requesters, within 90 days after request (extendable to 180 days), regarding the compliance of existing or proposed specific practices with federal consumer financial law. This system is funded with user fees adopted by rule. De-identified opinions are public and create a reliance defense to any violation of federal consumer financial laws. Opinions can be modified or repealed.

**Section 323:** Reforms the Civil Penalty fund by putting time limits on the process of identifying the victim class (60 days) and refunding money (2 years). Undisbursed remainder goes to Treasury.

**Section 324:** Requires transparency on all CFOC published studies and papers. They must be accompanied by all data, studies and analyses relied on in preparing the paper. Note the effect this might have on studies using confidential supervisory data (disclosure of which would violate CFPB rules).

**Section 325:** Puts CFOC employees on the GS pay scale. This would likely be a pay cut from current FRB pay scale.

**Section 326:** This section is captioned “separating monitoring from supervision.” It may go beyond that. Its content includes:

- (a) Cutting back 1022(c)(4) data gathering, which is the non-investigatory authority to request data from industry for rulemaking and market monitoring purposes. The amendment would permit it only “on a sampling basis.”
- (b) Data gathered under 1022(c)(4) cannot be used for assessing compliance by industry with federal law. This is exactly what was done in the payday rule, where monitoring data was used to support a finding that there were abusive practices in the payday and other small dollar industries.
- (c) Eliminates the authority to use supervisory data to “detect and assess risks to consumers and to markets for consumer financial products and services.” In other words, the supervisory process could find individual participant violations but not be the basis to find industry-wide problems best addressed through rules or other industry-wide activity.

**Section 327:** Prohibits publication of consumer complaint data unless CFOC verifies the “accuracy of all facts alleged in the complaint.”

**Section 328:** Limits supervisory jurisdiction over depository financial institutions to those with more than \$50Bn in assets. The current trigger is \$10Bn.

**Section 329:** Moves ownership of Bureau headquarters building at 1701 G Street from OCC to GSA. This likely would impose a new set of rules on the renovations currently under way, and may affect Bureau tenancy in the building.

## Subpart C

**Section 331:** This section changes the current rules for protection of consumer-specific information held by CFPB into a flat prohibition of CFOC *accessing* or possessing any nonpublic personal information, as defined in Gramm Leach Bliley. This would impact several ongoing datasets maintained at the Bureau, such as the National Mortgage Database and the credit card dataset shared with the OCC. More

important, it appears to inhibit supervision, as the bureau examiners could not look at actual consumer files or computer systems.

**Section 332:** Repeals FSOC review of Bureau rules (probably because FSOC is changed elsewhere) and requires CFCO to consider safety and soundness impact of its rules.

**Section 333:** Permits states and tribal entities to obtain an exemption from CFCO rules on payday and other similar loans, on request. Five year exemptions are renewable indefinitely.

**Section 334:** Repeals CFPB Bulletin 2013-2, the indirect auto finance discrimination bulletin. Requires any bulletin or guidance relating to indirect auto finance to be published for notice and comment, with numerous supporting studies and transparency of all data and analysis used to support the studies.

**Section 335:** Repeals the Durbin Amendment (Board regulation of debit card fees to merchants).

**Section 336:** Requires annual studies by Treasury of the GSE conservatorships.

**Section 337:** Repeals “abusive” from UDAAP, thus removing the only new substantive teeth in CFPB.

**Section 338:** Repeals section 1028 authority to regulate arbitration clauses in consumer financial product agreements.