

## **Title VII: EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE**

CHOICE Act 2.0 makes significant structural and mission changes to the CFPB. As a result of the changes contemplated by the legislation, the agency would primarily function as a regulatory and limited enforcement agency, with its supervisory and examination powers being repealed.

### **Structural Changes**

CHOICE Act 2.0 would rename the CFPB the “Consumer Law Enforcement Agency.” The CFPB is presently an agency established within the Federal Reserve System and it receives its funding through the Federal Reserve. CHOICE Act 2.0 would instead require that funding of the agency be effected through the Congressional appropriations process.

Further, the President would be able to remove the Director of the CFPB at-will and also appoint the Deputy Director of the CFPB. The Deputy Director is currently appointed by the Director, and the Director may presently only be terminated by the President for cause.

A Senate-confirmed inspector general would also be established for the CFPB.

### **Changes to Authority**

CHOICE Act 2.0 would strip the CFPB of its supervisory and examination authority over entities presently under its jurisdiction. The CFPB would retain enforcement authority, however, over non-depository institutions within its jurisdiction and depository institutions and credit unions with total assets of more than \$10 billion. Additionally, the legislation would revoke the CFPB’s authority to regulate certain small-dollar credit, such as payday loans and vehicle title loans. However, the CFPB would retain its rulemaking authority with respect to various consumer protection laws, such as the Truth In Lending Act, the Real Estate Settlement Procedures Act and the Truth in Savings Act.

With respect to enforcement, the legislation would remove in its entirety the CFPB’s responsibility for ensuring that, with respect to consumer financial products and services, “consumers are protected from unfair, deceptive, or abusive acts and practices.” The bill specifically deletes the rulemaking and enforcement provisions concerning such acts or practices and removes the Consumer Financial Protection Act’s prohibition against engaging in, or assisting in, unfair, deceptive, or abusive act(s) or practices(s). The bill does, however, maintain the CFPB’s authority to protect consumers from discrimination.

Separately, CHOICE Act 2.0 would remove the power of the CFPB to enforce rules under the Federal Trade Commission Act with respect to unfair, deceptive, or abusive acts or practices. It would also delete a provision of the Federal Trade Commission Act that encourages cooperation between the Federal Trade Commission (“FTC”) and the CFPB to avoid duplication or conflict of rules with respect to the offering or provision of

consumer financial products or services. The bill preserves the power of Federal banking regulators to prevent “unfair or deceptive acts or practices in or affecting commerce,” though not abusive acts or practices, by depository institutions through the promulgation of regulations. Under CHOICE Act 2.0, such regulations must be “substantially similar” to those promulgated by the FTC, unless: (i) the banking regulator determines that the acts or practices are not unfair or deceptive, or (ii) the Federal Reserve determines that implementation of similar regulations would “seriously conflict with essential monetary and payments systems policies of such Board.”

Further, the CFPB’s civil penalty fund would be required to establish segregated accounts in respect of different classes of victims of the violations for which funds are collected, and payments to victims would be required to be made within two years after victims are identified, with remaining amounts being transmitted to the Treasury’s general fund. The bill also would revoke the authority of the CFPB to prohibit or impose conditions or limitations on the use of an arbitration agreement, where the prohibition or imposition is found to be in the public interest.

Where the CFPB brings administrative proceedings where a penalty or a cease-and-desist order may be issued at the conclusion of the proceeding, the subject of such proceedings would be permitted to terminate the proceeding within 20 days such that the CFPB would be required to bring a civil action in court against such party. Additionally, a statutory meet-and-confer requirement would be implemented, requiring recipients of civil investigative demands to meet and confer with the CFPB within 30 days. Currently, recipients have only 10 days to meet and confer. Additionally, parties would be able to petition, in any United States “judicial district in which such person resides, is found, or transacts business,” to set aside or modify civil investigative demands within 45 days after receiving service. Currently, petitions are required to be submitted within 20 days. CHOICE Act 2.0 would also eliminate the requirement that a court give deference to CFPB interpretations of consumer financial law.

The agency would also have a dual mandate going forward. In addition to its current consumer mandate, the agency would also be tasked with strengthening consumer participation in markets, without government interference or subsidies, in order to increase competition and enhance consumer choice.

Among other reforms, the Director of CFPB would be required to, subject to payment of a fee, issue advisory opinions in response to public inquiries regarding conformance with consumer financial law. Further, CFPB employees would be placed on the General Schedule pay scale, similar to employees of other federal agencies. Additionally, the CFPB’s complaint database would no longer be made available to the public.

#### Durbin Amendment

While Title VII of the version of CHOICE Act 2.0 that initially passed the Committee contained a repeal of the Dodd-Frank Act-established “Durbin Amendment,” which places limitations on certain fees charged in respect of debit cards, the provision repealing the Durbin Amendment was removed before the full House vote.