

PUBLICATION

Happy Fifth Birthday, CFPB: It's Time for Your Check-Up

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This past July marked the five year anniversary of the CFPB. The industry has accumulated a laundry list of criticism for the regulator including the practice of regulation through enforcement, lack of issued guidance, an unacceptable "jurisdictional creep" over entities and businesses they were not intended to supervise and even an unconstitutional structure. The CFPB, however, marked the milestone by [publishing five ways they have helped consumers in their first five years](#). They included the following accomplishments:

1. Their actions have resulted in \$11.7 billion in relief for more than 27 million harmed consumers.
2. They have handled nearly one million consumer complaints.
3. They have empowered millions of consumers to "Know Before You Owe."
4. They put in place new rules to make the mortgage market safer for you.
5. They are curbing potentially harmful financial practices with new consumer protections nationwide.

The CFPB's top five accomplishments reflect a common criticism not mentioned earlier of the Bureau that the rules they promulgate are drafted with very little attention paid to the effect said rule has on the functioning of the consumer financial markets. This is unsurprising as CFPB states that its objectives under Dodd-Frank are to (1) Conduct rulemaking, supervision and enforcement with respect to the federal consumer financial laws; (2) Handle consumer complaints and inquiries; (3) Promote financial education; (4) Research consumer behavior; and (5) Monitor financial markets for risks to consumers. Dodd-Frank Section 1021 (b)(3), however, states that "the Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services – outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens."

To accomplish this goal, the architects of the Dodd-Frank included Section 1022(d) titled "Assessment of Significant Rules". This section states that the Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau. The assessment shall address the effectiveness of the rule or order and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect. The CFPB is also required to publish a report of its assessment not later than five years after the effective date of the subject rule or order and allow for public comment on recommendations for modifying, expanding or eliminating the newly adopted significant rule or order prior to publication of said report.

The Bureau has acknowledged its responsibilities under Section 1022(d) by [stating in their FY13-17](#) strategic plan that they will complete all five-year regulation assessments on schedule. The look-back will present both an opportunity and a complication for the industry. The public comment on the recommendation will afford the industry the opportunity to voice their concern with certain regulations and to showcase any negative or unintended impact said regulation has had on operations. On the flip side, the Bureau can use the five-year look-back as yet another opportunity to redefine regulation that our industry has committed substantial funds in an effort to be compliant with. Changing said regulation will only cause less certainty in the marketplace, create a negative impact and force the industry to incur more cost.

As the CFPB started to promulgate rules in the mortgage space, mortgage lenders and servicers will be the first to experience the CFPB's look-back process. That said, no matter what line of businesses you or your institution participates in, you should pay attention to how this process is handled by the CFPB as it will eventually occur for every rule and order issued by the CFPB. If you have any regulatory or compliance concerns on any CFPB rule, exam or investigation, please contact a member of Baker Donelson's CFPB team.