CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 3, 2009

H.R. 3126
Consumer Financial Protection Agency Act of 2009

As ordered reported by the House Committee on Financial Services on October 22, 2009

SUMMARY

H.R. 3126 would establish the Consumer Financial Protection Agency (CFPA) as an independent federal agency to regulate entities that offer, market, or sell financial products to consumers for their personal use and those that provide services related to such products. The CFPA would be authorized to enforce certain provisions of various consumer laws, including the Fair Credit Reporting Act, the Truth in Lending Act, the Home Mortgage Disclosure Act, and the Real Estate Settlement Procedures Act.

Under H.R. 3126, the CFPA would receive funding from four sources. The bill would appropriate funds for the Department of the Treasury to act on behalf of the CFPA until its Director is confirmed. The bill also would authorize the continued collection of fees from depository institutions and new fees from nondepository entities to cover a portion of the administrative costs of enforcing consumer protection regulations. The bill would authorize the CFPA to receive and spend amounts transferred from the Federal Reserve each year. Finally, H.R. 3126 would authorize the appropriation of whatever amounts are necessary for the agency to carry out its responsibilities.

CBO estimates that enacting H.R. 3126 would increase direct spending by $646 million over the 2010-2019 period and decrease revenues by $490 million over the same period. In total, those changes would increase budget deficits by about $1.1 billion over the 2010-2019 period. This net deficit impact would result for a number of reasons:

- The Department of the Treasury would incur costs that would not be subject to appropriation and would not be offset by fees;

- The Federal Reserve would incur additional costs that would decrease the revenues they would remit to the Treasury;

- While the CFPA would be authorized to spend all of the fees they collect under the bill, those fees would be partially offset by a loss of receipts from income and payroll taxes; and

- Federal banking regulators would not be able to offset all of the costs they would incur under H.R. 3126 because the bill would impose a cap on the fees they are otherwise authorized to collect under current law.

In addition, CBO estimates that implementing the bill would reduce discretionary costs by $6 million over the 2010-2014 period and by $162 million over the 2010-2019 period. Such reductions in discretionary spending assume appropriations would be reduced by the estimated amounts.

H.R. 3126 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on entities that offer, market, or sell consumer financial products or services. The bill also would preempt state laws, prohibit states from increasing some fees, and impose notification requirements on state attorneys general. Based on data from industry sources regarding the number of public entities that purchase or service financial products, CBO estimates that the cost to comply with the mandates for those entities would not exceed the annual threshold established in UMRA for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation). Based primarily on the fees that nondepository entities would be required to pay, CBO estimates that the aggregate costs of complying with the mandates would exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates would be in effect.

MAJOR PROVISIONS

- Subtitle A of title I would establish the CFPA; create various functional units within the agency, including research, community affairs, consumer complaints, and consumer financial education; establish an Office of Fair Lending and Equal Opportunity, an oversight board, and an advisory board;

- Subtitles B and C would establish the CFPA's general powers, including specific authority to prohibit unfair, deceptive, or abusive practices in connection with the provision of financial services or products to consumers;

- Subtitle D would authorize the CFPA to determine whether state consumer protection laws are inconsistent with the bill. It also would allow the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) to determine by regulation whether a state law discriminates against national banks or federal savings associations or whether it interferes with the ability of those entities to engage in the business of banking. The bill would require OCC and OTS to review those regulations every five years;

- Subtitle E would establish the enforcement powers available to the CFPA to ensure compliance with its regulations. This subtitle would authorize the agency to conduct investigations and to institute civil proceedings in certain circumstances. The bill also would establish new civil penalties for violations of regulations developed by the agency; and

- Subtitle F would transfer the consumer protection authorities currently exercised by the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the OCC, the OTS, the National Credit Union Administration (NCUA), as well as the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD) to the CFPA. Further, the bill would specifically transfer employees who perform consumer protection functions from the Federal Reserve and several of the banking regulatory agencies to the CFPA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3126 is shown in the table below. The costs of this legislation fall within budget functions 450 (community and regional development) and 370 (commerce and housing credit).

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3126 will be enacted in calendar year 2010, that the amounts necessary will be appropriated each year, and that outlays will follow historical spending patterns for consumer financial protection programs.

H.R. 3126 would require the Secretary of the Treasury, in consultation with the leaders of several agencies—the Federal Reserve, FDIC, FTC, NCUA, OTC, OCC, HUD, and the Office of Management and Budget—to designate a specific date to transfer the authority and staff of those agencies to the CFPA (the transfer date) to enforce consumer protection laws. Further, the authority of the federal banking regulators—the FDIC, OCC, NCUA, and OTS—to collect fees to offset the cost of consumer protection activities also would be transferred to the CFPA on that date. CBO expects that the transfer would occur in the first half of fiscal year 2012—24 months after enactment of H.R. 3126, the maximum time allowed under the bill. Prior to the transfer date, H.R. 3126 would authorize the Secretary of the Treasury to perform the functions of the Director of the CFPA until the Director is confirmed by the Senate, which CBO also assumes would occur in the first half of fiscal year 2012.

	By Fiscal Year, in Millions of Dollars											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010-2014	2010-2019
CHANGES IN REVENUES												
Fees from Nondepository Institutions	0	0	0	113	188	263	338	375	383	390	300	2,048
Depository Institutions												
Transfer from Federal Reserve	0	0	-413	-422	-444	-465	-484	-504	-524	-545	-1,279	-3,801
Lower Federal Reserve Staff Expenses	0	0	94	150	155	161	166	173	179	186	399	1,264
Net Impact on Federal Reserve	0	0	-319	-272	-289	-304	-318	-331	-345	-359	-880	-2,537
Total Changes in Revenues	0	0	-319	-160	-102	-42	20	44	38	31	-580	-490
CHANGES IN DIRECT SPENDING												
Treasury Spending on Transition Activities												
Estimated Budget Authority	10	40	70	0	0	0	0	0	0	0	120	120
Estimated Outlays	9	36	66	11	0	0	0	0	0	0	120	120
CFPA Spending for Nondepository Institutions												
Estimated Budget Authority	0	0	0	150	250	350	450	500	510	520	400	2,730
Estimated Outlays	0	0	0	122	235	335	435	493	509	519	357	2,647
CFPA Net Spending For Depository Institutions												
Transfer of Funding and Staff from Federal Reserve												
Estimated Budget Authority	0	0	-309	-256	-269	-287	-299	-309	-325	-339	-834	-2,393
Estimated Outlays	0	0	-309	-256	-269	-287	-299	-309	-325	-339	-834	-2,393
Transfer of Funding and Staff from Banking Agencies												
Estimated Budget Authority	0	0	-13	-17	-15	-13	-11	-9	-6	-4	-45	-88
Estimated Outlays	0	0	-13	-17	-15	-13	-11	-9	-6	-4	-45	-88
CFPA Net Spending for Depository Institutions												
Estimated Budget Authority	0	0	-322	-273	-284	-300	-310	-318	-331	-343	-879	-2,481
Estimated Outlays	0	0	-322	-273	-284	-300	-310	-318	-331	-343	-879	-2,481
Net Spending for Consumer Protection Activities by Banking Agencies												
Estimated Budget Authority	5	5	25	35	40	40	45	50	55	60	110	360
Estimated Outlays	5	5	25	35	40	40	45	50	55	60	110	360
Total Direct Spending												
Estimated Budget Authority	15	45	-227	-88	6	90	185	232	234	237	-249	729
Estimated Outlays	14	41	-231	-105	-9	75	170	224	232	235	-291	646

Continued

	By Fiscal Year, in Millions of Dollars											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010-2014	2010-2019
IMPACT OF CHANGES IN REVENUES AND DIRECT SPENDING ON THE DEFICIT												
Net Effect on the Deficit [a]	14	41	88	54	92	116	150	180	195	204	289	1,136
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Consumer Financial Protection Agency												
Estimated Authorization Level	0	0	65	0	0	0	0	0	0	0	65	65
Estimated Outlays	0	0	55	10	0	0	0	0	0	0	65	65
Related Agencies												
Estimated Authorization Level	0	0	-17	-27	-28	-29	-30	-32	-33	-34	-72	-230
Estimated Outlays	0	0	-16	-27	-28	-29	-30	-31	-33	-34	-71	-228
Net Spending Subject to Appropriation												
Estimated Authorization Level	0	0	48	-27	-28	-29	-30	-32	-33	-34	-7	-165
Estimated Outlays	0	0	39	-18	-27	-29	-29	-30	-33	-34	-6	-162

Note: Components may not sum to totals because of rounding.

a. Positive numbers indicate increases in deficits.

Revenues

The bill would require the CFPA to charge fees to offset the expenses of carrying out its duties and responsibilities; because such compulsory payments would arise through the exercise of the government's sovereign authority, CBO believes that those amounts should appear in the budget as revenues. Furthermore, because excise and other indirect business taxes, including fees paid to the CFPA, would reduce the tax base of income and payroll taxes, those new fees would lead to reductions in income and payroll tax revenues. As a result, the fees collected by the CFPA from nondepository institutions would be partially offset by a loss of receipts from income and payroll taxes of 25 percent.

H.R. 3126 would prohibit the CFPA from commingling certain funds. Fees paid by depository institutions (which currently pay fees to federal banking regulators to cover the administrative costs of those agencies) would be held in a fund separate from fees paid by nondepository institutions (which pay few, if any, fees under current law to cover the cost of federal regulatory activities).

Fees from Nondepository Institutions. The bill would authorize the CFPA to assess fees on a wide range of nondepository institutions, including several hundred independent mortgage banks, roughly 22,000 payday lenders, about 65,000 real estate appraisers, and approximately 300,000 mortgage originators. Because most of those entities are registered or regulated by state governments, CBO expects that the CFPA could readily obtain sufficient information about those firms to impose new federal fees by the beginning of fiscal year 2013. However, information about other business lines that would fall under the CFPA's regulatory authority (for example, certain debt collection services; personal and real property leasing agents; and certain financial advisors providing educational courses, debt management or credit counseling services) would be less readily available. Consequently, CBO expects that the agency would not start to collect fees from those entities until several years after the transfer date. CBO expects, however, that the agency would be able to collect the full amount it would need to fully offset its operating costs to regulate nondepository institutions starting in 2013. Further, we expect that fee collections would grow with the agency's operating costs as the agency identifies and regulates all of the entities that would fall under its authority.

Based on information from agencies with similar regulatory authorities, including the Federal Communications Commission (FCC) and the Securities and Exchange Commission (SEC), CBO expects that the CFPA would need about one year after the transfer date to adopt regulations and begin to collect fees. CBO estimates that fee collections from nondepository institutions, net of the income and payroll tax offset, would grow from $113 million in 2013 to about $400 million in 2019, increasing federal revenues by $2.0 billion over the 2010-2019 period.

Depository Institutions. To support the CFPA's supervision and enforcement activities with regard to depository institutions, H.R. 3126 would authorize the agency to spend 10 percent of the total expenses of the Federal Reserve System. The bill would require the Federal Reserve to transfer that amount to the CFPA each year. Under current law, the Federal Reserve remits almost all of its net income (that is, its income in excess of its expenses) to the Treasury, and that amount is recorded as revenue in the federal budget. CBO estimates that the new transfer to the CFPA would cause the amount that the Federal Reserve remits to the Treasury to be lower by $3.8 billion over the 2010-2019 period.

Soon after the transfer date in 2012, about 500 employees who currently perform consumer protection duties for the Federal Reserve also would be transferred to the CFPA. The transfer of those employees would reduce the Federal Reserve expenses. Based on information from the Federal Reserve, CBO expects that the net reduction in expenses resulting from the transfer of some employees to the CFPA would cause remittances from the Federal Reserve to increase by nearly $1.3 billion over the 2010-2019 period.

Taken together, enacting the fee provisions that affect depository institutions would reduce federal revenues by about $2.5 billion over the 2010-2019 period. As explained in the next section of this cost estimate, a similar amount—$2.4 billion—would be transferred to the CFPA and recorded in the budget as offsetting receipts (a credit against direct spending). CBO expects that the Federal Reserve would need to replace some of the employees transferred to the CFPA, therefore, the savings to the Federal Reserve would be about $100 million lower than the $1.4 billion in employee costs transferred to the CFPA.

Direct Spending

H.R. 3126 would authorize the Secretary of the Treasury to perform all the functions of the director of the CFPA until the designated transfer date. Once operational, the CFPA would have to maintain two separate funds, one for activities associated with nondepository institutions and one for depository institutions. Finally, the banking agencies would retain the costs and fees associated with those smaller depository institutions because regulatory authority over those entities would not be transferred to the CFPA.

Treasury Spending on Transition Activities. H.R. 3126 would appropriate such sums as may be necessary to the Secretary of the Treasury to perform the functions of the CFPA until its Director is confirmed by the Senate and all authorities are transferred to that agency. CBO assumes that the Director would not be confirmed until early in fiscal year 2012. CBO expects that the Secretary would use that spending authority for a couple of years to meet certain deadlines under the bill, to prepare the agency to exercise its authorities on the transfer date, and collect sufficient funds to cover its budget. CBO estimates that this provision would increase direct spending by $120 million over the 2010-2019 period.

CFPA Spending on Nondepository Institutions. The bill would require the CFPA to establish registration and reporting requirements as well as examination standards for nondepository entities. H.R. 3126 also would transfer employees with responsibilities for enforcing consumer protection laws, including the Fair Credit Reporting Act and the Real Estate Settlement Procedures Act, from the FTC and HUD within 90 days after the transfer date. Based on information from those agencies, CBO estimates that 110 employees would move to the CFPA soon after the transfer date to supervise nondepository institutions. Those staff positions would be supplemented over time as the agency expands its review, compliance, and enforcement activities.

To estimate the total cost of the CFPA's activities related to nondepository institutions, CBO reviewed the budgets of other agencies that perform similar functions, including the FCC, FTC, and SEC. While the laws each agency enforces are different, the agencies' structures and general authorities are similar enough to provide a reasonable estimate of the resources the CFPA would need. In fiscal year 2009, the FTC spent about $265 million to enforce a wide range of consumer protection regulations, the FCC spent $348 million to enforce various communications laws, and the SEC spent $950 million to enforce regulations related to securities and exchanges.

CBO expects that the CFPA's costs to oversee nondepository institutions would fall near the midpoint of the range of costs incurred by the selected agencies. The CFPA would have more authority to supervise and examine nondepository institutions than the FTC, but the agency would not be required to perform certain monitoring activities that fall within the SEC's authority. CBO estimates that the CFPA's annual costs to regulate nondepository institutions would reach about $500 million per year and that it would take about five years after the transfer date for the agency's costs to grow to that size.

Overall, CBO estimates that enacting provisions of H.R. 3126 to regulate nondepository entities would increase direct spending by $2.6 billion over the 2010-2019 period; further, as discussed earlier, CBO estimates that fees would be collected to offset those costs starting in fiscal year 2013. While we estimate that fee receipts would be about equal to agency spending in fiscal year 2013 and beyond, CBO estimates that fee collections, net of payroll and indirect tax effects, would increase federal revenues by about $2.0 billion over the 2010-2019 period, increasing the deficit over the same period by about $600 million. During the period between the transfer date and the first receipt of fees, CBO expects that the CFPA would require the appropriation of $65 million to fund its operations (see Spending Subject to Appropriation below).

CFPA Net Spending for Depository Institutions. CBO estimates that the proceeds transferred from the Federal Reserve and the other banking agencies would exceed the amounts projected to be spent on consumer protection programs at depository institutions by about $2.5 billion over the next 10 years.

Transfer of Funding and Staff from Federal Reserve. Within 90 days after the transfer date, employees from the Federal Reserve who perform or support the consumer financial protection functions in that agency would be transferred to the CFPA. Based on information from the Federal Reserve, CBO estimates that around 500 employees would be transferred to the CFPA to oversee the consumer protection activities of approximately 200 depository institutions with total assets of more than $10 billion (or total assets of more than $1.5 billion in the case of credit unions). Existing federal banking regulators would continue to enforce consumer protection laws at depository institutions and credit union with assets less than those thresholds. As noted earlier, CBO estimates that the salaries and expenses of the employees transferred from the Federal Reserve would cost about $1.4 billion over the 2010-2019 period. To cover those costs, H.R. 3126 would require the Federal Reserve to transfer 10 percent of its net operating expenses to the CFPA, approximately $3.8 billion over the 2010-2019 period. CBO expects that this transfer would be recorded in the budget as an offset to the CFPA's direct spending, thus, the net effect of the additional employees and the transfer of funds would be a reduction in direct spending of $2.4 billion over the 2010-2019 period. (As noted earlier in the Revenues section, this increase in offsetting receipts would be matched by a similar net reduction of $1.3 billion in revenues.)

Transfer of Funding and Staff from Banking Agencies other than the Federal Reserve. Under current law, the federal banking agencies other than the Federal Reserve are authorized to directly spend proceeds from fees and insurance premiums to cover their administrative costs. Under this bill, both the costs and income associated with the consumer protection functions at large depository institutions would be transferred to the CFPA. However, H.R. 3126 would cap future collections to amounts paid by those entities prior to the enactment of the bill. Assuming that the CFPA collects the fees equivalent to the amounts collected in 2009, CBO estimates that this transfer would provide net income of $88 million to the CFPA over the 2010-2019 period.

Based on information from the OCC, OTS, FDIC, and NCUA, CBO estimates that spending for consumer protection activities totaled about $160 million in 2009. The amount collected from depository institutions to offset those expenditures was somewhat lower—about $132 million, CBO estimates—because some of the costs incurred by the FDIC and NCUA are offset by the interest income credited to balances in the insurance funds. The fees paid by individual firms reflect a variety of factors, including their size, complexity, and risk. Information from the agencies suggests that the large depository institutions that would be transferred to the CFPA accounted for about half of the combined collections in 2009 (roughly $67 million) but only 28 percent of the spending on consumer protection (or about $45 million). Assuming costs increase by about 4 percent annually, CBO estimates that the net surplus at CFPA would decrease over time, falling from about $13 million in 2012 to about $4 million in 2019.

Net Spending for Consumer Protection Activities by Banking Agencies. CBO estimates that provisions in H.R. 3126 that would cap the amounts paid by individual depository institutions would increase net direct spending by the banking agencies by $360 million over the 2010-2019 period. The cap on future collections would affect those agencies in two ways. First, they would be unable to collect fees or premiums to cover cost-of-living increases or other growth-in-program spending. Second, the agencies would be unable to adjust fees or premiums to reflect the difference between the amounts spent on consumer protection activities and the amounts collected from the institutions remaining under their jurisdiction. Assuming costs for consumer protection programs increase by an average of 4 percent annually, CBO estimates that unrecoverable costs would total about $360 million over the 2010-2019 period for institutions remaining under the jurisdiction of the OCC, OTS, FDIC, and NCUA. For this estimate, CBO assumes that the agencies would spend existing, unobligated balances to cover those incremental costs.

Spending Subject to Appropriation

CBO estimates that implementing the provisions of H.R. 3126 would reduce discretionary spending by $6 million over the 2010-2014 period. Such reductions in discretionary spending assume appropriations would be reduced by the estimated amounts.

Consumer Financial Protection Agency. H.R. 3126 would authorize the appropriation of such sums as necessary for the CFPA, taking into account other amounts available, to carry out the activities authorized by the bill. As noted above, CBO estimates that fees and assessments from nondepository institutions would not be sufficient to fully offset operating costs attributable to regulating those entities. Therefore, CBO estimates that the agency would require an appropriation to make up the difference until fee collections are available to fully offset the agency's costs. Assuming appropriation of the necessary amounts in 2012, CBO estimates that implementing this provision would cost $65 million over the 2012-2014 period.

Related Agencies. By transferring certain employees from the FTC and HUD to the CFPA, CBO anticipates that discretionary spending would fall as those agencies spend less for salaries, benefits, and support for those positions, although we expect that some of the employees transferred would need to be replaced by the agencies. Assuming future appropriation acts reflect those reductions in costs, CBO estimates that implementing the employee transfers would reduce discretionary spending by $71 million over the 2010-2014 period.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3126 would impose intergovernmental and private-sector mandates, as defined in UMRA, on entities that sell, purchase, or service consumer financial products or services. The bill also would preempt state laws, prohibit states from increasing some fees, and impose notification requirements on state attorneys general. Based on data from industry sources regarding the number of public entities that purchase or service financial products or services, CBO estimates that the cost to comply with the mandates for those entities would not exceed the annual threshold established in UMRA for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation). However, based on the fees that nondepository entities would be required to pay, CBO estimates that the aggregate costs of complying with the mandates would exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates would be in effect.

Mandates that Apply to both Public and Private Entities

Registration Requirements and Fees. The bill would require nondepository entities such as housing finance and student loan agencies, independent mortgage banks, real estate appraisers, mortgage originators, check-cashing companies, and payday lenders to register with the CFPA. Nondepository entities also would have to provide whistleblower protections for their employees. The bill would authorize the CFPA to require entities that sell, purchase, or service financial products to meet standards for sales practices, such as providing disclosures to consumers regarding the costs, benefits, and risks associated with products and services. In addition, those entities would be required to comply with reporting requirements and examination standards set by the CFPA. Finally, the bill would authorize the CFPA to assess fees on those entities to cover its expenses.

Based on data from industry sources regarding the number of public entities that purchase or service financial products, CBO estimates that the cost to comply with the mandates for those entities would be significantly less than the annual threshold established in UMRA for intergovernmental mandates. CBO estimates that the annual fees to be paid by nondepository institutions would amount to hundreds of millions of dollars beginning in 2014, and therefore, would exceed the threshold for private-sector mandates, beginning that year.

Subpoena Authority. The bill would require entities in the public and private sectors, if subpoenaed, to attend and provide testimony, evidence, or materials related to any investigations the CFPA may conduct. Such a requirement would be an intergovernmental and private-sector mandate as defined in UMRA. Most entities that deal with consumer financial products under current law are subject to the subpoena authority of their regulators. CBO expects that the number of additional cases in which the CFPA would exercise its subpoena power would be small and that the costs to comply with a subpoena would not be significant.

Mandates that Apply to Public Entities Only

Prohibition on Fee Increases for ConsumerProtections. The bill would prohibit states from increasing the fees they levy on depository institutions for consumer compliance purposes. Based on information from state regulators, CBO estimates that the cost to comply with the mandate would total less than $5 million in each of the next five years.

Consultation with Federal Agencies. The bill would require state attorneys general to consult with the OCC and the CFPA before carrying out certain enforcement activities. CBO estimates that the cost to comply with the mandate would be minimal.

Preemption of State and Local Laws. The bill would preempt some state laws that protect consumers, such as laws that prohibit the issuance of alternative mortgages and those that restrict remittances. Those preemptions constitute intergovernmental mandates as defined in UMRA, but CBO estimates that they would impose no duty on states that would result in additional spending.

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