# Special Alert: Treasury Issues Report Encouraging Sweeping Reforms to Regulation of Consumer Financial Products and Services

On June 12, the Treasury Department issued the first of four reports to the president detailing its review of financial regulation in the United States and making recommendations to reform federal regulatory oversight of depository institutions. For depository (and nondepository) institutions offering consumer financial products and services, the report sets forth a series of recommendations to reform the supervision and enforcement practices of federal financial regulators, and in particular the Consumer Financial Protection Bureau. The report also details a number of recommended reforms to regulations governing mortgage lending and servicing and indicates that the Treasury Secretary is particularly interested in modernizing the Community Reinvestment Act (CRA).

The report makes clear that the Treasury Department supports substantial structural reforms at the CFPB, many of which complement concepts included in the Financial CHOICE Act, which passed the House on June 8. The Treasury Department is particularly interested in reducing the autonomy of the CFPB by making the CFPB Director removable at will by the president or converting the CFPB to a commission, as well as by subjecting the CFPB's budget to Congressional appropriations. The Treasury Department also proposes eliminating the CFPB's supervisory authority, and would return that authority to the federal prudential regulators for depository institutions and to state regulators for other financial institutions, as applicable. The report also contains a number of recommendations to amend the CFPB's enforcement authority, which are aimed at giving regulated institutions better advance notice of regulatory expectations and stronger procedural rights when responding to CFPB investigations. The proposed CFPB reforms come within a broader set of recommended reforms to the entire federal financial oversight structure designed to ensure consistency and fairness across regulators.

The Treasury Department also offers a number of substantive recommendations for reforming the federal regulation of mortgage lending, most of which pertain to rules that emerged from Title XIV of the Dodd-Frank Act. The proposed reforms to TRID and the loan originator compensation rules are focused on enhancing clarity by directing the CFPB to better articulate compliance expectations and liability for errors. Consistent with the Treasury Department's overarching goal of expanding mortgage lending, the report offers suggested reforms to Qualified Mortgage/Ability to Repay requirements aimed at boosting flexibility in underwriting standards and making it easier for lenders to extend smaller loans, as well as to make loans to self-employed and non-traditional borrowers. Finally, the report offers suggestions to reduce the regulatory burdens associated with complying with HMDA and the new federal mortgage servicing rules.

Although not directly related to consumer compliance, the Treasury Department also included a series of recommendations aimed at revising regulatory expectations related to board of director performance. The report highlights concerns that the burdens imposed on directors with respect to regulatory matters are excessive and crowd out time that should be allocated to board oversight of the institution's business risk and strategy. According to the report, the impact of the considerable volume of non-strategic regulatory matters for boards blurs the appropriate line between management and board duties, which results in increased risk as directors are distracted from focusing on core corporate governance issues. To address these concerns, Treasury recommends initiating an interagency review of collective requirements imposed on boards of directors to reassess and better tailor aggregate regulatory expectations.

Treasury has indicated that forthcoming reports will focus on reforms to the capital markets, the asset management and insurance industries, and non-bank financial institutions.

The following alert details Treasury's recommendations pertaining to providers of consumer financial products and services.

## Recommended Reforms to Federal Financial Agency Powers

### Federal Financial Regulatory Oversight

- Oversight Harmonization: Require federal financial regulators to coordinate and rationalize their examination and data collection procedures to promote accountability and clarity
- Supervisory Action: Conduct an interagency reassessment of Matters Requiring Attention (MRAs), Matters Requiring Immediate Attention (MRIAs), and Consent Orders
- Termination of Actions: Require federal financial regulators to develop an improved approach for addressing and clearing regulatory entities of resolved supervisory findings, such as MRAs, MRIAs, and Consent Orders
- Cost-Benefit Analysis: Subject the federal financial regulators to cost-benefit analysis requirements applicable to executive agencies
- Community Reinvestment Act Reform: Conduct a comprehensive review to enhance the existing CRA framework and ensure that the benefits of CRA investments are aligned with the needs of the communities being served

### CFPB Structure and Authorities

- CFPB Leadership: Make the CFPB Director removable at will by the president or restructure the CFPB as independent multi-member commission or board
- CFPB Funding: Fund the CFPB through Congressional appropriations and subject the CFPB to the Office of Management and Budget's apportionment process
- Repeal Supervisory Authority: Remove the CFPB's authority to conduct examinations and return supervision to prudential and state regulators, as applicable

- Complaint Database: Limit the availability of detailed complaint data in the CFPB complaint database to federal and state agencies, rather than the general public
- Periodic Regulatory Relief Review: Require the CFPB to commit to regularly reviewing all regulations it administers to identify outdated or otherwise unnecessary regulatory requirements
- Small Business Reporting: Revoke the statutory mandate (contained in Section 1071 of the Dodd-Frank Act) requiring the CFPB to collect information to monitor small business lending

**CFPB Enforcement Reform**

- Rules Before Enforcement: Require the CFPB to issue rules or guidance prior to bringing an enforcement action in an area where there is no clear regulatory guidance
- UDAAP Reform: Require the CFPB to adopt regulations delineating UDAAP standards
- Recovery Limitations: Permit the CFPB to seek monetary sanctions from entities only where the regulated party had reasonable notice of the regulatory requirement by virtue of a regulation, judicial precedent, or FTC precedent
- Enforcement Venue: Require the CFPB to bring enforcement actions in federal district court rather than via administrative proceeding or, if the CFPB continues to utilize the administrative process, require the CFPB to develop procedures delineating how the venue choice will be made
- Civil Investigative Demands (CIDs): Reform the CFPB's CID process to, among other things, ensure that CID appeals remain confidential and permit those petitioning to modify or set aside a CID file a motion in federal court
- Civil Penalty Fund: Limit usage of funds placed in the Consumer Financial Civil Penalty Fund to payments to bona fide victims of the activity for which penalties were imposed and require the CFPB to remit excess funds to Treasury
- No Action Letters: Align no-action letter policies with those of other regulators and lower the burden for providers of financial services to receive the benefit of the no-action letter

## Recommended Mortgage Reforms

**Qualified Mortgage/Ability to Repay**

- QM Patch Phase-Out: Align QM requirements with government-sponsored enterprise eligibility requirements and then phase out the QM Patch that currently covers GSE loans
- QM Status Flexibility: Permit a loan to attain QM status where one underwriting criterion is not met, but there are compensating factors
- Appendix Q Revision: Simplify Appendix Q standards and revise to enhance sensitivity to treatment of self-employed and non-traditional borrowers
- Points & Fees Cap for Small Loans: Increase minimum loan thresholds for applicability of QM points and fee cap and revise scaled cap for loans below the threshold

- Small-Creditor QM: Increase the total asset threshold to qualify for making small creditor QM loans from $2 billion to between $5 billion and $10 billion

**TRID**

- Additional Guidance: Reduce compliance uncertainty with TRID requirements through additional rulemaking or publishing Frequently Asked Questions in the Federal Register
- Waiting Period Waiver: Allow streamlined waiver for mandatory waiting periods between disclosure and closing
- Cure Expansion: Enable creditors to cure errors in the loan file within a reasonable period after closing
- Assignee Liability: Clarify liability for secondary market investors related to errors in the origination process where the error is not apparent on the face of the disclosure statement and not asserted as a defense to foreclosure

**Loan Originator Compensation**

- Regulatory Flexibility: Improve flexibility and accountability in the loan originator compensation rule
- Clarify Regulatory Expectations: Establish via notice and comment rulemaking clear standards for compliance, which will clarify enforcement priorities

**HMDA**

- Delay New Rule: Delay 2018 implementation of the new HMDA rule to better assess the privacy implications of the new requirements and examine the cost burden, particularly on small institutions
- Remove CFPB Authority: Consider moving the responsibility for administering HMDA back with the prudential regulators
- Data Availability: Consider discontinuing public use of HMDA data

**Mortgage Servicing**

- Rulemaking Moratorium: Place a moratorium on additional rules until mortgage servicers can update operations to comply with existing regulations and transition away from HAMP to alternative loss mitigation options
- Regulatory Coordination: The CFPB should work with prudential and state regulators to improve alignment with respect to regulations and examinations

If you have questions about the ruling or other related issues, visit our Consumer Financial Protection Bureau practice page for more information, or contact a Buckley Sandler attorney with whom you have worked in the past.