Summary of H.R. 3126

Subtitle A – Establishment of the Agency

Creation of the CFPA and its Director

Consumer Financial Protection Agency is established as an independent agency headed by a Director who is Presidentially-appointed and Senate-confirmed to a five-year term.

Purpose of the Agency

- CFPA is responsible for rulemaking, examination and enforcement of financial institutions that provide consumers with financial products and services
- The rulemaking authority of the Federal Reserve and other Federal banking agencies under the existing consumer banking laws is transferred to the CFPA
- CFPA also has broad rulemaking authority to address unfair, deceptive and abusive acts and practices that the Agency identifies in the future.
- CFPA will examine bank and nonbank institutions for compliance with the consumer banking laws and CFPA regulations and enforce violations of those standards.

Oversight and Advisory Boards

The Director of CFPA will be advised by two boards:

- The Consumer Financial Protection Oversight Board is composed of the Chairmen of the Federal Reserve, the FDIC, the NCUA, and the FTC as well as the head of the new National Bank Supervisor, the Secretary of HUD, and the Chairman of the Liaison Committee of Representatives of State agencies to the Financial Institutions Examination Council. In addition, the Director will appoint five members from the fields of consumer protection, fair lending and civil rights, or from financial institutions that primarily serve underserved communities.
- The Consumer Advisory Board will be a panel of experts selected by the Director to represent the interests of providers and consumers of financial products

Office of Fair Lending and Equal Opportunity

Within CFPA, an office of Fair Lending and Equal Opportunity is created to enforce the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act and to coordinate with other federal agencies and state regulators on laws ensuring fair, equitable, and non-discriminatory access to credit.

Financial Literacy

Establishes the Office of Financial Literacy in the CFPA to facilitate the education of consumers on financial products and services; amends the Financial Literacy and Education Improvement Act to create a research unit to research, analyze and report on current and prospective developments in the market for consumer financial products and services.

Funding

The CFPA will be funded by:

- An annual transfer from the Fed equal to 10% of the Federal Reserve's total system expenses
- Assessments on nonbank institutions, as set by the director by regulation
- Assessments on depository institutions and credit unions, provided that
    - Funding and spending on banks must be segregated from nonbanks.
    - Banks can not pay more for consumer compliance supervision than they did before
- Annual appropriations by Congress

Subtitle B – General Powers of the Director and the Agency

Periodic Examinations

The bill will leave primary responsibility for consumer compliance examinations with the appropriate federal prudential regulator for banks with assets of $10 billion or less and insured credit unions with $1.5 billion or less. Larger depository institutions will have simultaneous federal safety and soundness and consumer compliance examinations (unless they request exams at different times). The banking agencies and CFPA will have to coordinate and consult one another on the timing, scope and results of exams to ensure a minimum regulatory burden.

Dispute Mechanism

Depository institutions that receive contradictory or conflicting supervisory determinations or directives from CFPA and their prudential supervisors will be able to appeal the decisions to a disinterested governing panel and receive a quick and definitive answer.

CFPA Back-up Role on Small Banks and Credit Unions

For depository institutions below the asset threshold, the bill:

- allows the CFPA to send an examiner to participate in exams conducted by prudential regulator;
- requires that the CFPA receive all consumer compliance examination information;
- gives the CFPA authority to remove a prudential regulator as consumer compliance regulator on an institution-by institution basis if it determines the regulator failed to adequately carry out consumer compliance supervision with regard to the particular institution; and
  - Such determination could be overruled by the Secretary of Treasury
- allows the CFPA to make special investigations and prosecute enforcement actions based on complaints received in the CFPA's consumer complaint process.

CFPA Ability to Delegate on Larger Banks and Credit Unions

The bill would also give CFPA the authority to delegate these responsibilities to the appropriate prudential regulator, and require the CFPA to include at least one examiner on such delegated exams.

Registration and Supervision of Nonbanks.

All nonbank financial institutions that provide consumer financial products and services will be required to register with CFPA; and nonbanks will be subject to a level of supervision and scrutiny that is no less burdensome or comprehensive than that governing traditional banks and thrifts and that will fully reflect the risks posed by these previously unregulated entities.

Nonfinancial Businesses Exempt

Merchants, retailers and other nonfinancial businesses will be excluded from the regulation and oversight of CFPA when they extend credit directly to consumers for the purchase of goods or services. Merchants and retailers can continue to give their customers tabs and layaway plans without becoming subject to new regulation as long as they do not resell the credit. Also, doctors and other businesses that bill their customers after a service is provided will be excluded.

- Credit and other financial activities of nonfinancial business will continue to be subject to the Truth in Lending Act and other consumer statutes as they are today.
- The Federal Trade Commission will continue its longstanding oversight role for these activities.

Other Exemptions

In addition to providing clear exclusions for securities, commodities, investment and general insurance products (other than financial planners), the following other businesses will not be subject to CFPA regulation for acting in their traditional capacities:

- Accountants and tax preparers,
- Real estate brokers and agents;
- Lawyers;
- Auto dealers; and
- Providers of IRAs, 401(k) plans, 529 plans and pension plans.

Service Providers

The bill creates a new “service provider” definition to cover entities that have a direct relationship to an underlying financial product or service, including facilitating the design or operation of the product or service, having direct interaction with a consumer, or processing related transactions. Service providers that provide only ministerial support services or that do not materially affect the financial product or service will not be subject to CFPA.

<u>Subtitle C – Specific Authorities</u>

Prohibits unfair, deceptive or abusive acts or practices

CFPA may take actions to prevent persons from committing or engaging in unfair, deceptive or abusive acts or practices, including through issuing regulations identifying and prohibiting such practices. CFPA must consult with the Federal banking agencies, State bank supervisors and other federal agencies as appropriate regarding these regulations.

Disclosures and Sales Practices

The Director may also issue regulations regarding disclosures about consumer financial products, including the costs, benefits, and risks associated with a consumer financial product. In addition, the Director would be required to establish standards for pilot disclosures, and would have the authority to issue regulations regarding sales practices relating to consumer financial products.

Duties

CFPA may issue regulations imposing duties on covered persons and their employees who deal directly with consumers to ensure fair dealings with consumers.

Right to Information

Provides consumers with the right to access non-confidential information in the control of or possession of the covered person relating to a consumer financial product or service that the consumer obtains

Remittances

Adds key disclosure provisions and consumer protections relating to remittance transfers. Provides for clear and conspicuous disclosure of fees and exchange rate; ensures that consumers have the right to cancel remittance transfers, resolve errors and receive refunds.

<u>Subtitle D – Preservation of State Law</u>

National Bank / Federal Thrift Preemption

The bill codifies the standard in the 1996 Supreme Court case of *Barnett Bank of Marion County, N.A. v. Nelson*. This standard permits the federal regulator to preempt state consumer financial protection laws only after a written finding that the state law “prevents or significantly interferes” with a federally regulated bank or thrift’s exercise of its powers. The finding must be done by regulation or order on a case-by-case basis. Federal regulators would also be required to consult with CFPA to determine that consumers will still be protected under federal law if the state law is preempted.

Operating Subisidiaries

The bill overturns the decision in *Watters v. Wachovia*, where the Supreme Court ruled that operating subsidiaries of national banks and federal thrifts (which generally are state incorporated entities) are not subject to state laws. Under the bill, state-chartered business entities will have to comply with state laws.

Savings Provision

The bill clarifies that any contract entered into before enactment that relied on previous preemption determinations will remain valid and subject to that previous preemption determination.

Enforcement by State Regulators

The bill codifies the recent *Cuomo v. Clearinghouse* Supreme Court decision to ensure that state attorneys general and other appropriate state regulators are not prevented from enforcing state laws against national banks and federal savings associations. The bill also makes clear that state attorneys general would be authorized to enforce CFPA regulations, provided they consult with the CFPA prior to initiating such action.

Subtitle E - Enforcement Powers

Subpoena Authority

The CFPA is authorized to issue subpoenas for documents and testimony. It is authorized to demand materials, must treat demanded material confidentially; petition a Federal district court for enforcement, petition to modify or set aside a demand.

Hearing Authority

The CFPA is authorized to conduct hearings and adjudication proceedings, with special rules for cease-and-desist proceedings, temporary cease-and-desist proceedings, and for enforcement of orders in a United States district court.

Judicial Remedies

The CFPA may seek available relief through administrative proceedings, may bring civil actions, and may refer criminal matters to the Department of Justice.

Whistleblower Protection

This section provides protection against firings of or discrimination against employees who provide information or testimony to the CFPA.

Subtitle F - Transfer of Functions and Personnel, Transitional Provisions

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Subtitle G - Regulatory Improvements

Collection of deposit account data is authorized.
Authorizes new data collection of loans to minority- and woman-owned businesses.

Subtitle H – Conforming Amendments

Makes appropriate conforming amendments, including transferring rulemaking authority under the consumer banking laws, over to Treasury.

Title II – Amendments to the Federal Trade Commission Act

Provides for clarification of authority of the FTC.