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GAO's Report Suggests Congress Give CFPB More Oversight

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This past February, the United States General Accounting Office (GAO) released a report to Congress entitled "Financial Regulation – Complex and Fragmented Structure Could Be Streamlined to Improve Effectiveness" (the Report). In its Report, the GAO examines "(1) the overall structure of the U.S. financial regulatory system, (2) [the] effects of fragmentation and overlap on agencies' oversight activities, and (3) the collaborative efforts and relevant authorities of agencies involved in systemic risk oversight." The GAO also makes several recommendations as to changes that Congress should consider in an effort to improve the financial regulatory system. One of those "suggested" recommendations is the transfer of the remaining consumer protection responsibility for large depository institutions from the existing "prudential regulators" to the CFPB.

In the Report, the GAO examined roles and responsibilities of the Board of Governors of the Federal Reserve System (Federal Reserve), the Commodity Futures Trading Commission (CFTC), the Bureau of Consumer Financial Protection (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Federal Insurance Office (FIO), the Federal Trade Commission, the U.S. Department of the Treasury (Treasury), the Office of the Comptroller of the Currency (OCC), the Office of Financial Research (OFR), the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC) as well as various state regulatory agencies in the oversight and regulation of the United States financial system. The GAO also examined the history of development of financial regulation over the last one hundred and fifty years which has resulted in the current "complex and fragmented" structure.

The GAO also indicates that there are three types of problems with the current financial regulatory system. Those three problems are (1) "Fragmentation," which occurs when each regulatory agency has a different role to play within the same financial industry sector; (2) "Overlap," which occurs when regulatory agency's jurisdiction covers portions of the same financial industry sector; and (3) "Duplication," which occurs when multiple regulatory agencies have jurisdiction over the same financial industry sector. The GAO suggests that because of these problems, "the existing regulatory structure does not always ensure (1) efficient and effective oversight, (2) consistent financial oversight, and (3) consistent consumer protections."

As to the CFPB, the Report's focus is the overlapping regulation of the consumer protection issues involving "Depository Institutions" and "Nondepository Entities that offer consumer financial products and services (Nondepository Providers)." The GAO's examination of the CFPB's role in the current "complex and fragmented" structure began with the CFPB's creation pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act). The GAO states that the Act established the CFPB "as an independent bureau within the Federal Reserve System and provided it with rulemaking, enforcement, supervisory, and other powers over many consumer financial products and services and many of the entities that sell them." The GAO also indicates that the Act authorized the CFPB "to supervise certain nonbank financial companies and large banks and credit unions with over $10 billion in assets and their affiliates for consumer protection purposes."

Once the CFPB was created in 2010, it had to co-exist in the existing regulatory structure. The CFPB therefore currently shares overlapping regulatory and supervising authority with several other agencies. As to Depository Institutions, the existing regulators are the Federal Reserve, the FDIC, the OCC, the NCUA and the state banking regulators. As to Nondepository Provides, the existing regulators are the FTC and the state banking regulators.

According to the GAO, the creation of the CFPB "helped to reduce fragmentation in consumer financial protection oversight [as to Depository Institutions] by consolidating authority for a number of consumer financial protection laws that had been handled by seven different agencies." Nevertheless, the Act did not end fragmentation; as noted in the Report:

For example, the act fragmented consumer protection supervision and enforcement for depository institutions, based on a depository institution's size. Specifically, while most consumer protection oversight responsibilities were transferred from the prudential regulators to [the] CFPB for depository institutions with more than $10 billion in assets and their affiliates, prudential regulators retained authority for certain consumer protection laws for these institutions. In addition, the prudential regulators continue to supervise institutions with assets of $10 billion or less for consumer protection.

The state banking regulators also retain jurisdiction to initiate proceedings against state chartered institutions that violate the Act and the CFPB rules promulgated thereunder.

Furthermore, the focus of the CFPB and the focus of the existing regulators is different. The CFPB's primary goal is consumer protection. Conversely, the primary goal of the existing regulators of Depository Institutions, which the GAO calls "prudential regulators," is the "safety and soundness" of the financial system. Consumer protection is a secondary issue for the prudential regulators.

Similarly, oversight of Nondepository Providers is divided between the CFPB, the FTC and state banking regulators. Under the Act, the CFPB has consumer protection oversight as to "certain kinds of mortgage market participants, private student lenders, and payday loan lenders, for the purposes of enforcing the consumer financial protection laws" which were previously unregulated. However, the FTC retained its authority over "most nondepository entities, including mortgage companies, mortgage brokers, finance companies, auto dealers, payday lenders, debt collectors and others." State agencies also regulate the activities of Nondepository Providers under a myriad of laws.

The GAO also recognized that the CFPB has specific priorities which may differ from the other regulators. The GAO states that in contract to very broad OCC compliance management reviews, "CFPB officials told us that [the] CFPB goes through a prioritization process each year to determine the areas in which it will conduct compliance management system reviews and where follow-up is needed. This may result in CFPB reviewing the compliance management system for compliance with one or two specific consumer protection laws."

Because the regulation and oversight of the United States financial regulatory system remains divided, the GAO suggested changes that Congress could consider in order to consolidate and reorganize the financial regulatory system. In one example of a potential change, the GAO suggested that Congress could consider transferring "the remaining prudential regulators' consumer protection authorities over large depository institutions to [the] CFPB." Specifically, the Report stated:

For example, Congress could consider consolidating the number of federal agencies involved in overseeing the safety and soundness of depository institutions, combining the entities involved in overseeing the securities and derivatives markets, **transferring the remaining prudential regulators' consumer protection authorities over large depository institutions to [the] CFPB**, and the optimal role for the federal government in insurance regulation, among other considerations. (Emphasis added.)

While the suggestion that Congress consider such a transfer of authority to the CFPB was made in the context of an example of changes that could be made, the GAO has clearly raised the issue for Congress's consideration. As a result, large financial institutions should be aware of the potential for even greater CFPB oversight in the future.