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# Consumer Financial Protection Bureau

New watchdog agency creates anxiety for small business owners.

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**Published:** September 18, 2011 - 5:59 am

*Buck Ennis*

**WORRIED:** Any change to loan documents makes buyers nervous, says Mark Schienberg of the Greater New York Auto Dealers Association.

Restaurateur Neil Calisi is bracing for higher bank fees now that the Consumer Financial Protection Bureau is up and running. The new federal agency is charged with such things as ensuring that institutions simplify credit applications and stop sending credit cards that customers have not requested.

But Mr. Calisi, the third-generation owner of Yolanda's Italian Restaurant & Pizzeria in the South Bronx, is skeptical. He expects that banks will approve fewer credit card applications and compensate by hiking merchant fees.

“The banks will get their money, no matter what,” said Mr. Calisi, who added that about 85% of the sales at his 10-employee eatery are made via credit card.

In fact, small businesses throughout the city are uncertain about how the CFPB will affect them.

## BROAD AUTHORITY

Created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the agency has the broad mandate of protecting consumers from misleading, unfair, abusive and discriminatory financial practices.

Its jurisdiction extends to banks and other institutions, including a subset of the finance and small business: pawnbrokers and check-cashing operations.

But with its expansive authority, the CFPB is not without controversy—particularly in this political climate. Most Democratic lawmakers support it, but Republicans are wary of its power and structure. They want to turn the agency into a five-member commission.

Senate Republicans made clear that they would not confirm Elizabeth Warren—a critic of the industry who helped set up the agency—if she were nominated to be its director. President Barack Obama nominated CFPB enforcement chief Richard Cordray instead.

The CFPB could be a mixed blessing for small business: The focus on lending and credit cards could hurt revenues and cash flows, but the agency might help some, notably startups and minority and women-owned businesses.

For instance, a number of agencies, including the CFPB and the Federal Deposit Insurance Corp., must each establish an Office of Minority and Women Inclusion to monitor their diversity efforts, as well as those of their contractors and regulated entities. The CFPB provides scrutiny of lenders' compliance with the Equal Credit Opportunity Act, which prohibits discrimination against borrowers.

## "WORTHWHILE INTERVENTION"

The bureau is "going to encourage lending when the economy improves, and anything that reduces discrimination is a worthwhile intervention of the government," said John F. Robinson, CEO of the Manhattan-based National Minority Business Council.

The watchdog could affect local small business in a number of other ways. Although it doesn't regulate small business credit, the agency could prove helpful to those who want to start a business and must rely on their personal credit history to secure financing, according to Dan Sokolov, the CFPB's deputy associate director for research, markets and regulations.

Testifying in July before a House subcommittee, Mr. Sokolov said the CFPB's efforts will "strengthen over-sight of the credit reporting system." That would lead to "more accurate personal credit histories," and could "benefit startups applying for business credit and lenders that serve the market," he added.

## EXAMINATION AUTHORITY

Dodd-Frank has the potential to give the CFPB the authority to examine and supervise credit bureaus, and to determine the adequacy of the current credit dispute mechanism.

Securing a bank loan is often difficult for fledgling firms, however, and personal credit cards could now become harder to obtain. The Credit Card Accountability Responsibility and Disclosure Act of 2009 began the movement to get financial institutions to curtail issuance of cards for high-risk borrowers.

With the new agency, the outlook is dimmer for the "guy in the garage" to get a personal credit card and succeed to become "the next Dell or Microsoft," said Mark Calabria, director of financial regulation studies at the Cato Institute, a think tank in Washington.

The bureau also stands to hurt small business owners who use personal credit cards as "bridge financing" to help them manage cash flow, said Rohit Arora, CEO of Biz2Credit, an online service that matches small business borrowers with financial institutions.

The combination of the credit card act and the recession triggered card issuers to raise interest rates by about 2 percentage points, notes Nessa Feddis, vice president and senior counsel at the American Bankers Association.

"If the bureau imposes further restrictions, the additional regulatory burden could [result in] higher interest rates and fees," Ms. Feddis said. The agency does not have the power to cap either.

Still, David Reiss, a Brooklyn Law School professor whose expertise includes consumer financial services law, believes that "by pushing for better disclosures," the CFPB will benefit owners who use their own credit cards.

Created largely in response to the residential mortgage debacle, the CFPB is establishing standards for mortgage servicing while creating rules that require lenders to evaluate borrowers' ability to repay those loans.

But the bureau's activities could exacerbate the already-challenged residential real estate market and hurt small firms involved in home sales, appraisals, and mortgage brokerage and lending, according to Todd Soloway, chairman of the real estate litigation group at Pryor Cashman in New York.

"I don't know that [the CFPB] will affect us directly, but if it makes it more difficult for lending, then it hurts," said Mike Villaplana, a certified appraiser at Queens Appraisers in Astoria.

In addition, small mortgage brokers and lenders must devote resources to "familiarizing themselves with CFPB rules and forms, and making sure that borrowers are fully informed," Mr. Soloway said. "They can't just say, 'I'm too small and don't have the money.' Everyone has to comply."

## DOMINO EFFECT

With loan defaults in the auto market less than half of 1%, car dealerships are exempt from Dodd-Frank. But manufacturers' consumer financing arms—known as "captives"—are not.

“The potential is that the agency will require a change of language and more disclosure and paperwork” in financing agreements, said Mark Schienberg, president of the Greater New York Auto Dealers Association, headquartered in Whitestone, Queens.

“It's possible that anyone involved in car loans—including captives, credit unions and banks—will start increasing their rates if they have to do so much to bring a loan to market,” Mr. Schienberg said. That could lead to buyer confusion and a sales decline, he added, as any small change causes consumers to “pull back and stay with the status quo.”