



Legal Counsel to the
Financial Services Industry

The CFPB in Focus: Where We Are Now and What Lies Ahead

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CFPB Overview

- Established as an independent bureau of the Federal Reserve Board (FRB) by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Official first day of operations was July 21, 2011
 - Preparations, including staffing and information-gathering, began much earlier
- To be headed by a single Director
 - 5-year presidential appointment
 - Richard Cordray, former Ohio AG, is current nominee
 - To serve as member of FDIC Board, FFIEC and Financial Stability Oversight Council
 - To make semi-annual reports to Congress

CFPB Powers

- Generally, the CFPB is tasked with regulating and enforcing the “enumerated” consumer protection laws:
 - Title XIV of Dodd-Frank - Mortgage Reforms
 - Title X of Dodd-Frank - Consumer Financial Protection Act
 - Fair Credit Reporting Act, FDCPA
 - RESPA, TILA, HOEPA, SAFE Act, HMDA
 - Gramm-Leach-Bliley Act (with exceptions)
 - Truth in Savings Act
 - Electronic Funds Transfer Act, Fair Credit Billing Act
 - Durbin Amendment remains under FRB
- *Does not include Fair Housing Act and Community Reinvestment Act
- CFPB has requested comment to streamline regulations
- FSOC has ability to overrule CFPB regulations

Supervision and Enforcement Powers

- Expansive authority to examine and supervise “covered persons” engaging in, offering, or providing consumer financial products or services
- Banks
 - Banks \$10B+ subject to supervision, enforcement and regulation
 - Banks <\$10B subject only to regulation
 - Calculation of \$10B threshold is based on total assets
 - Starting point for determination is June 30, 2011 Call Report
 - Change in status will result after four consecutive quarters above/below threshold
- Non-banks (once Director in place)
 - Residential mortgage lending, private education lending, payday lending
 - Other “large participants” in markets to be defined by regulation

Director Confirmation Issues

- Exercise of many powers contingent on appointment and confirmation of Director
 - Can supervise and regulate \$10B+ banks
 - Cannot supervise or regulate non-banks
 - Controversy surrounding CFPB issuance of “large participant” notice and request for comment
- Treasury Secretary has authority to carry out certain CFPB functions until the appointment of a Director, including:
 - Prescribing rules and issuing orders and guidance related to consumer financial laws previously within authority of other agencies

CFPB Structure



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CFPB Leadership

- Richard Cordray – nominee for Director; currently Assistant Director of Enforcement
- Raj Date – Special Advisor to Secretary of Treasury
- Steve Antonakes – Large Bank Supervision
- Peggy Twohig – Non-Bank Supervision
- Holly Petraeus – Office of Servicemember Affairs
- Patrice Ficklin – Office of Fair Lending & Equal Opportunity
- Skip Humphrey – Office of Older Americans
- Leonard Kennedy – General Counsel

CFPB Staffing

- Currently, the CFPB has approximately 700 employees
 - 1/3 consist of transfers from other federal banking agencies
- Examination staff
 - Examiners located in most states
 - Half of CFPB staff is focused on examination and enforcement
 - CFPB has created its own examiner university

Stated Priorities

- To “make sure that consumer finance markets work for American families”
 - Intent is to use all available tools to accomplish goal, including complaint gathering, supervision, rulemaking, financial literacy and enforcement
 - Committed to responsiveness, innovation and transparency
- Mortgages from “cradle to grave”
- Credit cards
- Expanded and focused protection on servicemembers, older Americans, and students

Supervision & Examination Approach

- Supervision to be guided by three overarching principles:
 1. Evaluation of supervised entity's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm
 2. Data-focused reviews
 3. Consistency in supervision of banks and non-banks
- CFPB and prudential regulators are developing MOU to implement "Congressional intent" of Dodd-Frank exam coordination requirements

Supervision and Examination Manual (v. 1.0)

- For use with banks and non-banks
- Three components:
 - Part I describes compliance examination process
 - Part II outlines general and law-specific examination procedures, including mortgage servicing
 - Part III provides templates for providing results
- Incorporates FFIEC rating system and examination procedures
- Provides for scheduled, targeted, horizontal and product/business line-specific examinations

Mortgage Servicing Examination Procedures

- First business-line specific examination procedures issued
- CFPB plans to begin servicing exams in near future focusing on:
 - Default Servicing (including fees)
 - Loss Mitigation Efforts
 - Foreclosure Referral Processes
- ECOA analysis of loss mitigation and foreclosure practices will be conducted for disparate impact
- Review of all complaints relating to accounts referred for foreclosure within past year

UDAAP

- “Abusive” is defined by Dodd-Frank, but still unclear
- UDAAP section of Manual sets forth specific examination procedures and expectations
- Manual provides examples of “red flags” for UDAAP:
 - Failure to underwrite based on consumer’s ability to repay
 - Profitability depends on penalty or back-end fees
 - High rate of changes in terms
 - Combined features making consumer comprehension of product and risks presented difficult
 - Fees for obtaining account-related information
 - “Products targeted to particular populations without appropriate tailoring, marketing, disclosures, and other materials designed to ensure understanding by the consumers”

Other Areas of Focus: Mortgages and Credit Cards

- Efforts related to mortgages:
 - “Know Before You Owe” Initiative – combined TILA/RESPA disclosure
 - Ability to Repay Rule – expected in early 2012
 - Servicing examinations beginning Q4, 2011
 - Complaint collection began December 1, 2011

Other Areas of Focus: Mortgages and Credit Cards (cont.)

- Efforts related to credit cards:
 - “Know Before You Owe” Initiative – Credit Card Agreements
 - Draft credit card agreement released (12/6/11)
 - Studies issued on effects of Card Act on supply, demand and pricing
 - Online credit card complaint system implemented
 - Interim consumer complaint study released (11/30/11)
 - Issuers reported resolving 3/5 of complaints
 - Consumers disputed 13% of issuer-reported resolved complaints
 - Top issues: billing, fraud/ID theft, APR/interest rates

Servicemembers, Older Americans and Students

- Dedicated offices to address issues for each group
- Goals are not only regulation and supervision, but targeted financial literacy education
- Important part of efforts is information gathering to understand needs and concerns of groups
- Initiatives currently or soon to be underway include:
 - Request for information relating to financial products offered to military families
 - “Know Before You Owe” initiative – model financial aid form issued by Dept. of Education in collaboration with CFPB
 - Collaboration with Department of Education on comprehensive study of private student loan market

Enforcement

- Interim Final Rules Relating to Investigations and Administrative Proceedings address:
 - Civil investigative demands (CIDs)
 - Investigatory hearings
 - Rights of witnesses and recipient of CIDs
 - Administrative hearing officer presents recommended decision to Director for ultimate consideration
 - Draw heavily on SEC, FTC, and Uniform Rules
- Early Warning Notices (CFPB Bulletin 2011-04, 11/7/11)
 - Bureau *may* give notice to individual or firm subject to investigation prior to recommending or commencing enforcement action
 - Response required in 14 days with 40 page limit
 - Response may be discoverable by third parties

Cooperation on Enforcement Matters

- CFPB promulgated an interim final rule requiring state officials to notify the CFPB of actions or proceedings (7/22/11)
 - Requires state officials to provide 10 days notice prior to filing lawsuit or taking administrative or regulatory proceeding to enforce any provision of Title X or regulations issued under the CFPB’s authority
 - CFPB may intervene or otherwise participate
- State Attorneys General
 - Joint Statement of Principles with NAAG addressing coordination of investigations and enforcement actions and information sharing
 - AGs as “deputies” – can enforce Dodd-Frank consumer protection provisions and CFPB regulations in federal court
 - Working together on mortgage servicer settlement

Cooperation on Enforcement Matters (cont.)

- Fair lending MOU with FTC, HUD, and DOJ provides for sharing information on agencies' fair lending investigations, screening procedures and investigative techniques
- MOU with FTC on broader enforcement issues required by Dodd-Frank under negotiation
- CFPB/SIGTARP cooperation on mortgage modification scams

Information Gathering & Sharing

- CFPB is focused on gathering information and complaints directly from consumers
 - Data security: Consumer complaints include sensitive non-public information
- Agreement with FTC announced in Aug. 2011 to allow CFPB access to Sentinel consumer complaint database
- Information-sharing MOUs and agreements exist with various federal and state agencies including other banking regulators, FFIEC, FinCEN, NAAG, and Conference of State Bank Supervisors

Confidentiality & Disclosure

- 12 C.F.R. Part 1070 contains rules relating to disclosure of documents and information generated by and obtained by CFPB
 - FOIA procedures
 - Many restrictions on disclosure but ultimately in Director's discretion to determine whether to release information, including confidential and privileged information submitted by supervised entities
- Key question: Does 12 U.S.C. § 1828(x) preserve privilege on documents produced to CFPB?
 - CFPB believes it has a defensible interpretation
 - Caution warranted until clarified or tested

What Lies Ahead

- Who will be the next nominee if Mr. Cordray is not confirmed?
- Will the CFPB be restructured?
- How well will the CFPB and banking regulators work together?
- What is required to “pass” a UDAAP exam?
- Rulemaking, studies, etc. – what topics and when?
 - Ability to repay/Qualified Mortgages – expected Q1 2012
 - Remittance rules – due 1/21/12
 - Large nonbank financial services providers – due 7/21/12
 - Proposed RESPA/TILA disclosure – due 7/21/12
 - Private student loan study – due 7/21/12
 - Small business data collection requirements – timing unknown
 - Older American legislative and regulatory recommendations – due 1/21/13

Questions?

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