Policy and Regulation Alert

Regulatory Implications of Cordray Appointment to Head the Consumer Financial Protection Bureau

January 9, 2012

On January 4, 2012, President Obama appointed Richard Cordray to be the first director of the Consumer Financial Protection Bureau (CFPB). Prior to his appointment, Mr. Cordray served as the CFPB's chief of enforcement and Ohio's attorney general. The administration had submitted Mr. Cordray's nomination to the Senate for confirmation in July 2011. However, the vast majority of Senate Republicans stated that they would not support the confirmation of any CFPB director until certain changes were made to the CFPB's structure and operating procedures. The administration strongly opposed these proposed changes, so the president decided to install Mr. Cordray as director using his recess appointment authority.

While much of the early Washington chatter has focused on the constitutionality of the Cordray appointment and how it will affect the administration's relationship with congressional Republicans, this appointment has more-practical implications for many nonbank consumer finance companies that will now face enhanced federal regulation, oversight and potential enforcement actions.

Prior to Mr. Cordray's appointment, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") provided the CFPB with supervisory and enforcement authority over banks, thrifts and credit unions with more than $10 billion in assets, and their affiliates. However, now that a director is in place, the bureau will also have supervisory and enforcement authority over certain nondepository "covered persons." This includes immediate supervisory authority over covered persons of any size that offer the following consumer financial products or services—

- origination, brokerage or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services
- private education loans
- payday loans.

In addition, the CFPB will have supervisory authority over "larger participants" (still to be defined by a rule that must be issued by July 21, 2012) in certain consumer financial products or services markets, which are likely to include—

- debt collection
- consumer reporting (e.g., credit bureaus)
- consumer credit and related activities (e.g., finance companies or lenders that make automotive loans or issue unsecured consumer installment loans)

- money transmitting, check cashing and related activities
- prepaid cards (e.g., gift or store cards, EBT cards and open-loop payment cards)
- debt relief services (e.g., debt settlement agencies).

As a result, firms in these market segments are likely to face increased regulatory compliance costs, federal audits and oversight, investigations and potential enforcement actions.

CONTACT INFORMATION

We would be happy to work with you to develop a targeted federal policy strategy to address particular issues or concerns. If you have any questions regarding the scope of CFPB regulatory authority and the types of businesses that will be most directly affected by these developments, please contact—

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