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Watchdog eyes bankers

INDUSTRY EXPERTISE

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The Consumer Financial Protection Bureau quickly is coalescing around an aggressive regulatory agenda following the recent appointment of former Ohio Attorney General Richard Cordray as its first director.

What can financial institutions expect from this new federal regulator?

The bureau was formed by Congress as part of the 2010 Dodd-Frank legislation. Its regulatory authority is derived, in part, from the traditional consumer-protection functions set forth in federal statutes. Its functions previously were handled by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp. and others.

But CFPB appears to define its mandate more broadly. In testimony before Congress, Cordray noted that prior to the financial crisis, seven agencies had some responsibility for consumer protection, "but none of these agencies had consumer-financial protection as its sole priority, or the tools to regulate and oversee the whole market.

"We plan to use all of the tools available to us to ensure that everyone respects and follows the rules of the road," he added. "Where we can cooperate with financial institutions to do that, we will; when necessary, however, we will not hesitate to use enforcement actions to right a wrong."

CFPB has supervisory, rulemaking and regulatory authority over banks with more than $10 billion in assets. With the Cordray appointment, CFPB may begin supervising nonbank participants in the consumer-financial markets. These include nondepository mortgage-related companies, payday lenders, student-loan providers and other entities that qualify as "larger participants" in the markets or whose products or services pose potential risks to consumers.

Last month, CFPB released a proposed final rule defining some of the larger participants in the consumer-financial markets that will be subject to federal supervision and enforcement authority. Debt collectors with annual receipts exceeding $10 million are considered larger participants under the proposal. In recent months, debt-collection practices have come under greater scrutiny, similar to the efforts applied to mortgage-foreclosure practices. Courts and enforcement agencies have faulted debt collectors for failing to properly document and verify amounts owed.

Consumer-reporting agencies, on the other hand, are deemed larger participants if they have more than $7 million in annual receipts. Although CFPB estimates this includes about 30 companies, they account for 94% of the credit-reporting market. Subsequent rules will define thresholds applicable to issuers of prepaid credit cards, finance companies and debt-relief companies.

Companies that service, originate or broker residential mortgages, payday lenders and private-education lenders are subject to CFPB's supervision, regardless of their size or impact in the financial markets.

CFPB's proposed rule is the first effort to subject these nonbank entities to the same CFPB oversight as banks. Nonbank entities will be subject to CFPB examination to assess compliance with all federal consumer-finance laws and potential risks to consumers and the markets.

The agency has an estimated budget of $365 million in 2012 and a proposed budget of $448 million for 2013. It's expected to scrutinize broadly consumer-lending practices through onsite examinations and targeted investigations into possible violations of existing laws. Significantly, CFPB has authority under Dodd-Frank to define and ultimately proscribe any acts or practices it deems unfair, deceptive or abusive. This includes acts CFPB believes are likely to cause substantial injury or interfere with the consumer's ability to understand a particular product or service. CFPB has yet to define what it considers unfair, deceptive or abusive.

On March 2, CFPB announced the launch of a web-based tool for collecting complaints related to checking, savings and other bank accounts. CFPB implemented similar systems for mortgage and credit-card complaints in 2011.

Last month, CFPB announced an inquiry into overdraft programs for checking accounts. The investigation will consider how overdraft practices are affecting consumers. It will focus on transaction reordering to increase fees, the clarity of the information provided to consumers and any disproportionate impact on young and low-income consumers.

CFPB also appears to be focusing on the payday-lending industry, holding a public hearing in Alabama in January and issuing examination procedures for short-term, small-dollar loans.

Other CFPB initiatives include issuance of several prototype disclosure forms for consumers — including a monthly mortgage statement, a model form to help compare student loans and revised mortgage-loan disclosures.

As the bureau continues to define the scope of its regulatory power, it remains subject to intense scrutiny on Capitol Hill. Some Republicans object to Cordray's recess appointment and the scope of CFPB's power, while some Democrats expect CFPB to correct lending practices believed to have contributed to the credit crisis. Industry participants will have to watch carefully in the coming months to see how CFPB meets these competing expectations.

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