The Consumer Financial Protection Bureau – Is It a Legal Mine Field?

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CFPB – the Background

- Created by virtue of the Dodd-Frank Wall Street Reform and Consumer Protection Act, "the Dodd-Frank Act"
- One agency responsible for consumer financial protection
- Consolidates enforcement from:
  - Board of Governors of the Federal Reserve
  - Department of Housing and Urban Development
  - Federal Deposit Insurance Corporation
  - Federal Trade Commission
  - National Credit Union Administration
  - Office of the Comptroller of Currency
  - Office of Thrift Supervision

CFPB – the Background (cont.)

- Consolidates enforcement of consumer statutes under one agency:
  - Fair Credit Reporting Act
  - Fair Debt Collections Practices Act
  - Equal Credit Opportunity Act
  - Truth in Lending Act
  - Real Estate Settlement Procedures Act
  - Home Mortgage Disclosure Act
  - Secure and Fair Enforcement for Mortgage Licensing Act

Objectives Defined

- To ensure that consumers have timely and understandable information to make responsible decisions about financial transactions
- To protect consumers from unfair, deceptive or abusive acts or practices and from discrimination
- To reduce outdated, unnecessary or unduly burdensome regulations
- To promote fair competition and consistent enforcement of the consumer protection laws in the Bureau's jurisdiction; and
- To encourage markets for consumer financial products and services that operate transparently and efficiently and to facilitate access and innovation
- "to level the playing field" – Message from the Director

The Current Size

- Seven Hundred Fifty (750) Employees
- Funding Limit FY 2011 - $498 million
- Funding Limit FY 2012 - $547.8 million
- Funding Limit FY 2013 - $597.6 million

- Can request additional $200 million in funding with congressional approval

Who is Being Supervised?

- Direct versus indirect

Direct Supervision

- Large Bank Supervision Program – banks, thrifts and credit unions with assets over 10 billion

- Non Bank Supervision Program - Nonbank providers of consumer financial products and services
  - All nonbanks in the residential mortgage, private education lending and payday lending markets
  - "larger participants" in other markets
  - Any nonbank that it determines is engaging or has engaged in conduct that poses risks to consumers with regard to consumer financial products or services

Direct Supervision – Larger Participant

- How is a “larger participant” defined?

- Notice and Request for Comment Pending
  - Identification of Larger Participant “in a market”
    - Possible Criteria
      - Annual Number of Transactions in a Market
      - Geographic Coverage

- Key terms: “larger participant” and “in a market”

Indirect Supervision

- Supervision and Examination Manual, October 2011

  “Supervised entities are also expected to manage relationships with third party service providers to ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided”

  “…the CFPB expects every regulated entity under its supervision and enforcement authority to have an effective compliance management system adapted to its business strategy and operations.”

Indirect Supervision (cont.)

- Supervision and Examination Manual, October 2011

  CFPB examiners should seek to determine whether the board and senior management have:

  1. Demonstrated clear expectations about compliance, not only within the entity, but also to third party service providers

Indirect Supervision (cont.)

- Supervision and Examination Manual, October 2011

  Examiners should request and review compliance policies and procedures…with compliance officers as follows:

  Review policies and procedures designed to ensure that the entity's third party service providers comply with legal obligations applicable to the product or service of the examined entity and the provider.

Guidance for Managing Third Party Risk

- CFPB has not adopted formal guidance for addressing third party risk management but references the FDIC guidance for risk assessment

- FDIC risk management process:

  1. Risk assessment
  2. Due diligence in selecting a third party
  3. Contract structuring and review
  4. Oversight

FDIC – Risk Assessment

- Is the proposed relationship consistent with the institution's strategic planning and overall business strategy
- Identification of performance criteria, internal controls, and reporting
- Does the institution have knowledge of the third party practices and industry

FDIC – Due Diligence in Selecting a Third Party

- Comprehensive due diligence involves the review of all available information about a potential third party, focusing on its:
  - Financial condition
  - Relevant experience
  - Knowledge of applicable laws and regulations
  - Reputation
  - Effectiveness of its operations and controls
  - Management of information systems
  - Knowledge of consumer protection laws

FDIC – Contract Structuring and Review

- Contract should include the following:
  - Scope
  - Cost/compensation
  - Performance standards
  - Reports
  - Audit
  - Confidentiality and Security
  - Customer complaints
  - Business resumption and contingency plans

FDIC - Oversight

- Oversight should include:
  - Quality of service
  - Risk management practices
  - Financial condition
  - Applicable controls and reports
  - Review licensing and registrations

CFPB - The Complaint Process and How it Will Affect You

- CFPB set up toll free number which provides services in 191 languages
- Consumer complaint comes in, then sent to the company
- The company reports back to the consumer and CFPB within 15 days of complaint, originally was 10 days with recommendation

Complaint Perspective

- From July 21, 2011 through December 31, 2011 there were 13,210 complaints received by the CFPB

- Responses required on all that were sent to the companies by the CFPB

In sum…

- Compliance
- Compliance
- Compliance

We Appreciate Your Time

Questions?

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