

Client Alert:

CFPB and Dodd Frank: What Fintechs Need to Know

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On April 25, 2022, the **Consumer Financial Protection Bureau (CFPB)** announced that it would be invoking its authority under Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), to supervise nonbank entities whose activities are thought to pose financial risk to consumers. This authority went largely unused until now and will allow the CFPB to hold nonbanks to the same standards as banks.

Who are the nonbanks the CFPB is targeting? This action is primarily directed at Fintechs.

The **Fintech industry** has been experiencing rapid growth in recent years, and it is not surprising that this level of growth generates a lot of attention from regulators. Fair or unfair, Fintech firms have been scrutinized as having a competitive advantage in the financial market partly because they have not been subject to the same level of attention and oversight as say traditional banks.

The announcement from the CFPB is one of many moves that government has taken to put Fintechs on notice. **Beware Fintechs: the CFPB may come knocking on your door next.** What can the CFPB do? CFPB has the authority to perform oversight activities such as: examinations of consumer compliance programs, and investigations into possible violations of consumer financial law.

Here are three key takeaways and considerations for Fintechs to make when evaluating the impact of the CFPB's action:

1

Takeaway: The CFPB supervisory examination includes a review of the entity's compliance management system. The examination entails an assessment of the effectiveness of the system and controls to prevent, detect, and deter practices that could lead to violations of consumer financial law.

Consideration: *Fintechs should consider proactively reviewing their existing consumer compliance management program, assessing the program's processes and controls for potential gaps, and test the design and operating effectiveness of existing controls.*

2

Takeaway: The CFPB also evaluates entity's ability to effectively manage the risk of non-compliance with consumer financial laws as well as risk of causing harm to the consumers and the market. More specifically, how an entity can effectively identify and manage compliance risk in the institution's products and services.

Consideration: *Fintechs should consider assessing the effectiveness of its risk management process. The risk management process should include identifying known and emerging consumer and market risks, controls to mitigate the risks, and action plans to address identified weaknesses. The risk management process should be well documented and include reporting to senior management.*

3

Takeaway: Consumer whistleblower complaints are an area of concern to the CFPB. Of particular concern is an entity's responsiveness to whistleblower complaints and the effectiveness of an entity's whistleblower program. Specifically, the CFPB expects timely investigation and resolution of customer complaints.

Consideration: *Fintechs should consider assessing its whistleblower system to ensure: (1) all whistleblower complaints are received and triaged timely; (2) the program is staffed appropriately (i.e., numbers and expertise) to perform the initial assessment and investigate the complaints; and (3) results are reported timely to key stakeholders, including government authorities when appropriate.*

In summary, **Fintechs will be facing increased government scrutiny** and should consider assessing their current consumer compliance program, including the risk management process and whistleblower system, to confirm the organization's policies, processes, and controls are designed and operating effectively to prevent, detect and deter non-compliance with consumer financial laws. Identified gaps or weaknesses should be remediated using a risk-based approach. Assessment of the consumer compliance program and assurance of the remediation activities are best performed by an independent party (e.g., internal audit function or independent consultants) that understand government expectations and best practices.

About the Author

Kristin Bone, a Partner with StoneTurn, has more than 20 years of forensic accounting, auditing, compliance and monitoring, and dispute consulting experience. Kristin brings expertise in investigations, litigation matters and arbitration connected with civil and commercial disputes. She also assists clients to develop and implement antifraud risk assessments, and remediate fraud and corruption.

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