

# Banking Law

January 10, 2012

## CFPB Enforcement Actions Will Impact Community Banks

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**The Consumer Finance Protection Bureau's full jurisdiction and enforcement authority has been launched by the appointment by President Obama of Richard Cordray as the CFPB's first Director. The appointment was immediately the focus of political and legal controversy over the constitutionality issue of the effectiveness of a "recess appointment." The actions of Mr. Cordray and the CFPB on his first day "in charge" also were newsworthy. However, community bankers who look at the CFPB as the agency that is likely to have little impact on their activities should recognize that its breadth and scope will provide significant challenges for the day-to-day business of banking.**

The day after his appointment, the CFPB website announced "the nation's first nonbank supervision program" with Director Cordray stating, "Holding both banks and nonbanks accountable to consumer financial laws will help create a fairer, more transparent market for consumers." Consumers could also find a personal invite from Director Cordray to use a new online link to tell their stories of lender abuse [help.consumerfinance.gov/app/tellyourstory](http://help.consumerfinance.gov/app/tellyourstory). The following day President Obama visited CFPB employees at their new offices (inherited from the OTS) to tell them their role was to "make sure the big banks on Wall Street play by the same rules as community bankers on Main Street."

Title X of the Dodd-Frank Act gave the CFPB the authority to implement, examine and enforce compliance with the "Federal consumer financial law," which, among others, includes the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collections Practices Act, the Truth in Lending Act, the Truth in Savings Act, the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act and the consumer privacy provisions of the Gramm-Leach-Bliley Act. The CFPB may conduct examinations of large banks with over \$10 billion in assets and all nonbank providers of consumer financial products and services and may initiate enforcement actions directly against those entities.

A significant limitation in Dodd-Frank urged by community bank groups provides that banks with \$10 billion in assets or less would instead remain subject to examinations and enforcement actions regarding compliance with the consumer laws by their primary federal banking agencies and not the new CFPB examiners. However, community banks should keep a close watch on the supervision and enforcement policies and practices of the CFPB. In our experience, regulatory actions applicable to larger banks over time have a way of expanding to

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community banks through the regular bank examination process.

Dodd-Frank gave the CFPB the authority to federally regulate the offering and provision of consumer financial products generally, and the implementation of that mandate is likely to find its way into new interpretations of the consumer laws by the CFPB and new standards and “best practices” expectations that will eventually be applied to smaller banks regardless of size. The CFPB’s first priority is expected to be identifying and preventing “unfair, deceptive or abusive” products and practices at nonbank providers, including mortgage companies and payday lenders. This authority previously was under the aegis of the Federal Trade Commission. Any products or practices challenged as unfair, deceptive or abusive by the CFPB will likewise become unacceptable in smaller banks as well as larger banks. As an example, those community banks seeking to recapture some of the residential mortgage market abandoned by larger providers or to bring more of the unbanked into their customer ranks must pay attention to fees, advertising and disclosures criticized by the CFPB. The federal bank regulatory agencies can be expected to make their supervision and enforcement of the consumer laws more robust lest they be deemed too accommodating to the banks they supervise. Dodd-Frank also provides that the CFPB may include its examiners on a sampling basis at examinations of smaller insured depository institutions to assess compliance with the requirements of federal consumer financial law. This may lead to competition for attention to consumer law compliance enforcement among the banking agencies and the CFPB to the potential detriment of community banks.

At the least, community bank compliance and risk management personnel, executive management and boards of directors must stay abreast of CFPB developments so as to monitor the bank’s compliance and expected best practices. This necessarily means more compliance costs and another governance and internal controls task while, at the same time, community banks continue efforts to recover and grow in the aftermath of the recent recession. Given the new regulatory emphasis on risk management at the board of directors level, we expect these consumer issues to rise in prominence in the examination process. Bankers should assume that any act or practice challenged by the CFPB as “unfair, deceptive and abusive” will be encompassed within the “unsafe and unsound” standard used by all bank regulators.

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