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November 16, 2012

What the 2012 Election Means for the CFPB

CFPB Watch

Jonathan Pompan published "What the 2012 Election Means for the CFPB" in *CFPB Watch* on November 14, 2012.

Since last week's election win for President Obama and Elizabeth Warren, there has been endless buzz about the future of the Consumer Financial Protection Bureau (the "CFPB" or "Bureau"), and from the looks of things, Bureau staff are continuing about their work as if it's full steam ahead.

In the days since the election, the Bureau posted on its website consumer-focused guidance on such topics as a checklist of financial decisions to make after a disaster, transcripts and observations from the CFPB's first consumer advisory and council meetings, a vague announcement about the launch of "Project Catalyst," and a Veteran's Day announcement drawing attention to consumer financial protection issues affecting servicemembers and veterans. The CFPB continues to push its pro-consumer agenda.

The CFPB has a short though consistent history of using regulation, supervision, enforcement, and the bully pulpit to effect change. The CFPB already has a list of accomplishments that includes rulemakings in the areas of nonbank supervision and examination, and mortgage reform; enforcement actions against banks and a loan modification company; and placing a spotlight on financial services for students, servicemembers and seniors.

The President's re-election and the Democratic majority in the Senate spells trouble for efforts to amend the Dodd-Frank Act to reform or, as some have suggested, abolish the Bureau: The President is a strong supporter of the CFPB's work and pushed for the creation of the Bureau. Further, Elizabeth Warren's election to the Senate means there will be a staunch defender and advocate for the Bureau, irrespective of what committees she ends up serving on.

The effects of a second term for President Obama will reach far beyond the immediate agenda of the Bureau and will have significant consequences for consumers and consumer financial services providers. Crucial decisions like the re-appointment of Richard Cordray as the Director of the CFPB, or his replacement should he move on, will be President Obama's to make. Perhaps the only safeguard for moderating the Bureau's influence is the courts; but none of the legal challenges brought to date have yet been effective in that regard.

Just about everything we've come to know about the CFPB is going to remain the same for at least the next year – and likely for the next two years. This means that the CFPB is going to continue increasing its regulation of banks and nonbanks. The CFPB is already undertaking various rulemakings mandated by the Dodd-Frank Act, including several mortgage-related rulemakings and rulemakings to implement the CFPB's supervisory program for certain nonbanks, proposals concerning prepaid cards, and several administrative matters.

Some of the issues we expect to see the Bureau tackle in the near term include:

- Proposed rules that would require certain nonbank financial institutions to register with the CFPB.
- Proposed rules to clarify the CFPB's supervision of depository institutions, their affiliates, and service providers, including examinations of smaller insured depository institutions on a sampling basis.
- Development of proposed regulations concerning the Home Mortgage Disclosure Act and the data to be collected and appropriate procedures, information safeguards, and privacy protections for information gathering.
- Regulations concerning reloadable prepaid cards.

- Final disclosure rules and requirements concerning high-cost mortgage loans and mortgage servicing.
- Final rules on mortgage originator standards. Among several requirements, the rules will affect how originators are able to be paid, and qualification requirements.
- Rules establishing the scope of the CFPB's nonbank supervision program in the markets of (1) consumer credit; (2) money transmission, check cashing, and related activities; (3) prepaid cards; and (4) debt relief services. (The CFPB has already completed its first two "larger participant" rulemakings addressing consumer debt collection and consumer reporting agencies).

But the changes the Bureau has in store aren't confined to regulations. The Bureau has said it has open investigations in virtually all of the market areas under its jurisdiction. The fact that the President has won reelection means that these investigations will continue unabated, and that more are certain to come.

In its first three out of four enforcement actions, the Bureau has aggressively scrutinized and been critical of how banks monitor third-party vendors and employees; designed, approved, and implemented compliance management systems; and interfaced with consumers. These enforcement actions also were the by-product of multi-agency cooperation between the CFPB and other federal and state banking departments. This level of coordination is expected to continue.

Bottom line: The Bureau has become known as a "Beltway Start-up" with access to close to a half-billion-dollar budget and more than 1,000 employees. Financial institutions will need to double down on compliance, brace for scrutiny, and search for ways to affect policy directly at the Bureau, as well as through Congress and the courts.

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