

Consumer Financial Protection Agency Update

January 20, 2012

Michael A. Thurman
Loeb & Loeb LLP



Not Legal Advice

- * This presentation is for informational and educational purposes only. It is not offered or intended to provide legal analysis or advice on any specific issues, does not establish an attorney-client relationship and should not be relied upon as legal advice. You should consult with a licensed attorney to discuss any specific factual situation or legal questions relating to your business.

January 4, 2012



- * President Obama's recess appointment of new CFPB Director
- * **Richard Cordray** – former Attorney General of the State of Ohio
 - ▶ Subject to Challenge?

Effect of Director Appointment?

- * Authorizes the agency to exercise the full measure of its powers:
 - * **Supervision**
 - * **Enforcement**
 - * **Rulemaking**



Why do I care?

- * \$500 million budget (does not rely on Congressional appropriations)
- * 1,000-person staff by the end of 2012
 - * Recruited from the FTC, other regulatory agencies, state regulators
- * **More than half** of resources devoted to Supervision and Enforcement
- * Agency answers to ???



What are the agency's powers?

- * Oversees businesses (“covered persons”) that provide “consumer financial products and services”
- * Includes:
 - * Debt settlement
 - * Mortgage lenders
 - * Collection agencies
 - * Credit card issuers
 - * Payday lenders
 - * Credit reporting agencies
 - * And many more
- * Supervises large banks with assets over \$10 billion



What are the agency's powers?

Prohibit unfair, deceptive and **abusive acts** and practices

- * **Unfair**

- * (1) Whether the practice injures consumers
- * (2) whether it violates established public policy
- * (3) whether it is unethical or unscrupulous

- * **Deceptive** – false or misleading



What are the agency's powers?

- * **“Abusive”**

- * "Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service"
- * “Takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service”
- * “Takes unreasonable advantage of the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service”
- * “Takes unreasonable advantage of the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.”

What are the agency's powers?

- * **Similar to the FTC's jurisdiction and authority**

- * **Important differences:**

- * Jurisdiction over **non-profits**

- *

- * **Supervisory powers:**

- * Non-Bank Supervision Unit – headed by Peggy Twohig – former FTC Bureau of Consumer Protection associate director

- *

- * issue CIDs and subpoenas

- *

- * require registration/licensing

- *

- * perform audits, inspections

- *

- * require reports

- *



What are the agency's powers?

Other Differences from the FTC:

- * **“Fast-track” rulemaking authority**
- * **States are authorized to enforce CFPB rules**

What do I need to do?

- * CFPB's process is **complaint-driven** (consumers complaints direct to CFPB, FTC Sentinel, States, BBB, complaint websites, etc.)
 - * Resolve complaints with consumers
 - * Monitor complaints
 - * CFPB Portal for Businesses
- * **Designate a compliance manager** to oversee the company's compliance functions
 - * CEOs, marketing directors do not usually make good compliance managers
- * **Evaluate your procedures and marketing materials** with an eye toward unfairness, deception and abusiveness
- * Implement **written compliance procedures**
- * **Document your implementation** of these procedures

Questions?

Michael A. Thurman
Loeb & Loeb LLP
mthurman@loeb.com
310-282-2122

