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Dodd-Frank Financial Reform Law

ALERT

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It Starts! CFPB Announces Implementation of its Nonbank Supervision Program

Within hours of President Obama's recess appointment of Richard Cordray as the first director of the Consumer Financial Protection Bureau, the directors of the agency's banking and nonbanking supervisory divisions announced the activation of the nonbank supervision program. Although the CFPB previously had assumed responsibility for supervising large banks with assets in excess of $10 billion from other banking regulators last July, this marks the first real change to the consumer financial landscape for nonbanking companies.

In a statement on the agency website, Nonbanking Supervision Unit director Peggy Twohig and Depository Supervision Unit head Steve Antonakes announced that the new program will begin immediately overseeing mortgage companies (including originators, brokers and servicers), loan modification and foreclosure relief services, payday lenders and private education lenders.

The agency will also soon enact rules specifying the definition of "larger participants" for all other consumer financial markets, including debt collection, consumer reporting, auto financing and money services businesses. Those companies that are designated as "larger participants" also will be subject to the CFPB's supervisory jurisdiction.

The supervisory unit directors also reminded businesses that the agency is authorized to investigate and supervise "any nonbank that it has a reason to determine is engaging or has engaged in conduct that poses risks to consumers with regard to consumer financial products or services." They promised that the CFPB will publish rules and procedural guidelines governing these investigations in the near future.

The Nonbank Supervision Unit has a number of tools at its disposal for examining companies under its supervision. Besides requiring those companies to file certain reports, it can review materials used by the companies to offer their products and services, review their compliance systems and procedures, and review promises made to consumers. Although the announcement indicates that the CFPB generally will notify companies in advance of examinations, it did not reveal how much notice the agency would provide or under what circumstances it would withhold prior notice.

The announcement committed to apply the Dodd-Frank Act's mandate that the nonbank supervision system be risk-based. As such, the unit heads stated that the agency will evaluate a number of factors in determining whether to implement supervision, including the company's volume of business, types of products or services, and the extent to which it is subject to existing oversight by state regulators.

The agency has been recruiting actively and hiring its supervisory and examination staff since it opened for business in July 2010. The announcement confirms that examiners with state and federal banking and financial services regulatory agencies experience have been hired and are training within the division. The supervision staff will work throughout the U.S., with regional offices located in New York, Washington, D.C., Chicago and San Francisco.

The CFPB also announced that Raj Date, the former bank executive who has been de facto head of the bureau since July, will serve as the agency's deputy director. Kent Markus, former chief legal counsel to former Ohio Governor Ted Strickland who served as Cordray's deputy for enforcement, will now run that division.

For more information on the content of this alert, please contact Michael A. Thurman at 310.282.2122 or Michael Mallow at 310.282.2287.

Loeb & Loeb's Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas – including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance – who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

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