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Obama's Re-Election: Full Speed Ahead At The CFPB

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Law360, New York (November 07, 2012, 5:16 PM ET) -- With President Obama's re-election and control of the Senate remaining firmly in control of the Democrats, the Consumer Financial Protection Bureau's hand has strengthened. I've been saying all along that, even if Mitt Romney became president, it was unlikely that there would be any weakening of the CFPB until at least 2014, when Romney would have had the opportunity to appoint a new director.

As things now stand, it is unlikely that there will be any significant change in direction at the CFPB throughout Obama's next term unless a court were to rule that his recess appointment of Richard Cordray was invalid or unless the Democrats in the Senate show a willingness to agree to amending Dodd-Frank to substitute a five-member commission for a single director in exchange for something else for which they need Republican support in the House (e.g., tax reform). With Elizabeth Warren's, D-Mass., election to the Senate, it seems less likely that the Democrats are going to be willing to make any changes to the structure of the CFPB.

Thus, the CFPB has been given a clear signal that it does not need to change its direction. While Cordray could elect to serve out the remainder of his term in 2013, most pundits believe that he will resign during the third quarter of next year to return to Ohio to run for governor. At that point, Raj Date will succeed him as acting director.

The only thing that could upset the applecart is if a court were to rule that Cordray's appointment was invalid. If that were to occur, the CFPB's supervision and enforcement initiatives related to nonbanks would be invalid. Any regulations promulgated by the CFPB might also be invalid. There would then be a lot of pressure on Obama and the Senate Democrats to barter with the Republicans. That could result in significant CFPB reform. However, unless and until that happens, it will be business as usual for the CFPB and the financial institutions that it exercises jurisdiction over.

So where is the CFPB's agenda for the rest of this year and next year? On the regulatory front, it will continue to focus on finalizing a slough of rules pertaining to the origination and servicing of residential mortgage loans. Many if the rules must be in place by Jan. 21 of next year.

On the supervisory front, the CFPB will continue to examine the largest banks, payday lenders, private student lenders, mortgage originators and services and large credit bureaus. Beginning on Jan. 2 of next year, it will begin to examine large (those having note than $10 million in annual receipts) debt collectors, debt buyers and collection law firms. This will be the first time that those entities have ever been subject to examination for compliance with federal consumer protection laws. Our firm has been involved in helping dozens of these companies prepare for their first CFPB exams.

On the enforcement front, the CFPB will undoubtedly announce additional settlement agreements with banks and companies that it is now investigating. It has within the past few months entered into settlement agreements with three large credit card issuers involving hundreds of millions of dollars. New investigations will continue to be launched since the Bureau's modus operandi seems to be to regulate the consumer financial services industry through enforcement rather than the issuance of new rules.

Finally, I expect that the CFPB will begin to supervise other industry groups such as consumer finance companies, auto finance companies and companies that issue prepaid cards.

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