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Regulatory: Title X's designated transfer date

The transfer date is here; now what?

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This column is part a series of articles on the new Consumer Financial Protection Bureau and the upcoming wave of regulations affecting the consumer financial industry.

On July 21, 2011—the "designated transfer date" in the parlance of Title X of the Dodd-Frank Act—the new Consumer Financial Protection Bureau will officially open its doors and inherit the remainder of its many and considerable powers. With the designated transfer date looming on the horizon, now is a good time to take a look at the significance of the date in the broader context of the Act and the upcoming regulatory onslaught.

What happens on the designated transfer date?

Much of Title X lay dormant before the designated transfer date. A handful of provisions took effect last year when President Obama signed the bill. But as the remainder of Title X becomes effective, a host of significant changes will take effect, including the bureau's specific authority to protect against unfair, deceptive or abusive acts or practices, and its varied enforcement tools and powers.

Before the designated transfer date, the bureau itself was technically in the hands of the Department of Treasury, which had the authority to provide any administrative services necessary to support the bureau. On the designated transfer date, everything shifts over to the bureau, including some or all of the consumer financial protection functions previously provided by the "transferor agencies," that is, the current/soon-to-be former regulators of various portions of the consumer financial services industry, including the Federal Reserve, OCC, OTS, FDIC, FTC, NCUA and HUD.

In addition, on the designated transfer date, the Board of Governors of the Federal Reserve must transfer to the bureau the amount of money the director has determined to be reasonably necessary for the bureau to carry out its duties under Title X. For 2011, that amount is capped at 10 percent of the Fed's 2009 total operating expenses. The cap rises to 11 percent in 2012, and tops out at 12 percent in 2013 and all subsequent years.

What happens after the designated transfer date?

The designated transfer date triggers the start of a series of deadlines placed on the bureau by the Dodd-Frank Act. Some of the key triggers are set forth below.

Within 90 days of the designated transfer date:

- The bureau's "Private Education Loan Ombudsman" must enter into a memorandum of understanding with the Higher Education Act's Student Loan Ombudsman to ensure the coordination of assistance to borrowers seeking to resolve disputes regarding their private education or Federal student loans

- The transferor agencies must transfer all employees that are to be transferred to the bureau

Within 180 days of the designated transfer date:

- The bureau is required to appoint an ombudsman who must (1) act as a liaison between the bureau and anyone who has an issue resulting from the bureau's regulatory activities, and (2) assure that the agency maintains a safe, encouraging, and confidential environment for complainants to come forward

- The bureau must establish the Office of Financial Protection for Older Americans, which will facilitate the financial literacy of seniors who have reached the age of 62 years or older. The literacy initiative must include protection from unfair, deceptive, and abusive practices, and current and future financial choices.

- The Attorney General and the bureau must coordinate investigations and proceedings, and to negotiate an agreement for such coordination

Within six months of the designated transfer date:

- The Federal Trade Commission and the bureau are required to reach an agreement for coordinating enforcement actions

Within one year of the designated transfer date:

- The bureau must establish the Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs

- The bureau is required to issue a rule defining covered persons who are "larger" participants of a market for other consumer financial products or services. The bureau is required to consult with the Federal Trade Commission on this rule and recently started taking comments from its website on who should fall within the definition of a "larger" participant.

- The bureau must develop and propose for public comment model disclosure for mortgages. These disclosures must combine the required TILA disclosures and the section 4 and 5 disclosures required by RESPA.

- The bureau must conduct a study on reverse mortgage transactions

- The bureau must submit a report to Congress describing recommended legislation and updated regulations directed at protecting consumers from exchange facilitators for transactions primarily for personal, family or household purposes

Within two years of the designated transfer date:

- Through the bureau's Office of Financial Education, the Director is required to submit its first annual report on its (1) financial literacy activities, and (2) strategy to improve consumer financial literacy. The annual report goes to the Senate's Committee on Banking, Housing and Urban Affairs, and the House's Committee on Financial Services.

- The bureau is tasked with monitoring the risks presented to consumers by consumer financial products and services. Beginning two years after the designated transfer date, the bureau must publish at least one report per year detailing the "significant findings" of its monitoring activities.

- The protection from pay decreases, involuntary separation, and involuntary reassignment afforded employees transferred from transferor employees expires.

Within three years of the designated transfer date:

- The president's authority to mediate disputes and issue orders or directives to effect the transfer of personnel or property from a transferor agency to the bureau sunsets.

Enjoy the designated transfer date! In coming installments, we will take a deep dive on the new provisions of Title X addressing unfair, deceptive, or abusive acts or practices.

Martin Bishop will be presenting a webinar addressing issues surrounding the designated transfer date and the transfer of power to the bureau on July 21, 2011. The event is free, but advance registration is required: http://www.foley.com/news/event_detail.aspx?eventid=3795.

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