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New CFPB Director's First Act: Implement Federal Nondepository Supervision Program

On Thursday, January 5, 2012, President Obama purported to make a recess appointment of Richard Cordray as the first director of the Consumer Financial Protection Bureau (CFPB). Although Senate Republicans are questioning the president's ability to make a recess appointment while the Senate was holding short pro forma sessions, the CFPB is proceeding as if the appointment were valid. If valid, the appointment triggered the CFPB's full supervision and enforcement powers provided pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

For his first official act as CFPB Director, Mr. Cordray declared the implementation of a federal nondepository supervision program. Pursuant to the CPA, the CFPB now has the authority to regulate nondepository institutions, such as:

- Non-bank mortgage lenders, servicers, originators, and brokers
- Private education lenders and servicers
- Other nondepository consumer lenders, including payday (deferred presentment), title, and small loan lenders
- Lease-to-own companies and consumer leasing companies (other than operating leases)
- Merchants and retailers who sell or lease goods to consumers with finance charges or in more than four installments
- Sales finance companies
- Consumer financial advisors
- Credit counseling, debt management, debt settlement, and foreclosure relief service companies
- Consumer reporting agencies
- Debt collectors
- Money transmission, remittance, and currency exchange companies
- Escrow agents and title companies
- Appraisers of real and personal property
- Issuers and sellers of stored-value products, such as gift cards, gift certificates, and general-use prepaid cards
- Payees of consumer electronic fund transfers
- Processors of consumer financial data
- "Larger participants" yet to be defined
- Service providers to any of the foregoing

The CFPB announced that the nondepository supervision program will include conducting individual examinations of these nondepository consumer financial service providers, and may also require additional reporting requirements. The CFPB has previously released its Supervision and Examination Manual that will control how the CFPB will supervise and examine consumer financial service providers. The Manual also provides clues regarding how the CFPB may determine whether providers are engaging in unfair, deceptive, or abusive acts or practices.

If it is determined that a consumer financial services provider has violated any portion of Dodd-Frank, the provider may face harsh penalties, including monetary penalties of up to \$5,000/day for violations; up to \$25,000/day for reckless violations; and up to \$1 million/day for knowing violations.

For continued monitoring of CFPB developments, as well as other financial services legal issues, be sure to visit our blog [CFSLBulletin.com](http://www.CFSLBulletin.com) (<http://www.CFSLBulletin.com>).

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