Overview of the Consumer Financial Protection Bureau
What’s new and what to expect in 2012
Executive summary
Since its inception in 2010 with the passage of the Dodd-Frank Act, the Consumer Financial Protection Bureau (CFPB) has been hiring staff and building a new regulatory agency from the ground up. The bureau was officially “stood up” on July 21, 2011, assuming regulatory authority to enforce 10 federal consumer protection laws. The bureau also assumed supervisory and examination authority of banking institutions with more than $10 billion in assets.

In January, the president used a recess appointment to name Richard Cordray as the first director of the CFPB, which expanded the bureau’s authority to supervise nonbank lenders that are “large-market participants.” A proposed rule, expected to be finalized later this year, will define these participants. Although controversy continues to surround the recess appointment, Director Cordray has signaled that he intends to exert the new regulator’s full authority.

In the near term, the CFPB primarily will focus on reviewing industry practices, aggregating data on the products and services over which the bureau has authority, and establishing mechanisms for collecting consumer complaints on specific financial products and services, such as credit cards, mortgages and student loans. As financial institutions prepare for future CFPB actions, it is critical that they are following industry best practices and complying with existing federal and state regulations.

Status of the CFPB
An integral part of the process of building the new bureau has been hiring key staff and managers to develop the bureau’s regulatory, enforcement and supervision policies that will guide the new agency for many years to come.
Staffing
According to the CFPB’s semiannual report, which was released in January 2012, the bureau has hired more than 750 employees, 230 of which were transferred from other federal banking regulators and agencies. As you can see from the model organizational chart below, the CFPB has filled nearly all of the vacant management positions within the fledgling agency. Furthermore, the CFPB’s organizational chart demonstrates what markets and activities will be at the top of the bureau’s agenda as it moves forward.

What are the CFPB’s powers?
Now that the agency has a director in place, the CFPB can employ a full spectrum of regulatory and enforcement tools not only with regard to banks, but also nonbank institutions that provide financial products and services to consumers, such as payday lenders, private student lenders, and mortgage services and originators. The CFPB can write new rules in line with existing consumer financial protection laws and move forward immediately to supervise and examine these financial entities.
Defining large market participants
In addition to specified nonbank lenders, the Dodd-Frank Act requires the CFPB to define other “large market participants” involved in consumer financial markets before July 21, 2012. Last summer, the CFPB sought comment on the possible markets that should be included as larger participants. In February, the CFPB released a proposed rule that defined debt collectors and the consumer reporting agencies as larger market participants, making them susceptible to the bureau’s nonbank supervision program. The proposed rule would include third-party debt collectors with more than $10 million in annual receipts and consumer reporting agencies with more than $7 million in annual receipts.

Coordination with state and federal regulators
The CFPB also has been active in coordinating its efforts with law enforcement and regulatory agencies at the state and federal levels. Last April, the bureau and the National Association of Attorneys General announced agreement on a Joint Statement of Principles. Under the principles, the parties will seek to work together to share information and assist in the enforcement of federal and state consumer financial protection laws. Moreover, in January the CFPB and the Federal Trade Commission (FTC) announced that they had reached a Memorandum of Understanding. Because both the CFPB and the FTC have authority over nonbank entities that offer consumer financial products, the Dodd-Frank Act required the two federal regulators to negotiate an agreement to coordinate enforcement actions against entities that are subject to both agencies’ jurisdiction and to harmonize certain rule-makings.

The bureau’s top priorities
CFPB Director Cordray and his staff have outlined a number of top priorities for the agency as it begins to exert its full regulatory, supervisory and enforcement authorities over banks and nonbank lenders.

Payday lending
Regulation of the payday lending industry is one of the top agenda items for the CFPB. Although Director Cordray has stated that both bank and nonbank short-term lenders play an important role in ensuring that consumers have access to emergency loans, he has stressed that the bureau will be active in examining and regulating the industry to ensure that the products actually help consumers. In January, the bureau published its examination manual for payday lenders and also held a public field hearing to gain a better understanding of the industry and its practices. Director Cordray said the CFPB intends to distinguish between those loans that get a consumer over a short-term financial problem and those that trap consumers into a continuing spiral of debt.
**Debt collection**

In addition to the payday lending industry, issuing guidance for the debt collection industry will be a top priority. The Dodd-Frank Act transferred the FTC’s rule-making and enforcement authority over the debt collection industry to the CFPB. While the FTC was the debt collection industry’s primary regulator, the FTC was unable to provide debt collectors with clarity because it could not write new rules without permission from Congress. Although some in the industry have expressed concern about giving the CFPB the ability to write new rules and to take enforcement action, there are some in the debt collection industry who believe the new regulator will bring about a more predictable and consistent legal framework that reduces compliance uncertainty. The CFPB has said one of its top priorities is ensuring that debt collectors have transparency of the chain of title to debts before proceeding with collections.

**Consumer disclosures**

Promoting greater financial understanding of the products and services that consumers are purchasing also is important for the CFPB. Even before the CFPB had a director, the agency began the process of developing model mortgage disclosure forms for consumers as part of its Know Before You Owe program. The program aims to make financial disclosure forms shorter, simpler and easier for consumers to understand. In addition to the model mortgage disclosure forms, the CFPB has partnered with the Department of Education to develop a financial aid shopping sheet to help students compare their loan options. The bureau also has released model credit card agreements that are shorter and easier for consumers to understand. The CFPB currently is reviewing comments on the proposed model forms and is likely to issue a final draft at some point this year. The CFPB has said one of its goals is to establish disclosures that will allow consumers to easily compare the terms, conditions and pricing of similar financial products and services.

“One of our main objectives is to make sure the costs and risks of financial products are clear.”

— Richard Cordray in testimony before the House Financial Services Committee, Feb.15, 2012

**Data collection**

The CFPB is undergoing an effort to collect and aggregate data from both consumers and businesses on various financial products and services. For example, the agency has set up consumer complaint systems for disputes related to credit cards and mortgage products and soon will introduce a similar system for private student loans. The CFPB has stated that it intends to use the data and information that it collects from these efforts as a basis for future regulatory and enforcement actions.
Credit scores
As required by the Dodd-Frank Act, the bureau has stated that it will review current practices relating to disclosures of consumer credit scores. Last summer, the CFPB released a preliminary report on differences between credit scores that consumer reporting agencies provide to consumers and those that are provided to lenders. The report provides background on the issue, including how scores are obtained and used. The CFPB stated in the report that it plans to conduct further research and analysis on the issue over the next year and then issue a final report quantifying the differences among scores and how the variations may impact consumers.

Consumer reporting
The CFPB intends to focus on processes and procedures that affect the accuracy of credit reports. The Dodd-Frank Act requires CFPB officials to see how accuracy is affected not only by the processes established by credit reporting agencies, but also by data furnishers, including those in the collections industry. The CFPB also will examine the efficacy of the processes established by consumer reporting agencies and data furnishers for resolving consumer disputes, including how these processes and procedures affect the accuracy of consumer reports.

Ability to pay
Another issue before the CFPB is how it will interpret the ability-to-pay rule that it inherited from the Office of the Comptroller of the Currency (OCC). This rule permits the use of modeled income or income estimators for assessing a consumer’s ability to pay. There has been some uncertainty surrounding the rule since it was transferred to the CFPB from the OCC. The OCC has taken a stance that this is a rule that regulates the safety and soundness of the financial system, while the CFPB is looking at the rule as a consumer protection issue. Experian® and lenders have urged the CFPB to make this issue a higher priority to bring greater clarity to the rule.

Financial literacy
The organizational structure of the CFPB clearly establishes that consumer financial literacy will be a chief priority. The Office of Consumer Education and Engagement will organize programs that help consumers understand the costs, risks and benefits of financial products. The office will be working with government and nonprofit organizations as well as the private sector to develop a variety of tools and approaches to address the different types of financial choices. Specific groups of consumers also have been identified for additional resources. The office has developed programs focusing on older Americans, students and service members. Across the organization, the CFPB will be ensuring compliance with fair lending laws.

Attorney-client privilege
Although there are a number of legislative proposals that would restructure the CFPB, they generally face steady opposition in Congress. However, one area that Democrats, Republicans and even the CFPB’s new director agree on is ensuring the confidentiality of privileged information that financial entities provide to the bureau.
Documents covered by attorney-client privilege include any communication from a financial institution’s lawyer that provides legal advice. Current law ensures that when a bank turns over documents containing privileged information to a specific list of regulators — the Federal Reserve System, the Federal Deposit Insurance Corp. or the Office of the Comptroller of the Currency — the bank is assured that its right to privilege will not be waived. This guarantees banks that the privileged information will not be viewed by third parties, including other regulators, who could use it to mount a legal case. However, the law that created the CFPB failed to add the bureau to the list of banking regulators exempted from privilege. Without the explicit legal protection, financial institutions have argued that they could not be certain that privileged information provided to the CFPB would remain confidential.

Legislation to address the issue already has been introduced, and CFPB Director Cordray stated that while he does not believe it is necessary, he would support legislation to ensure that privileged information provided to the CFPB has the same legal protections that it does at the other banking regulatory agencies.

**Conclusion**

Over the next year, the CFPB will continue to develop the agency’s organizational structure and focus on protecting consumers and enhancing their understanding of financial products and services. It is expected that the CFPB will engage in a number of supervisory activities to review current industry practices and collect data from businesses and consumers alike to gain a clearer picture of the products, services and markets that the bureau has authority over. Although there may be uncertainty regarding what rules the CFPB will draft or the types of financial products and services the bureau will examine, one thing is certain: the CFPB is here to stay.

Despite the controversy surrounding the recess appointment of Cordray and the continued debate in Congress over how to increase oversight over the bureau, the CFPB is planning to move forward with a full regulatory agenda.

It is imperative that financial institutions under the authority of the CFPB ensure that they follow industry best practices and are in compliance with current federal and state regulations to prepare for future actions by the new consumer financial regulator.