

REGULATORY INTELLIGENCE

Disarray at U.S. watchdog CFPB throws authority in doubt; firms face caution, opportunities

Published 28-Nov-2017 by
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Financial firms under the U.S. Consumer Financial Protection Bureau's jurisdiction must proceed with caution in dealing with the agency amid a legal battle over its leadership, but there also may be opportunities, compliance experts said on Monday.

The consumer protection agency created by the 2010 Dodd-Frank Act has been thrown into disarray by following the resignation of Richard Cordray, the CFPB's first director. Cordray and President Donald Trump each named their own choices to be acting director. The standoff entered federal court on Monday sowing confusion over the agency's continued authority.

"Until the courts sort out the question of who is in charge of the agency, there isn't anything the CFPB can do in terms of issuing regulations or formal statements because nobody knows if it has been done by an individual with lawful authority or not," said Alan Kaplinsky, a specialist in consumer financial services with Philadelphia-based law firm Ballard Spahr.

In the meantime, companies should not enter any formal agreements with the CFPB until the outcome of the ongoing legal battle and appeals process is known, he said. "The battle is not going to go on forever," he added.

Cordray, appointed during the presidential administration of Barack Obama, resigned on Friday and designated his chief of staff, Leandra English, as deputy director and by extension, interim head at the agency. Trump, who has the authority to nominate the permanent replacement to Cordray also nominated an interim chief for the role.

Trump chose Mick Mulvaney, Director of the Office of Management and Budget and a fierce critic of the CFPB as acting director. English was quick to sue Mulvaney over the appointment, but lacking any clear guideline on who would continue in the role, both English and Mulvaney asserted their claim to authority on Monday. Mulvaney, who showed up with a big bag of donuts for staff, immediately announced a hiring freeze and halt to new rules.

Long battle could extend compliance dilemma

A verdict is expected soon in the case being heard by federal Judge Timothy Kelly, a Trump appointee. The legal battle, which hinges on conflicting statutes governing appointments, could take weeks or months to play out as either of the parties could appeal the initial court decision.

However, some experts believe the CFPB's authority may have already been gutted, irrespective of the court outcome. Trump has echoed the criticisms of financial firms who argue the CFPB has been too harsh an enforcer. He could soon pick an anti-regulation nominee to lead the CFPB and further his deregulatory agenda. That pick would be subject to Senate confirmation.

"No matter how this particular situation ends up, this current president is going to be able to choose the successor. I can't foresee a situation where the CFPB comes out stronger," Elin Cherry, founder and chief executive of compliance consulting firm Elinphant said.

Companies could quickly reevaluate matters they have that require CFPB attention and try to contact the agency in the hope that officials may be less likely to aggressively oppose requests, given the lack of clear direction from the top. As long as companies do not cross a legal threshold and have their own controls, policies, and practices in place, they could choose to execute plans upon not hearing back from the CFPB, Cherry said.

"If you want leniency, now is the better time to go to them than not," she said, as the CFPB may more likely refrain from responding, rather than make a decision that could likely be invalidated later. "I think the CFPB is going to walk softer in the near future and I might take some risk and go ahead with it."

Kaplinsky too expects the CFPB to take a fresh look at any new or pending rules pushed by Cordray in his last days as director, if Mulvaney takes the helm.

In one such recent rule issued in October, the CFPB imposed additional restrictions on short-term "payday" loans with balloon payments and on the use of auto titles as collateral. Should the courts rule in favor of English's appointment, she could hold the financial industry to the same aggressive standards pursued by Cordray until Congress approves a permanent candidate to take on the position, Kaplinsky said.

As a consumer watchdog and regulatory authority over the financial industry, the CFPB says it has provided \$11.7 billion in relief for more than 27 million harmed customers since its creation in 2011.



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Produced by Thomson Reuters Accelus Regulatory Intelligence

28-Nov-2017



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