Consumer Financial Services Regulation Will Remain in a Trump Presidency

By Joann Needleman / Nov 10, 2016

As the country emerges from the smoke of a bitter and downright ugly election cycle, there is much speculation about the canvas of the regulatory landscape. For the consumer financial services industry, the past eight years have been particularly brutal. The Consumer Financial Protection Bureau's (CFPB) mission to regulate the offering and provision of consumer financial products and services, although well intended, was in the view of many observers poorly executed. Vague and muddled regulatory expectations have resulted in exorbitant compliance costs with no corresponding benefit in service or even financial stability.

Many believe that a Trump administration signals the end of this era and his promises of "reg relief" may finally quell industry suffering. There is no doubt that Congress will attempt to modify aspects of the CFPB's authority by reforming its structure into a commission and mandating more Congressional accountability. However, before you start shredding your policies and procedures and burning your compliance management systems, keep in mind a few things.

First, Trump's electorate is the same body of consumers that the CFPB has been charged to protect. This could mean a big opportunity for lenders, especially small dollar lenders, whose "access to credit" messaging now resonates favorably. Opportunities now exist for this industry to fashion reasonable "ability to repay" standards which not only help the small businesses who lend but the consumers who need the credit. Credit reporting, data collection and data aggregation will still be necessary elements to the underwriting process, but strategic and well thought-out implementation now seems more within reach.

Second, while there may be opportunities to relax some mortgage lending requirements, does this industry want to go through yet another wholesale change of TRID? The CFPB has listened to the comments voiced by the industry and made repeated tweaks to Regulations X & Z. A jump start in the housing market will be the real test to see if the regulations are truly workable.

Third, the debt collection industry is in need of rules, if not a full legislative makeover. The Fair Debt Collections Practices Act is an outdated piece of legislation that was never subject to rulemaking by any federal agency. Only in 2011 was the CFPB given this rulemaking authority. Opportunities may now exist for Congress to update the law into the 21st Century but there must be consistent implementing regulations, or else deficiencies in this market will only be perpetuated. The CFPB's recent proposals for rulemaking for the 3rd party debt collection industry (those who collect debt for others) lack some fundamental realities of the industry, including coordination with their 1st party creditor clients.

Fourth, student loans and student loan servicing is a problem that has bipartisan agreement on the need for change. The CFPB has signaled this as a top priority in 2017. It's time for the Bureau to put forth concrete proposals rather than just publicizing industry-wide problems. Congressional action could have a positive effect by mandating the Bureau to set specific timetables to act in order to develop an appropriate regulatory framework.

The consumer financial services industry will always be subject to regulation and compliance requirements. Oversight will not be eliminated by Congress or President Trump. Nonetheless, the industry is now in a position to demand and achieve workable and reasonable regulations so that bright lines can be drawn to identify best practices and lawful behavior. The industry should not only want compliance but a clear path to achieving it.

Clark Hill's Consumer Financial Services Regulatory & Compliance Practice Group is a national leader in the field of consumer financial services law, providing strategic legal counsel to clients in all areas of consumer finance. We provide counsel, consultation and litigation services to financial institutions, law firms and debt buyers throughout the country. Our group can help you navigate this rapidly evolving regulatory environment. Our exceptional team of lawyers and government and regulatory advisors has extensive experience in - and an in-depth understanding of - the laws and regulations governing consumer financial products and services. We can assist you in developing and implementing compliance programs, as well as defending consumer litigation and regulatory enforcement actions.

