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Uncertainty Over CFPB Tops Banks' Worries, Survey Says

By **Evan Weinberger**

Law360, New York (July 06, 2012, 3:41 PM ET) -- Banks and other companies subject to regulation by the Consumer Financial Protection Bureau say their top concerns about the fledgling agency are uncertainty over its approach to regulation and enforcement actions, a survey released Thursday by Mayer Brown LLP found.

Even though respondents to Mayer Brown's survey had varied responses to their specific worries about the CFPB, the one common theme throughout interviews was uncertainty, said Jeffrey Taft, a partner with the firm.

"There's still a great sense of uncertainty around there," he told Law360. "Clients tend to hate the unknown."

Of the 50 general counsel, compliance officer and other executives at depository institutions and nonbanks that Mayer Brown interviewed for the survey, 42 percent said that uncertainty over the CFPB's regulatory approach was their biggest worry about the new agency.

The CFPB's rulemaking authority was the top concern of 30 percent of respondents, while worries over the bureau's enforcement and examination process ranked highest for 28 percent of the respondents, Mayer Brown said.

The 2010 Dodd-Frank Act, which brought the CFPB into existence, gave the new watchdog agency a broad remit to oversee the consumer finance market. It took over a great deal of rulemaking authority from other banking regulators and was handed authority over all depository institutions with $10 billion or more in consolidated assets, as well as a large number of nonbank firms.

The agency is already in the process of rewriting the rules for the mortgage market, has posted an online database for credit card complaints and has designated debt collectors and credit reporting companies for increased regulatory oversight.

Dodd-Frank also gave the CFPB regulatory responsibility for nonbank mortgage companies, payday lenders and private student loan companies.

According to the survey, some 60 percent of respondent companies with $10 billion in assets or more have already made changes to their practices in preparation of examinations and regulation by the CFPB, as well as to avoid potential enforcement actions.

The survey said those changes included new compliance programs; reviewing advertising and marketing materials; reviewing products and services for elimination and for potential harm for consumers; and implementing new procedures for resolving customer complaints.

Changes are not only coming to the way that companies design and market financial products. Mayer Brown found that 76 percent of surveyed companies had created policies and procedures to handle requests for information during a CFPB examination or investigation.

Not surprisingly, given the changes that companies are making, 78 percent of those surveyed expected their regulatory costs to grow by more than 20 percent due to increased supervision by the CFPB.

“I think costs will go down over time, but I don't think it'll disappear. It's going to be more expensive to run your business,” Taft said.

While cost is important, Taft said that a potentially bigger concern regarding the CFPB was a lack of trust.

“I think there still needs to be trust built between the CFPB and the regulated entities. That's obviously going to take time to establish,” he said.

Part of the problem for regulated companies is that although the CFPB has a stated policy that it will handle privileged documents in the same confidential manner as other banking agencies, that requirement is not written into the statute. Because of that, 80 percent of surveyed companies told Mayer Brown they feared that third-party actors could get access to those documents.

There are also worries that the CFPB will overlap with the work of state attorneys general, opening companies up to even more potential litigation, Mayer Brown said.

--Editing by Eydie Cubarrubia.