An article on the authority of the Consumer Financial Protection Bureau includes statements from Professor Hawkins regarding potential new rules.

CFPB and 'the great unknown'
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BYLINE: Joel Poelhuis

Uncertainty surrounding the Consumer Financial Protection Bureau extends from how the agency's use of broad new authority could impact consumer lending to the question of whether the organization will even survive political opposition with its current structure intact.

The Dodd-Frank Act outlines powers for the newly created CFPB that include oversight not only of banks and credit card companies but of nondepository participants in the mortgage market, payday lenders and companies that offer student loans - groups that previously faced regulation mostly on the state level.

However, it could be some time before the bureau is able to embark on extensive new rulemaking, as Republicans in the Senate have said they will block the confirmation of Richard Cordray, the Obama administration's nominee for CFPB director, unless the agency's structure is changed.

The main demands are that the director position be abolished in favor of a five-member board, that the agency's budget be subject to the congressional appropriations process rather than fixed as a percentage of the Fed's budget and that the standard and the voting threshold for a Financial Stability Oversight Council veto of CFPB actions be lowered, said Edward Mills, a Washington policy analyst for FBR Capital Markets. The Senate Banking Committee vote Oct. 6 that sent Cordray's confirmation to the full Senate was split 12-10 along party lines. And Mills told SNL that Republicans have very little incentive to confirm a director as long as next year's election holds the possibility of a change in power.

Even if a director is confirmed, one thing that is certain is that the agency does not have the power to cap the interest rates lenders charge consumers, meaning it will not be able to enforce any maximum usury rates, like those in effect in many states. That said, University of Houston law professor Jim Hawkins, who has written about the bureau for the Chapman Law Review, said it is possible the CFPB could try to institute a cap on the number of times a consumer is allowed to roll over a payday loan into new borrowing.

However the rules are eventually written, JMP Securities analyst John Hecht said any impact on payday lending from the bureau would probably be further down the road - and not only because of political delays.

"I think the division, first off, is initially going to focus on mortgage and credit card stuff, and as it shifts towards other products, when it gets to payday lending, I think the initial focus is going to be number one on disclosure ... and number two on enforcement," he said.
Jamie Fulmer, a representative for Advance America Cash Advance Centers Inc., one of the nation's largest payday lenders, said the company doesn't necessarily oppose additional disclosure requirements, as long as they are applied evenly throughout the industry. Hecht, who covers the payday lending sector, added that most short-term lenders are used to dealing with state regulation and some federal oversight already.

"Adding another layer of regulations would be a hassle and would potentially cost them, but I think they could accommodate it in terms of registering and so forth," Hecht said.

Some analysts believe the biggest impact on the sector won't be seen for some time, but Hawkins said that while it is possible the CFPB will turn its attention to higher-dollar industries such as mortgages first, the agency could also see payday lending as "low-hanging fruit," ripe for introductory regulation.

"Some of the other financial products will take a lot more research and a lot more fight to get something done on," Hawkins said, surmising that the bureau could use rulemaking for the sector to establish itself.

This would be welcomed news for Kathleen Day, a representative for the consumer advocacy group Center for Responsible Lending, who said heightened supervision of specialty lenders by the CFPB is essential to provide a level playing field for banks and nonbanks and to avoid a "race to the bottom" in terms of consumer practices.

And while the political stalemate means it does not look likely that any new layers will be piled on soon, Mills said in the meantime that the Federal Trade Commission has stepped up enforcement of existing regulation regarding deceptive acts and practices in payday lending.

"I think it will be interesting to see what extent, on the federal level, the FTC tries to exert any responsibility on nonbank financials," Mills said.

While the outlook is still murky on what rules the agency will enact or when it will be in the position to enact them, some of the worst fears of nondepository lenders have subsided somewhat.

"A fear that a lot of alternative financial providers might have had that 'their goal was to shut us down immediately' - I don't think that's much of a risk," said Hawkins. "It seems like it's much more likely that they'll focus on disclosure-based rules."

Some of the CFPB's authorities have yet to be defined, such as a clause that authorizes it to prohibit "unfair, deceptive, or abusive" practices. Hawkins said that the "abusive" wording is novel enough to give the agency quite a bit of latitude in defining the term. It could possibly enable the outright ban of certain types of business, Mills said, though he added the scope of enforcement likely to result from that part of the law is still opaque.

"That is the great unknown," Mills said.

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