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Consumer Financial Protection Bureau Opens Whistleblower Complaint Hotline

The Consumer Financial Protection Bureau (the "CFPB") recently went live with a telephone hotline and email address for tipsters and whistleblowers with information about potential violations of federal consumer financial laws, with an online tips portal to be launched early in 2012. "Tips will help inform Bureau strategy, investigations, and enforcement," said Richard Cordray, Assistant Director of Enforcement for the CFPB.

The Consumer Financial Protection Act (the "CFPA"), Title X of Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), enacted strong anti-retaliation protections for employees of consumer financial product and service companies who are retaliated against for disclosing information concerning fraudulent or unlawful conduct relating to a consumer financial product or service.

The protections apply to a wide range of employers from banks to nonbank financial service providers, such as organizations that extend credit, mortgage lenders and servicers, providers of financial advisory services, consumer reporting agencies, money transmitters, providers of prepaid cards, payday lenders, credit counselors and debt settlement providers, and debt collectors.

Key Elements of the Anti-Retaliation Protections

Section 1057 of the Dodd-Frank Act prohibits banks and other consumer financial services providers from retaliating against an employee for providing information to an employer, a regulatory agency, or law enforcement agency about a reasonably perceived violation of a federal consumer financial law or a regulation of the CFPB. Under the CFPA, the term "federal consumer financial law" is broadly defined to include, among other things, Title X of the Dodd-Frank Act itself, which prohibits unfair, deceptive, or abusive acts and practices in connection with consumer financial products and services, and several "enumerated consumer laws" and their implementing regulations.

The consumer financial products and services whistleblower provisions protect "any individual performing tasks related to the offering or provision of a consumer financial product or service" who engages in certain whistleblowing activities.

Protected activities by an employee include:

- Providing information to the employer, the CFPB, or any other government or law enforcement agency about an act or omission the employee reasonably believes is in violation of the CFPA, or any other law or rule subject to the jurisdiction of the Bureau;
- Testifying in any proceeding resulting from the enforcement of the CFPA or any other provision of law subject to the CFPB's jurisdiction;
- Instituting any proceeding under any federal consumer financial law; and
- Objecting to, or refusing to participate in, any action the employee reasonably believes to be in violation of any law or rule subject to the CFPB's jurisdiction.

Employees that believe they have been discharged or discriminated against in violation of this whistleblower provision have 180 days from the date of the alleged retaliation to file a complaint with the U.S. Department of Labor ("DOL"). The DOL is authorized to investigate these complaints and order the appropriate relief upon finding that a violation has occurred. The DOL has up to 210 days after the date a complaint is filed to issue a final order, otherwise the claimant can bring a suit in federal district court.

Available remedies may include:

- An order requiring the employer take affirmative action to abate the violation;
- Reinstatement;
- Compensation, including back pay;
- Compensatory damages; and
- At the complainant's request, reimbursement of all costs and expenses (including attorney's fees and expert witness fees) reasonably incurred.

These rights and remedies cannot be waived by any agreement, policy, form, or condition of employment. In addition, this whistleblower provision prohibits mandatory arbitration of a dispute arising under this provision.

Challenges for Providers of Consumer Financial Products and Services

The consumer finance whistleblower protections have significant implications for legal and regulatory compliance and raise a number of challenges for providers of consumer financial products and services. Covered employers will need to consider such issues as:

- How to maintain legal and regulatory compliance with consumer financial protection laws and regulations;
- How to ensure that, to the extent there is a violation of consumer financial protection law or regulations, an employee will take advantage of internal reporting mechanisms as opposed to bypassing such mechanisms and going straight to the CFPB;
- How to conduct internal investigations without encouraging whistleblowers; and
- How to successfully mediate any problems discovered.

Steps to Help Minimize the Risk of Whistleblower Lawsuits and Related Enforcement Actions

The spotlight that the CFPB has placed on soliciting whistleblowers adds an additional layer of exposure to a continually evolving legal and regulatory landscape for providers of consumer financial products and services.

As a result, covered employers should review existing training, compliance, and audit functions and programs. The stronger the compliance policies and practices are, the less likely there will be legal and regulatory violations in the first place. It also will be critical to stay up-to-date on the latest regulatory and enforcement developments related to federal consumer financial laws. In addition, the implementation and strengthening of internal reporting mechanisms such as hotlines that are easily accessible, and the prompt investigation of internal complaints should help to curb complaints to the CFPB. Finally, in light of the potential for a private lawsuit, covered employers should review all anti-retaliation policies and procedures to ensure they expressly encompass whistleblowing activity.

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